



University of HUDDERSFIELD

University of Huddersfield Repository

Hviid, Morten, Izquierdo Sanchez, Sofia and Jacques, Sabine

From publishers to self-publishing: The disruptive effects of digitalisation on the book industry

Original Citation

Hviid, Morten, Izquierdo Sanchez, Sofia and Jacques, Sabine (2017) From publishers to self-publishing: The disruptive effects of digitalisation on the book industry. Working Paper. CREATE.

This version is available at <http://eprints.hud.ac.uk/id/eprint/31502/>

The University Repository is a digital collection of the research output of the University, available on Open Access. Copyright and Moral Rights for the items on this site are retained by the individual author and/or other copyright owners. Users may access full items free of charge; copies of full text items generally can be reproduced, displayed or performed and given to third parties in any format or medium for personal research or study, educational or not-for-profit purposes without prior permission or charge, provided:

- The authors, title and full bibliographic details is credited in any copy;
- A hyperlink and/or URL is included for the original metadata page; and
- The content is not changed in any way.

For more information, including our policy and submission procedure, please contact the Repository Team at: E.mailbox@hud.ac.uk.

<http://eprints.hud.ac.uk/>



CREATe

CREATe Working Paper 2017/06 (March 2017)

From publishers to self-publishing: The disruptive effects of digitalisation on the book industry

Authors

Morten Hviid
Centre for Competition Policy,
University of East Anglia
M.Hviid@uea.ac.uk

Sabine Jacques
Centre for Competition Policy,
University of East Anglia
Sabine.Jacques@uea.ac.uk

Sofia Izquierdo Sanchez
Department of Accountancy, Finance, and
Economics. University of Huddersfield
S.Izquierdo-Sanchez@hud.ac.uk

CREATe Working Paper Series DOI:10.5281/zenodo.321609

This release was supported by the RCUK funded *Centre for Copyright and New Business Models in the Creative Economy (CREATe)*, AHRC Grant Number AH/K000179/1.

Table of Contents

1. Introduction	3
2. The structure of the market pre-digitalisation and subsequent changes	6
2.1 Publishers and publishing.....	6
2.2 Book retailing.....	9
2.3 The entry of new services – disintermediation.....	10
2.4 Digitalisation – what changed?	11
3. Legal rights in the UK and their effect on printed books	13
3.1 Copyright Law.....	15
3.2 Economic rights.....	18
3.3 Contract Law	19
4. Publisher power to select and promote.....	22
5. What are authors really looking for?	28
6. Future problems: the long tail and new gatekeepers	38
7. Conclusions	40
Appendix A: Simple theoretical model for publisher behaviour	42
Appendix B – The Danish Experience.....	47
References.....	51

Abstract

This paper explores the structure of the book publishing industry post-digitalisation. We argue that the introduction of successful e-book readers has belatedly given digitalisation the characteristics of a disruptive technology by making self-publishing a serious option for authors. This has been supported by the entry of new types of intermediaries and the strengthening of others. These changes have reduced the overall complexities for an author to get a book self-published. As a result, a larger share of the surplus from the book industry is likely going to authors, explaining the significant increase in the supply of books. The potential over-supply of books has created a new problem by making consumer search more difficult. We argue that digitalisation has shifted the potential market failure from inadequate supply of books to asymmetric information about quality. It remains to be seen whether the market will provide appropriate intermediaries to solve the associated asymmetric information problem and, if not, what appropriate interventions should be contemplated.

Acknowledgements

Hviid, Izquierdo Sanchez and Jacques are all members of CREATE and financial support from CREATE is gratefully acknowledged. An earlier version of this paper was presented at the 2016 FSR C&M and CMPF Scientific Seminar on Competition and Regulation in Infrastructure and Digital Markets, Florence. We are grateful to the participants and in particular to our discussant, Virginia Silvestri, for helpful comments and suggestions. The usual disclaimer applies. The authors would also like to thank Lynne Chave, David Reader, Ruth Towse and an anonymous referee for the CREATE working paper series for their comments on earlier drafts.

1. Introduction

For decades, if not centuries, the traditional publishers have been the dominant players in the book industry. The most recent challenge to this position has been the arrival of e-books and in particular e-readers, enabling thousands of e-books to be carried and read on a single device. While electronic versions of books, now referred to as ‘e-books’,¹ have been available since at least the 1970s, see Gilbert (2015) and Waldfogel and Reimers (2015), it required the introduction of a dedicated reading device for the sales and use of e-books to truly take off. The launch of the first commercially successful e-reader, the Amazon Kindle reader in 2007, triggered a dramatic change in the book industry.² Since the launch of the Kindle reader, a variety of devices entered the market ranging from other e-ink readers (e.g. Nook and the Kobo) to small tablets and smartphones. Moreover, with the growth of e-book readers and other reading devices, came an increase in the sales of e-books and the number of e-books available. By the end of 2013, the share of e-book sales in the US reached almost a quarter of all book sales, see Gilbert (2015, 166) while for the UK, the official market share of e-books reached 21% of the total retail market by value.³ And while US sales of e-books were reported to have fallen in 2015,⁴ this has been hotly disputed. Research undertaken by *Author Earnings*⁵ finds that an increasing number of e-books do not have an ISBN number and such books would not be accounted for in the traditional statistics.⁶ Hence, the data on which the claim made about declining sales was based under-represented e-books.

¹ The terminology is not fully settled as yet and others use the variations ‘ebook’ or ‘eBook’.

² While digitalisation of books started in 1971 (with project Gutenberg) or possibly even earlier and e-readers also emerged relatively early, the first commercially successful e-book reader was the Kindle.

³ See Rüdiger Wischenbart, Global eBook 2016: A report on market trends and developments, page 30. Report available at <http://www.global-ebook.com/>.

⁴ See e.g. Alexandra Alter “The Plot Twist: E-Book Sales Slip, and Print Is Far From Dead”, New York Times, September 22, 2015, available at http://www.nytimes.com/2015/09/23/business/media/the-plot-twist-e-book-sales-slip-and-print-is-far-from-dead.html?_r=1. (“E-book sales fell by 10 percent in the first five months of this year, according to the Association of American Publishers, which collects data from nearly 1,200 publishers.”)

⁵ Author Earnings is a web site, <http://authorearnings.com/> which aims to provide data for authors regarding publishing. The data is mostly from the US, generated by collecting information from Amazon.com on the position of books on their various best-seller lists and using this to predict sales. The methodology is not set out clearly on their web site and the data should thus be treated with some caution. Because they are not affected by the lack of ISBN numbers for some self-published books, they offer the other extreme to the data by Nielsen. At the moment they have 10 data points from February 2014 – October 2016. Some of the data reported in this paper is from their February 2016 Earnings Report which focuses on the UK. The reports including a summary description of the methodology are available at <http://authorearnings.com/report/february-2016-author-earnings-report/>. See also Rüdiger Wischenbart, Global eBook 2016: A report on market trends and developments, page 26 (“Key to the approach is an extensive crawling of ebook titles and their sales rank on Amazon.com, and with the help of crowd sourced absolute sales information coming from contributing ebook authors, to convert rank into actual unit sales and earnings.”). Report available at <http://www.global-ebook.com/>.

⁶ See <http://authorearnings.com> and reports on their website.

In the past, publishers have provided an essential link between the author and the audience because they possessed superior data and experience, both in terms of assessing manuscripts and producing, distributing and promoting the resulting books. They also had the financial means to support authors by making upfront payments in advance and offsetting this against a sufficiently balanced portfolio of books to spread the risk of failure efficiently. Prior to digitalisation, it would have been prohibitively expensive for most authors to bypass publishers through self-publishing.⁷ However, this has changed with the arrival of the e-book and, in particular, e-book readers. Although traditional publishers still have a comparative advantage in terms of better data and funds to pay advances, self-publishing e-books has benefits in terms of speed as well as offering the author greater freedom and control over the final product and, possibly, even the pricing of their book.

The emergence of various internet-based services has also made self-publishing a more feasible choice for authors. Firstly, powerful internet-based retailers, such as Amazon, are willing to deal with self-publishing authors and to provide them with direct access to consumers. Secondly, over the last 10 years, a number of intermediaries have entered the market, offering to carry out several of the steps involved in converting a draft manuscript into an e-book (and even a printed book) or to provide the software and support to enable the author to carry out these tasks themselves. The effect has taken time to emerge but has more recently been significant.⁸ The US and UK are the two largest markets in terms of e-book sales. Data collected by Nielsen Book UK and reported on by The Bookseller show that self-published books account for 22% of book sales in the UK by volume and 16% by revenue.⁹ The fraction in the US is even higher. Yet, once again, official statistics should be interpreted with care. The fact that the statistics do not account for books self-published without an ISBN number means that the data are not fully representative, which is particularly problematic in relation to self-published books. Hence, official data underestimates the importance of self-published books and may do so significantly.

⁷ Though consider the counter-example of John James Audubon whose first book, “The Birds of America” was self-published and essentially crowdfunded through subscription. Creative and fortunate authors may always have been able to get around the gate-keeping publishers.

⁸ It is noticeable that, Thompson (2012), a tour-de-force of the history and current reality of book publishing, hardly devote any time to self-publishing – it only gets one mention, on page 154. The development in the five or so years since the publication of this book is very marked and largely justifies the more optimistic views on developments.

⁹ Lisa Campbell, “Self-published titles '22% of UK e-book market””, March 23, 2016. Available at: <http://www.thebookseller.com/news/self-published-titles-22-e-book-market-325152>.

What does emerge from existing industry data is a clear indication that self-publishing is a potential game-changer. As a consequence we may have to start regarding the Kindle Reader – and other e-reading devices – as another disruptive innovation which may require a more general rethink of the regulatory structure surrounding the industry and to evaluate industry behaviour and lobbying in light of this. The aim of this paper is to examine the option of self-publishing for authors and to assess whether it represents a real alternative to traditional publishing using conventional intermediaries (such as publishers). In that regard, we focus unashamedly on the authors.¹⁰ In particular, we seek to understand what features makes it a viable alternative, and whether there is a danger that the option of self-publishing may be curtailed in the future. Secondly, we investigate whether the ability to self-publish affects the bargaining power of authors and, hence, the allocation of revenue among those involved in creating and producing the final product, or whether it mainly allows authors more control over the final product. The focus is predominantly on the UK with occasional comparisons with other markets, particularly but not exclusively the US. The motivation for looking at the UK comes in part from an assessment made in Thompson (2012, chapter 8) that the UK is the “wild west” of publishing. As the “wild west” is where rules are made, challenged or broken it serves as an interesting laboratory for the study of the effects of a disruptive digital innovation.

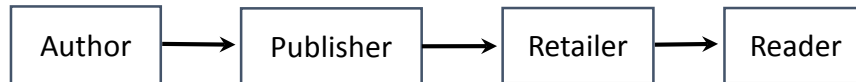
The paper is divided as follows. The following section describes the e-book publishing industry pre-digitalisation and then identifies what has changed through digitalisation, in particular the emergence of disintermediating entrants. Section three focuses on the legal rights, and unpicks the relationship between the book publishing industry and the law in the digital context. The primary focus is to identify copyright issues which arise in relation to the self-publication of e-books. Section four considers how the publishers have responded to the changes. Section five explores what may determine an author’s choice between using a publisher and self-publishing. Section six discusses the problem arising from the long tail. Section seven summarises the conclusions and points to likely future developments.

¹⁰ It is remarkable how little the two groups most deserving of public policy attention, the undiscovered authors and the consumers, feature in the academic and policy literature. Without wanting to single the book out for criticism, Thompson (2012) is a case in point with a focus on agents, publishers and to a lesser extent retailers. Authors, even the less successful ones, do get an occasional look-in, but the group footing the bill, the consumer/reader, is ignored. This seems to match the lobbying power. For more on lobbying and the creative industry, see Kay (2016).

2. The structure of the market pre-digitalisation and subsequent changes

Pre-digitalisation, the vertical structure of the book market could be illustrated as in Figure 1 below.

Figure 1: Traditional structure



The simplified figure includes the key actors but, in addition to this simple model, many authors hire agents to represent their interests and many publishers use independent wholesalers or distributors to supply the retailers.¹¹

2.1 *Publishers and publishing*

For centuries, book publishers have been the gate-keepers of the book market by selecting which of the numerous manuscripts received are ‘good’ enough to be published and offered for general sale. In practice, a publisher will only ever publish a small percentage of the manuscripts which they receive, and that manuscript may have already been rejected by several other publishers. In many cases, the decision to publish is not based upon the cultural merits of the author’s work, but is purely a financial one, founded upon an assessment of the likelihood of the financial success of the book: a calculation based on the data the publishers have available, such as the demographics of what type of works have proved successful before for a particular audience.

Before the advent of electronic publishing and e-books, the typical sequence of events from manuscript to published book can be described as follows. On receipt of a manuscript, an editor decides whether the work is suitable for that particular publishing house. If so, the publishing house acquires the manuscript from the author (or their agent), having negotiated any royalty rate to be paid on any future sales, as well as any advance on those future royalties. From that point onwards, the publishing house funds the cost of enhancing the manuscript via the editorial process; designing the artwork for the book’s cover and typesetting the pages; creating cost analysis documents and estimating production cycles; printing the book so that there is a product to be sold to readers; promoting the book; arranging for its distribution through various channels; handling all enquiries and orders from distributors, wholesalers and

¹¹ For more detail see e.g. Thompson (2012).

customers; and overseeing all sub-rights, foreign rights, foreign sales licensing activities, special cases, etc. (Greco, 1945 and revisited editions).

As illustrated by Table 1 below, there are a large number of publishers in the UK publishing industry. Moreover, while the number of UK publishers has fluctuated over the last 12 years, it has done so around an average of approximately 2200 with a short-lived spike in 2008:¹²

Table 1: Number of UK book publishers registered for VAT – March to March

Year		2003/04	2004/05	2005/06	2006/07	2007/08	2008/09
No of Publishers		2,270	2,270	2,275	2,320	2,610	2,510
Year		2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
No of Publishers		2,360	2,200	2,115	2,060	2,160	2,270

Source: ONS: UK Business: Activity, Size & Location various years¹³

At the same time, as shown in Table 2 below, the level of concentration in UK book publishing has also remained fairly constant. Analysis of the four-firm concentration ratio - measuring the market share of the four largest publishers - indicates that these publishers have retained approximately half of the market.¹⁴

Table 2: UK 4-firm concentration ratio

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
CR ₄	47.3	52.9	47.2	51.5	49.7	49.1	48.9	49.1	47.1	47.5

Source: UK Publishing Groups - Consumer Sales 2005-2014, BA Reports Library 2015

Moreover, data from the BA Reports Library indicates that, since 2009, the UK market share of the fifth largest publisher has been below 4%. Thus, there is a dramatic drop off in size outside the Top 4. The numbers in Table 2 do, however, mask a change in concentration. The market share of the largest firm, Bertelsmann, jumped from 14.8% in 2012 to 24.1% in 2013

¹² These numbers have to be viewed with some caution. We know that there is considerable merger and acquisition activity in this sector. It is not clear whether at acquisition the old brand or VAT number ceases to exist. Thus, the number of VAT registered publishers may not correspond to the actual independent decision makers in this industry.

¹³ <http://www.ons.gov.uk/ons/rel/bus-register/uk-business/index.html>.

¹⁴ The numbers in the table may overstate the actual market share of the large publishers because of an increase in e-books without an ISBN which would not be accounted for in the official data. According to *Author Earnings* [<http://authorearnings.com/report/november-2015-the-uk-report-author-earnings-on-amazon-co-uk/>], “just over 25% of the e-books sold each day through Amazon.co.uk lack ISBN identifiers.” While significantly less than the 37% they observe for the US, it still implies a significant over-estimation of the market share of traditional publishers.

following a merger with another of the largest firms.¹⁵ Although less frequent than in other creative industries,¹⁶ mergers and acquisitions do occur in the book publishing industry but without creating significant changes in concentration among the Top 4 or 5 firms.

The UK publisher, Bloomsbury, founded in 1986, offers another indication of the stability of market shares. Bloomsbury picked a big winner in 1997 by recognising the value of the Harry Potter books by J. K. Rowling. The success of the Harry Potter books was almost single-handedly responsible for moving Bloomsbury into the UK Top 10 publishers. Since 2007, its market share has continued to fluctuate between 2% and 2.5%. Some of its market share has been sustained by a strategy of acquisition. Between 2000 and 2014, Bloomsbury acquired 21 lists or publishers,¹⁷ but even with this level of acquisition, the company has not yet been able to grow its market share.

The overall picture of the UK is, thus, one of a very small number of large publishers which each hold a large portfolio of book titles and enjoy large sales, together with a huge tail. The tail comprises smaller, often specialist, publishers and an increasingly significant number of self-publishing indie authors.¹⁸ A similar picture characterises other markets and globally, the English language book market is dominated by five large publishers, often referred to as the Big-5.¹⁹ The market shares may understate the actual degree of competition among publishers. The US Second Circuit Court decision in the Apple e-book competition litigation noted that key players in the publishing sector had no qualms in regularly meeting to discuss industry developments.²⁰ The publishers did not consider such behaviour to be anti-competitive, because they did not meet to set retail prices, but instead agreed which agents and authors they would each represent. This begs the question of exactly how competitive this industry is and has been. The stability of the market structure is interesting in itself, because it suggests that, up until now at least, the traditional publishing ‘powerhouses’ have been able to maintain their

¹⁵ The £2.4bn merger between Penguin Books and Random House, creating the largest book publisher in the industry (The Telegraph, 2013).

¹⁶ e.g. the videogames industry where two or three big publishers dominate the market through acquiring the medium-big publishers and generating a clear oligopoly. Something similar has happened in the music industry.

¹⁷ See Bloomsbury Publishing corporate history at http://www.bloomsbury-ir.co.uk/html/about/a_history.html [site visited 27/01/2016].

¹⁸ This feature is not unique to book publishing. For example, Waldfogel finds a similar structure in the music industry.

¹⁹ This used to be the Big-Six: Hachette, Harper Collins, Macmillan, Penguin, Random House and Simon & Schuster. Following the merger of Penguin and Random House, the current Big-Five are: Bertelsmann (Penguin Random House/Transworld), Hachette Livre UK (Headline/Hodder/Little Brown/Orion), News Corporation (HarperCollins), Holtzbrinck (Pan Macmillan), and Simon & Schuster.

²⁰ United States v. Apple, Inc. 13-3741-cv (L), United States Court of Appeals for the Second Circuit decision of June 30, 2015, at page 15-16.

position despite the very technological innovations which might be expected to challenge their position.

2.2 Book retailing

The set of retail outlets for books has both expanded and changed in nature over the past four decades, becoming far more concentrated. The UK shows the same trend as in the US with the creation of several book shop chains of specialist book retailers in the early 1980s, followed by periods of consolidation among these chains.²¹ In 2005 in the UK, the announced merger of two of the major book retailers, Waterstone's and Ottakar's, was cleared by the competition authority. At that point in time, the four largest retailers²² had a market share of around 45%,²³ while internet retailers only accounted for 8% of the market.²⁴ Fast-forward to 2008, where the market share of the large chains had reportedly fallen to 34% while internet retailers had increased theirs to 13%.²⁵ A year later, one of the four large chain-store retailers, Borders, had called in the receiver.

The decades leading up to the introduction of the e-book reader saw the creation of powerful retailers with the ability to challenge the large publishing houses. While the challenge initially came from the creation of bookshop chains, the eventual challenge arose from the creation of on-line booksellers and, in particular, the launch of the Amazon Kindle Store,²⁶ but also others. More specifically, Amazon had experience of dealing with small independent firms selling through its platform (using Amazon Marketplace) and, hence, Amazon had a willingness to deal with and help smaller publishers including self-publishing authors. Therefore, if authors could somehow replace the inputs required to transform a manuscript into a book which is provided by a publisher, they would have a route to the market and, therein, to the reading public. Entry of new internet-based firms has enabled this.

²¹ See Thompson (2012, chapter 1) for more detail.

²² They were: WHSmith, Waterstone's, Ottakar's and Borders, of which only the three latter were specialist booksellers while WHSmith was predominantly a stationer.

²³ Best-sellers are sold across a greater range of retailers, including supermarkets. If one focused solely on the sales of books outside the 5,000 best-sellers, this market share increased to 55%.

²⁴ For a review of the Waterstone's/Ottakar's merger and information about the UK book market around 2005, see Aguzzoni, Luca and Argentesi, Elena and Ciari, Lorenzo and Duso, Tomaso and Tognoni, Massimo, Ex-Post Merger Evaluation in the UK Retail Market for Books (June 14, 2013). Quaderni - Working Paper DSE N° 889; DIW Berlin Discussion Paper No. 1310.

²⁵ James Thompson, Is this the final chapter for traditional bookshops?, The Independent, 24 November 2009. Available at: <http://www.independent.co.uk/news/business/analysis-and-features/is-this-the-final-chapter-for-traditional-bookshops-1826541.html>.

²⁶ Interestingly, Amazon opened a physical retail bookshop in Seattle. 1) to increase the exposure to ebooks, and 2) because compared to other goods, some people will always consume hardcopy. This shop widely advertises both formats.

2.3 The entry of new services – disintermediation

The wealth of information and new technology that has been made possible by the internet may give authors the means to bypass the traditional publishers and, potentially, side-step new and traditional retailers by dealing directly with those interested in reading their works. The incentive for this is clear when we consider information provided by the OECD (2012)²⁷ about the likely distribution of revenues across the key actors in Figure 1 above. In particular, the share of the revenue going to the author, from which they have to pay any agent they may have, is calculated to be 8-15%. These are averages and we would expect this share to differ dramatically between authors. The net shares of revenue going to the publisher and the retailer is reported to be 30% and 40% respectively.

Authors may utilise one of the different platforms available such as Smashwords (SW), Draft2Digital (D2D) and Bookbaby which all offer assistance with the publication and distribution process. These services prepare the author’s work for sale via the various retailers and in forms compatible with the various readers.²⁸ There are different platforms implementing different pricing policies. Table 3 lists some of the most important players in the self-publishing market, along with their pricing policies.²⁹

Table 3: List of main players

Players	Description	Pricing policy
Kindle Unlimited (KU)	E-book subscription platform.	Royalties based on qualified borrows, with payment to the author based on the number of pages read. ³⁰
Scribd	E-book subscription platform.	When a member reads a certain percentage of the book, authors get paid as if they had sold the book in an e-book retail store. ³¹
Smashwords	E-book distributor/aggregator. ³²	Authors and publishers earn 85% or more of the net proceeds from the sale of their works. ³³ Authors receive 70.5% for affiliate sales.

²⁷ OECD (2012), “E-books: Developments and Policy Considerations”, OECD Digital Economy Papers, No. 208, OECD Publishing. <http://dx.doi.org/10.1787/5k912zxcg5svh-en>, p. 26.

²⁸ Authors also have the option to offer their book in paperback format with the help of print-on-demand services such as LuLu and Amazon’s CreateSpace.

²⁹ Note that this is not a settled landscape. For example, in e-book subscription platforms, between July and September 2015, two of the four platforms, *Entitle* and *Oyster*, shut down.

³⁰ Full information available at: <https://kdp.amazon.com/help?topicId=A156OS90J7RDN>

³¹ Authors need to go through Smashwords, INscribed Digital, BookBaby, or Draft2Digital to upload their work. Full information available at: <https://www.scribd.com/about>

³² Smashwords distributes books to most of the major retailers, including Apple iBooks, Barnes & Noble, Sony, Kobo and the Diesel eBook Store.

³³ Net proceeds to author = (sales price minus PayPal payment processing fees). Information available at: <http://www.smashwords.com/about>.

Draft2Digital	US self-publishing and distribution platform ³⁴	There are no fees for formatting or distributing a book. Draft2Digital (D2D) keep about 10% of the retail price.
INscribe Digital	Digital solutions	Fee for services. ³⁵
BookBaby	Distribution and Print-On-Demand	Sells its services for a fee in various packages.

Most of the authors who decide to self-publish offer their book in an e-book format compatible with an e-book reader, including tablets and smart phones. As has been outlined above, the most popular e-book readers are: Kindle from Amazon, Nook from Barnes & Noble and Kobo's Kobo device. While Amazon may harbour ambitions to become a major publisher, these suppliers of e-book readers are all currently predominantly retailers and these retailers are prepared to deal directly with authors. Because they provide a vehicle for authors to publish and sell their own books independently, these devices threaten the market power of publishers by increasing competition in the industry.

When deciding whether to use a publisher or whether to self-publish, and if self-publishing, which channels to use to sell their books, authors need to understand what costs are incurred by retaining control and what benefits a publisher, or any particular retailer, is able to offer. In practice, this is a difficult decision to make because many of the benefits are hard to quantify. Additionally a significant hurdle for any self-publishing authors is to figure out how to promote the works best to ensure that these come to the attention of their target audience. To use these new services, self-publishing authors need to be knowledgeable about the different stages of the publishing business. Consequently, it may not appeal to all authors. However, and more crucially, e-books make it technically feasible for an entrepreneurial author to circumvent the traditional publishers which may strengthen their hand in contract negotiation.

2.4 Digitalisation – what changed?

While the digitalisation of books was a necessary condition for the rise of e-books, it required the availability of an appropriately designed and marketed e-reader for this product format to take off and become a game-changer. The launch of the Kindle by the dominant internet book

³⁴ D2D is a conversion and distribution aggregator – it does not provide editing, design and marketing services.

³⁵ INscribe Digital deals with the digital side of book publishing by providing customised solutions for production, conversion, distribution to retailers and e-reading devices, marketing, sales reporting and analytics.

retailer, Amazon, has arguably led to major disruption of an industry which has, otherwise, been relatively stable.

One effect of internet retailers and the e-book has been a move from the traditional production and sale of physical books towards the sale of books in both formats, or in e-book format exclusively. An increasing number of these books are self-published. Research by *Author Earnings* indicates a shift away from the major traditional publishers towards self-publishing, both in terms of the market share of unit sales and in market share of revenue. Over the 33-month period covered by their data, the market shares of the Big-Five traditional publishers show a significant decline, from approximately 39% to 24% in terms of unit sales³⁶ and a continuous drop from 53% to 39% of revenue. Self-published indie books showed an increase over the period from 27% to 36% with a high point in May 2016 of 43% in unit sales and from 15% to 20% with a high point in May 2016 of 25% in terms of revenue. The greater movement of market shares in terms of units sold, rather than revenue, is explained by the difference in average prices between the Big-Five publishers and self-publishers. Further evidence of the trend towards successful self-publishing provided by *Author Earnings* is that on the day their January sample was collected (10.1.2016), four of Amazon's overall 'Top 10 Best Selling' e-books were self-published indie titles. The corresponding numbers for the Top 20 and Top 100 best-sellers were 10 and 56 respectively. Self-published indie titles thus formed 56% of Amazon's overall Top 100 Best Selling e-books. *Author Earnings* also estimates that, in terms of printed books, the Big-Five account for just below 50% of both units sold via Amazon and of revenue.

The e-book market is dominated by one retailer, Amazon. *Author Earnings*, by recognising that not all e-books have ISBN numbers,³⁷ estimates Amazon's share of US e-book sales at 74%, with the majority of the remaining share being split among four other retailers: Apple's iBooks Store [11%], Barnes & Noble's Nook Store [8%], Kobo's US bookstore [3%], and Google Play Books [2%], so leaving only 2% for sales via other avenues. The US is the largest market for e-books, with the UK second. *Author Earnings* has recently extended its empirical work to cover the UK market.³⁸ This identifies that while there are many similarities between

³⁶ The trend for the first nine reports was for a continual decline, to a low of 23%. The decline has been reversed in the most recent October 2016 report, where self-publishing is reduced and small publishers have seen a significant level of growth. A clear understanding of this change has not yet been offered.

³⁷ They estimate that 37% of e-books sold on amazon do not have an ISBN number. Those books do not show up in most regularly collected statistics. They argue that the true US e-book market, which includes non-ISBN sales, is at least 50% larger than ISBN-limited market statistics from Nielsen and Bowker are estimating.

³⁸ See <http://authorearnings.com/report/november-2015-the-uk-report-author-earnings-on-amazon-co-uk/>.

the UK and US findings, the share of self-published books sold on Amazon via its UK website (amazon.co.uk) is significantly lower than that sold via its main website (amazon.com), while the share of the Big-Five traditional publishers is significantly higher. One important factor which is likely to explain the difference between sales on Amazon's US and UK websites – the difference in pricing structures on the two sites. Big-Five books are, on average, significantly more expensive in the US, while self-published indie books are cheaper in the US than in the UK. One reason for this is that since 2014, the Big-Five have regained more control over final retail prices in the US. Following the end of the temporary ban on the agency model (i.e. publishers set the final consumer price, which arose from an antitrust action brought against Apple)³⁹ publishers have negotiated a return to this model of pricing.

3. Legal rights in the UK and their effect on printed books⁴⁰

The publishing industry and copyright law share a long and tumultuous history, but it is widely accepted that they also share an inter-linked, symbiotic relationship, see e.g. Goldstein (2003), Grosheide (2001) and Wiseman (2007). Copyright law aims to promote cultural diversity⁴¹ by providing creators with an incentive to invest in the creative process by offering legal protection which can be enforced to prevent unauthorised copying of works for a finite period. In this way, the author enjoys a lead-time to recoup their investment by having an option to exploit their work commercially.

Despite these aims, UK copyright law has often been criticised for being more publisher-centred, than author-centred, see D'Agostino (2010, p. 53). Although the first copyright statute, the Statute of Anne in 1709,⁴² vested the exclusive right to print books in the *author*⁴³ - thus requiring publishers to acquire that right from the author (whether by assignment or licence) - there is no doubt that the Statute of Anne favoured publishers. Indeed, given the nature of the market, and the cost of the printing press, it was impractical for authors to exploit their own works commercially. In this context, publishers took advantage by insisting upon

³⁹ United States v. Apple, Inc. 13-3741-cv (L), United States Court of Appeals for the Second Circuit decision of June 30, 2015

⁴⁰ This section focuses on the UK. European copyright laws differ, and the role of collecting societies, standard contracts, and various forms of literary policies play different roles in different markets.

⁴¹ Through its paradigm, copyright law provides a legal remedy to increase the quantity and variety of cultural works produced and disseminated. This is likely to be increased with the reduction of transaction costs linked to self-publishing and the resulting higher competition in the book industry.

⁴² 8 Anne c. 19. This instrument was initially conceived to address the book industry.

⁴³ See Sterling (2015, p. 11)

assignment of rights before incurring the risk of publication⁴⁴. Ever since, publishers have been able to rely upon their commercial might to ensure that copyright law furthers their interests, thereby stretching the intended ‘fair’ balancing of interests of both authors *and* publishers to one extreme.⁴⁵ This state of affairs has resulted in an extension of the term of protection, as well as an expansion of the range of the exclusive rights granted to the copyright owner. The list of ‘exclusive rights’ defines which acts and uses of any protected work requires the copyright owner’s permission. Thus, as the reach of copyright expands, legislators are called to re-balance the interests of publishers in favour of users (readers), and the public more widely.⁴⁶ This has led to greater scrutiny of copyright exceptions – specific uses which are held to fall outside the copyright owner’s scope of control.

Yet, it would be incorrect to assume that authors, publishers and users are completely distinct entities with different interests⁴⁷, not least because the book publishing industry may be characterised by:

“[T]he ability of a publisher to select or commission content that the reading public will be ready to purchase, which will satisfy their interests in a variety of thematic areas. Book publishers produce this content in print and/or in other formats (electronic versions of books, periodicals, websites, blogs, etc.) and use sales and marketing skills to sell this content to readers.” WIPO (2008, p. 7)

Therefore, book publishers may be simultaneously content creators, owners and users.

In the past, publishers have had the important role of guaranteeing that the content is not libellous, obscene or blasphemous. It is clear that having a powerful gatekeeper – who in return can be sued for breach of these rules – is beneficial to policy makers and this in turn may go somewhat towards explaining why developments in the law have been skewed towards publishers. A publication is a realisation of the author’s right to freedom of expression, which is protected at international⁴⁸ and national⁴⁹ levels as a fundamental human right. Nevertheless, this right is not absolute and can be restricted if publication would violate the rights of others. Consequently, any publication must, for example, refrain from promoting hate or

⁴⁴ Against which, the author generally receives upfront payment and a percentage of royalties.

⁴⁵ Similarly to other creative industries – such as the music industry – the book publishing industry is characterised by the formation of ‘clusters’ where different actors share knowledge and resources to foster the industry. These actors also have a greater lobbying power as they come together to influence the development of the intellectual property regime applicable to this particular industry. See also Kay (2016).

⁴⁶ Yet the *Proposal for a Directive of the European Parliament and of the Council on Copyright in the digital Single Market* launched on September 14, 2016 seem to take a step back and fortify the publishers’ position.

⁴⁷ This is simple to understand given that publishers bear the cost and the risks linked to the production and manufacturing of a book.

⁴⁸ Article 19 UDHR, article 19(2) ICCPR, article 10(1) ECHR and article 11(1) EU Charter.

⁴⁹ Section 12 Human Rights Act 1998.

discrimination.⁵⁰ In addition, UK law prohibits the publication of defamatory and obscene content.⁵¹ These laws apply to the author of any publication, but because a traditional publisher may also be legally liable, the publisher's vetting of a text and familiarity with legal compliance offers the author additional peace of mind. In the case of self-publishing, the author has sole responsibility to fulfil these additional roles, or must employ one or more specialists to do so on their behalf.

3.1 Copyright Law

The regime of copyright law derives from a series of international treaties and national laws. The Berne Convention, signed in 1886, is the oldest and arguably most author-oriented of the international treaties. In essence, this instrument aimed to replace numerous bilateral agreements by ensuring a common minimum level of protection among the signatory parties. While the Berne Convention clearly did not foresee the emergence of a digital environment, numerous principles established in this treaty remain valid today. For example, it enshrined the existing consensus that copyright law should regulate the cross-border reprinting of books. This resulted in the principle of national treatment of copyright works authored by nationals of one of the Union countries, irrespectively of whether their works were published within the Union, or remained unpublished.⁵² Nevertheless, as D'Agostino (2010, pp. 88-98) explains, by the time the Convention was introduced, it was already well-understood that use of the term 'authors' encompassed the author's assigns and successors in title. Furthermore, there are scant provisions regulating the extent to which copyright law may be by-passed under contractual terms.⁵³ Essentially, this international paradigm liberated and legitimised publishers' freedom of contract (i.e. parties are free to determine the terms that bind their contractual relationship). The Universal Copyright Convention (UCC), established by UNESCO in 1952, also states in Article I that an 'author and the other copyright proprietors' enjoy the same protection. This instrument sought to broaden the international scope of copyright harmonisation by attempting to attract the USA to sign (since the USA only became party to the Berne Convention in 1988). To achieve this, the treaty applies the national treatment principle in a similar vein to the Berne

⁵⁰ Articles 19(3) and 20 ICCPR, article 10(2) ECHR, Article 17 ECHR.

⁵¹ One should bear in mind that defamation laws vary from country to country, as do concepts of morality, such that on-line circulation of books may open up global legal issues.

⁵² Article 2(1) of the Berne Convention 1886. Later revisions of the Berne Convention introduced important changes such as the prohibition of formalities for obtaining protection, a minimum term of protection of fifty years, moral rights of attribution and integrity, the communication to the public right, the right to translate and the reproduction right.

⁵³ In Berne, only two provisions deal with the transferability of rights: article 6bis in relation to moral rights and article 14bis(2)(b) relating to cinematographic works.

Convention but, unlike Berne, it does not set any minimum standard of protection. It also permits signatories to establish formal registration procedures (as is long-established in the USA), recognises a shorter term of protection (twenty-five years after the author's death), and presents no requirement for national copyright legislation to recognise an author's moral rights.

Towards the end of the 20th century, the need for greater harmonisation of copyright laws was recognised, but negotiations to revise the Berne Convention, now under the auspices of WIPO, a dedicated intellectual property arm of the United Nation, proved to be increasingly difficult, in part owing to the increased number of signatory parties. A solution presented itself with a shift of forum to WTO, and the adoption of an Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1994. Similarly to Berne, TRIPS establishes minimum standards of protection but unlike Berne it creates a dispute settlement mechanism, giving it a greater coercive force. The shift of forum from WIPO to WTO explains the economic-oriented provisions of TRIPS, since WTO is primarily concerned with establishing provisions necessary for international trade. At its very heart, Article 44 of TRIPS sought to foster international trade in 'intellectual' products, including copyright works, and to strengthen the scope of protection to combat the growing problem of piracy. It is, therefore, unsurprising that this instrument exclusively refers to 'right-holders', instead of 'authors', as it aims to facilitate commercial exploitation of copyright-protected works, and at the time of the agreement's drafting, this was the sole preserve of publishers, not authors. In terms of limits upon contractual provisions, TRIPS provides little more guidance than Berne, given the lack of consensus on the matter,⁵⁴ although article 40 does regulate anti-competitive practices in contractual licences, thereby offering a little comfort to authors, while corroborating publishers' freedom of contract.

Subsequently, the growth of the internet, and its implications for copyright law, led to the adoption of the WIPO Internet Treaties in 1996, including the WIPO Copyright Treaty (WCT). The WCT is most relevant, given our particular focus, since it reiterates the Berne Convention's provisions, but establishes additional digital-based obligations on the signatory parties. For example, it expands the established rights to reproduction⁵⁵ and communication to the online environment,⁵⁶ as well as introducing provisions to combat on-line piracy.⁵⁷ One significant omission in the WCT remains – the absence of any provision which regulates transfer of

⁵⁴ Gervais (2012, p. 552) explains that, in the initial negotiations, a copyright contract provision was inserted in the draft of 23 July 1990, but this provision was eventually set aside given the lack of consensus among signatory parties.

⁵⁵ Article 1(4) WCT.

⁵⁶ Article 8 WCT.

⁵⁷ Articles 11, 12 and 14 WCT.

ownership or licensing of copyright works on-line, which is seen likely to hinder international trade of copyright works in the digital era, see D’Agostino (2010, p. 106).

Based on this international legislative framework, it is reasonable to conclude that publishers and authors enjoy comparable protection pursuant to copyright law. Few provisions exist to regulate contractual issues, or regulate the remuneration owed to an author, so condoning and reinforcing the established practice of publishers to demand complete transfer of rights and, consequently, full enjoyment of all revenue streams. Against this backdrop, it is evident that authors have a vested interest in retaining the rights of their own works, rendering self-publishing all the more attractive.

Within the EU, the Information Society Directive of 2001⁵⁸ harmonises certain aspects of copyright legislation and implements the WIPO Internet treaties at regional level. Without repeating all the criticisms levied at this particular instrument here, one noteworthy point is that the Directive fails to resolve the crucial copyright issues associated the digital exploitation of copyright-protected works. As Hugenholtz comments:

“In fact, the Directive does not do much for authors at all. It is primarily geared towards protecting the rights and interests of the “main players” in the information industry (producers, broadcasters and institutional users), not of the creators that provide the invaluable “content” that drives the industry. The Directive fails to protect authors or performers against publishers and producers imposing standard-form “all rights” (buy-out) contracts, a dreadful practice that is rapidly becoming routine in this world of multimedia.” Hugenholtz (2000, p. 501)

Indeed, recital 30 and article 9 of the Infosoc Directive specifically articulates that there is no intention of the Directive affecting contractual arrangements, as exemplified by the Directive’s failure to prevent contract terms which override the copyright exceptions. The Infosoc Directive assumes that right-holders will always rely on collective rights management systems for the exploitation of their rights, but there can be little doubt that the digital environment now challenges this assumption, D’Agostino (2010, p. 108).

In conclusion, while copyright contracts are at the very heart of the book publishing industry, the international and regional copyright framework barely touches upon this issue. Additionally, the general failure to protect author-specific interests serves to further enhance the appeal of self-publishing to those authors who wish retain control over the exploitation of their works, and any income generated as a result. Overall, the copyright system endorses a

⁵⁸ Council Directive (EC) 01/29 on the harmonization of certain aspects of copyright and related rights in the information society [2001] OJ L 167 (‘the Infosoc Directive’).

system in which freedom of contract prevails, and this invariably favours the party with the greater negotiating power.

3.2 *Economic rights*

If a work satisfies the protection requirements, copyright law grants the author a bundle of exclusive rights.⁵⁹ These define the economic uses of the work, and hence the revenue streams, which the right-holder is able to control.⁶⁰ The term of protection varies according to the type of work, but for a literary work, such as the text of a book, protection is fixed at seventy years after the death of the (last surviving) author.⁶¹ In summary, the CDPA grants the right-holder the exclusive right to reproduce the work by making any copies to distribute or otherwise communicate the work to the public (including placing the work on-line, as well as the exclusive right to translate or adapt the work, see Sterling (2015, pp.442-445). The latter includes changing the format of a work, e.g. from a book to a film.

Generally, the law recognises the author as the ‘first owner’ of copyright.⁶² So, while an author will be the first owner of their literary work, if a book is published by a traditional publisher, it is likely to be the publisher which is responsible for the final layout of book. In which case, the publisher is the first copyright owner of the work comprising the additional protection for the typographical arrangement.⁶³ The question of ownership is vital in the book publishing industry given that, firstly, it is the starting point for the copyright term and, secondly, it continues to be essential for ensuring that national law respects the over-arching principle of national treatment set out in International copyright law.⁶⁴

Enforcement of copyright is another aspect of legal protection which has been impacted significantly by the digital environment. Traditional publishers (to some extent rightly) feared that dissemination of works on-line would make it almost impossible to police use of their rights in the digital environment. Increased piracy (both one-off unauthorised uses and wholesale piracy) was predicted, as digital technology enabled works not only to be accessed,

⁵⁹ Section 16(1) CDPA and section 17-21 CDPA.

⁶⁰ Alongside these economic rights, CDPA also grants additional rights to certain authorial works which qualify for copyright protection. These additional ‘moral rights’ are vested in the author alone, to protect certain non-economic interests of the author. Irrespective of whether the economic rights in a work are transferred, the author retains these moral rights which ensure that the author, nevertheless, retains some degree of control over subsequent uses of their works. Moral rights also further the general public interest, insofar as protecting the integrity of works by ensuring that the public is exposed to a work as intended by its author. Moral rights additionally reassure the public that any work is properly attributed.

⁶¹ Section 12(2) and 12(8) CDPA.

⁶² Section 11 CDPA. Exceptions to this are made, for example, in the case of works created by employees.

⁶³ Sections 1(1)(c) and 8 CDPA. Sterling (2015, pp. 245 & 528).

⁶⁴ Sections 12 and 15A CDPA.

but for perfect, infinite copies of the work to be made and distributed at the click of a mouse. However, the technological developments also created new opportunities for copyright holders. Seizing the opportunity to expand the exploitation of books to a new on-line market, publishers extended their offering to e-books, and devised ‘digital’ locks which deterred all but the most determined individuals from copying and printing the works made available on-line.⁶⁵ At the start of the digital publishing era, hardcopy books were scanned, encrypted and then made available to internet users in a downloadable format. However, once piracy in the form of bypassing encryption appeared, more sophisticated anti-circumvention measures were introduced and were reinforced by additional legal protection via copyright law, which rendered circumvention of rights management measures unlawful.⁶⁶ These new anti-circumvention provisions enabled right-holders, i.e. publishers, to gain even more control, by making micro-management of every single use of a work possible, Wiseman (2007). This shift signals the growing use of ‘mouse-click’ contracts and the like to regulate digital access to works, typically accompanied by the introduction of evermore sophisticated anti-piracy systems, Galopin (2012,) Geiger (2004), Guibault (2002) and Buydens and Dusollier (2001).

3.3 Contract Law

To fully understand the management of copyright within the traditional book publishing industry and the likely ramifications of self-publishing, we need to refer to general principles of contract law. Within the UK, contract law generally adheres to the principle of freedom of contract, that is, the parties to any agreement are free to determine the terms which bind their contractual relationship. Copyright legislation seeks to recognise this general contract law principle, characterised by the complete freedom of authors (generally the first owners of

⁶⁵ These digital locks (better known as digital rights management (DRM) locks), restore territorial frontiers in a way by enabling publishers and distributors to divide the book market in an on-line environment. DRM is used for: “(1) controlling access to and copying of reproductions and (2) administering information relating to the exercise of rights (e.g. in royalty collection and distribution systems).” Sterling (2015, p. 208). As Vaver notes, his system leads to an intricate situation whereby publishers lobby the legislatures arguing that the digital world has changed everything which requires more legal protection but simultaneously, if authors go to publishers to get a greater revenue share linked to the distribution of works in different formats, these claims are usually rejected based on the fact that the digital world has not changed the conditions (Vaver 2006, p. 6). This also consequences on the tax regime applicable to e-books. The CJEU will have to decide whether Council Directive 2009/47/EC of 5 May 2009 amending Directive 2006/112/EC as regards reduced rates of value added tax (OJ 2009 L 116, p. 18) is invalid on the ground that it violates the ‘principle of fiscal neutrality to the extent to which it excludes the application of reduced tax rates to books published in digital format and other electronic publications’. As e-books are regarded as a provision of services, these cultural works subject to standard rate VAT while paperback book benefit from a reduced rate. With the Proposal for the new Copyright Directive, the EU legislator seem to favour a differentiation in VAT rates.

⁶⁶ Sections 296-296ZF CDPA implementing article 6 of the Infosoc Directive. For more on article 6, see Becker et al. 2003, p 463).

copyright) to exercise, or waive, the exclusive rights associated with their work by the CPDA personally, or to exploit their work via one or more third parties via contractual agreements.⁶⁷

Typically in the book publishing industry, a publisher enters into one of two forms of contractual relationship with an author, covering the book's publication and subsequent distribution to end-users. The first form of legal relationship is an assignment, traditionally for payment of a fixed lump sum payable on signing, by which the author transfers full ownership of specified rights to the publisher. The second form of agreement is a licence. This may be an exclusive (Section 92 CDPA) or non-exclusive licence (Section 90 CDPA), or a combination of the two. In the case of a licence, as compared to an assignment, the author retains legal ownership of the copyright, but grants permission for publishers to perform the specified acts for a specific period of time. In the case of an exclusive licence, the copyright owner is precluded from personally exercising any of the licenced rights or from granting a conflicting licence to anyone else. Thus, in certain respects, an exclusive licence mimics an assignment as it places control over exploitation of the work in the hands of the licensee. CDPA requires assignments of copyright and exclusive licences to be in writing and signed by the right-holder, although industry practice is for non-exclusive licences to be written contracts as well.

In terms of content, these contracts tend to cover all the legal means necessary for publication and distribution of a work during a limited period of time and a specific territory. While this requires an author to licence or assign the reproduction (including the format) and distribution rights at least, it is common for the same agreement to cover other related exclusive rights, such as the adaptation right (for translation for example). Electronic publishing invokes the right of communication to the public, since it enables the public to access a protected work from their location. Other contractual terms cover non-copyright related aspects, such as the deadline for delivery of the work, an agreement on a possible publication date, a non-compete clause and warranties⁶⁸. Another important aspect is that parties will agree on the type and amount of remuneration for the author; for example, a one-off fee or a share in royalties or the amount of upfront payment. Finally, the copyright contracts feature termination provisions which state the circumstances in which one or either party may end the contractual relationship.

⁶⁷ *Chappell & Co Ltd v. Nestle Co Ltd* [1960] AC 87, (Lord Somervell of Harrow).

⁶⁸ The author warrants e.g. that prior authorisation has been granted for the reproduction of any third party copyright-protected materials, that the work is the author's own intellectual creation, and that the content is not libellous, obscene or blasphemous. In other words, the work should not infringe the rights of others.

D'Agostino (2010, pp. 66 & 158) explains how, in the nineteenth-century, UK courts were more supportive for authors in their contractual relationships with publishers given the restrictions of yesteryear. While imprecise and nebulous publishing clauses were traditionally interpreted in favour of the author, the position has reversed in the current digital era, and freedom of contract may now be expected to prevail. As explained below, authors tend to find to their cost that attempts to claw back control is futile, since their earlier agreement to vague contract terms permits the publisher to make new uses of their existing works, even though the digital environment was not envisaged at the time the contract was signed. But equally, the advent of the internet has brought advantages to authors too, making it possible for authors to contract directly with users and distribute their work themselves, without needing to engage in complex distribution apparatus required in the analogue publishing world.

In publishing, the most common model is the 'standard form' contract model in which one side (here the publisher) dictates the terms on a take-it-or-leave-it basis to the author, Guibault (2002, p.198). For example, many publishing contracts are wide-reaching and drafted by the publishers in their favour, covering the worldwide unlimited right to exploit the copyright-protected work in any form for the full copyright term. This position is exacerbated by the fact that many publishing houses adopt similarly standard terms. Therefore, an author unwilling or unable to accept these standard terms was, at least traditionally, unable to get their work published however meritorious the work might be.⁶⁹

In this context, self-publishing is not only attractive for authors who wish to remain in control of their rights but the digital world has rendered successful self-publishing possible. Authors are now in a position to reproduce and distribute their works on-line directly to the public without having to bear printing, storage and transport costs. In addition, they can control the translations made of their works to preserve their integrity. Finally, in some instances the author is better placed, having regard to personal connections, to negotiate deals for the adaptation of the book into a film or TV series.

In the light of the above, self-publishing represents a feasible possibility for authors having a minimum level of technical competence who prefer to retain control of their intellectual

⁶⁹ This description should not be taken as saying that there is no mechanism for courts in the UK to redress the unfairness of an unbalanced contractual relationship. Indeed, UK courts have held contracts voidable where there was a manifest inequality of bargaining powers, but there are several hurdles for the weaker party. *Peer International Corp v Termidor Music Publishers (No 1)* [2003] EWCA Civ 1156, [23]; *Lloyds Bank Ltd v Bundy* [1974] 3 All. E.R. 757, [765]; *Clifford Davis Management Ltd v WEA Records Ltd.* [1975] 1 All. E.R. 237, [240] (Denning LJ citing Diplock LJ in *Schroeder Music Publishing Co Ltd v Macaulay*); *Schroeder Music Publishing Co Ltd v Macaulay* [1974] 3 All E.R. 616, [624]; *Fry v Lane* (1888) 40 Ch D 312 (Kay J).

property rights. The overview of copyright law demonstrated that the current copyright paradigm is still largely publisher-oriented. The principle of freedom of contract over-arching UK contract law strengthens the position of publishers, since their superior negotiating position means they are often able to impose their terms on the author. The advent of new technologies (e.g. anti-circumvention measures) only increased the publishers' position, leaving little control and bargaining power for authors. While the law recognises 'moral rights', the manner in which these have been implemented within UK copyright law, such as the need for the attribution right to be specifically asserted to be effective, and the ability for other rights to be waived, undermines the practical impact on publishing practices.

4. Publisher power to select and promote

Designing the best marketing strategy for a book is complicated by three factors. One is that a book is an 'experience good', i.e. the pleasure to any individual reader may derive from reading a book can only be determined fully after it has been purchased and read (Nelson, 1970). A second is that since consumers' tastes differ, one consumer will not necessarily agree with an earlier reader's rating of book. This makes the recommendations and reviews of others an imprecise guide, especially if nothing is known about these reviewers. A third is that previous books by the same author are only an imperfect guide to how much the reader will enjoy other publications by the same author. Thus, when choosing a book to purchase, a consumer will base this decision on imperfect information drawn from their own past purchases, from endorsements and professional reviews and from the comments of others who have recently purchased that book.

The first and third factor has not been changed dramatically by the increased digitalisation, but the second has. With the increased importance of reader reviews, an author wishing to maximise sales of their work faces a fundamental problem – not only how to get their book noticed and talked about, but also to ensure that it comes to the attention of the 'right' people: its target audience, who will value the work most. Several studies have demonstrated that word of mouth recommendation and positive reviews are a key determinant to the success of various experience goods (Anderson and Madruger, 2012; Lee et al., 2009). The internet greatly enhances this spread of product information. Consumers can use this tool not just to track down opinions and reviews written by professional book reviewers, but those provided by fellow

consumers to obtain advice based on actual purchasing decisions (e.g. Amazon’s service to searchers: “people who purchased this book have also purchased...”).

While publishers, armed with their greater experience and access to funds, may be able to promote a book effectively,⁷⁰ they still need to undertake cost-benefit analysis to identify the type and amount of publicity any given manuscript is likely to need to be a commercial success, and to evaluate whether sales are likely to be sufficient to warrant this upfront expense. This is far from straightforward. In traditional publishing, manuscripts which proved to be successful have often already been rejected by other publishers in the past, especially where the manuscript is by a first-time author. Secondly, some books have been missed altogether and first gained prominence through the author self-publishing their work. The two case studies below have been chosen to illustrate these two scenarios. The first considers the *Harry Potter* series, one of the most successful series of books in the industry, and particularly in the UK. The second, *Fifty Shades of Grey*, is one of the most powerful examples of how self-published books can be a success. Both cases are intended to be illustrative, rather than representative.⁷¹

CASE STUDY 1: HARRY POTTER: *The seven Harry Potter books about an apprentice wizard have become the best-selling book series to date, having won numerous prizes for its author and become one of the most popular books ever in the UK. However, the manuscript was rejected by 12 publishing houses before being accepted for publication by a smaller publisher, Bloomsbury, which initially thought it to be just another children’s book.⁷² The seven Harry Potter books have collectively sold nearly 500 million copies since the publication of Harry Potter and the Philosopher’s Stone in 1997, making it the bestselling book series of all time.⁷³ In addition, the Harry Potter books have also found success within the film industry. The eight films based upon the books have grossed around £4.7 billion at the box office, making Harry Potter one of the highest-grossing film franchises (The Telegraph, 2014; Time, 2013).*

⁷⁰ While intuitively one might expect publishers to always be able to outperform authors, this is not generally true. Carolan and Evain (2013) provide some illustrative case studies where marketing is driven by the author.

⁷¹ Some other successful self-published books are: Hugh Howey’s *Wool* (2012), which sold over half a million copies through Kindle Direct Publishing; Andy Weir’s *The Martian* (2011) which was turned into a successful film, and *The Kissing Booth* (2012) written by the 17-year-old Beth Reekles who later signed a million-dollar three-book deal with Random House’s Delacorte imprint.

⁷² This information can be found in different magazine articles, for example “New Zealand Herald July 2005 by John Lawless” http://www.nzherald.co.nz/lifestyle/news/article.cfm?c_id=6&objectid=10333960

⁷³ Author Earnings is a web site, <http://authorearnings.com/> which aims to provide data for authors regarding publishing. At the moment they have 8 data points from February 2014 – January 2016. The data reported above is from their February 2016 Earnings Report available at <http://authorearnings.com/report/february-2016-author-earnings-report/>.

A new author with a superior product, but without a proven track record, risks being overlooked by the publishing industry. Even Bloomsbury, though willing to take a ‘punt’ and publish the book, were surprised at its ultimate success, because they failed to identify the manuscript as any more promising than any of their other children’s books. The case is testimony to the difficulty even professionals have in assessing the commercial merit of a manuscript.

CASE STUDY 2: FIFTY SHADES OF GREY: *The manuscript for the now successful Fifty Shades of Grey was (and still is) met with bad reviews and general dislike from publishers.⁷⁴ While the book did not convince the industry experts, it definitely succeeded in convincing its readers. The author, E.L. James, self-published the first book of the trilogy online in 2009, under the original title of Master of the Universe. Once the e-book had received around 37,000 positive reviews, E.L. James submitted her work to The Writers' Coffee Shop, a virtual publisher based in Australia. The first book, was re-released as an e-book and a POD paperback in May 2011 under the now-familiar title, Fifty Shades of Grey. The second volume, Fifty Shades Darker, was released in September 2011, and the third, Fifty Shades Freed, followed in January 2012. The Writers' Coffee Shop relied upon book blogs and ‘Goodread’ reviews for early publicity, which in turn inspired the word-of-mouth recommendations which marked the initial success of the book. Despite this limited promotional effort, the trilogy still achieved collective sales of 250,000 copies in e-book and POD paperback editions. However, given that the virtual publisher was not set up to print hard copies of the work in large volume, James signed a publishing deal with Random House's Vintage Books imprint in December 2011. Film rights were sold to Universal Pictures in March 2012, and Random House released the trilogy in paperback in April 2012. This was followed-up soon after with a Spanish translation in June 2012. Since then, the series has gone on to sell 35 million copies in the U.S.A. alone, and rights to the book have been sold in a total of 37 countries.*

The success of the *Fifty Shades* trilogy demonstrates how a self-published book which has received on-line acclaim can then be translated into a bestselling print book. It is also a testament to the broad consensus among self-published authors that “traditional publishers can accomplish what they can’t, including distribution, marketing, and selling foreign translation rights”.⁷⁵

The two case studies discussed share one common feature: both books served to reignite or reinvigorate a tired genre. While this may go some way towards explaining why the established publishers failed to identify the commercial worth of the works, at the same time, this failure to spot new trends has proved costly for publishers. In the light of this, this section questions

⁷⁴ Some examples can be found at the following links: <http://www.cosmopolitan.com/entertainment/news/a42274/meanest-reviews-of-grey/> and <http://www.theguardian.com/books/2015/jun/18/fifty-shades-of-grey-the-series-that-tied-publishing-up-in-knots>

⁷⁵ Sales, B. (2013). “Fifty Shades of Grey: the New Publishing Paradigm”, The Huffington Post, 18/04/2013. URL: http://www.huffingtonpost.com/bethany-sales/fifty-shades-of-grey-publishing_b_3109547.html.

what effects the increased ease of self-publishing might have on publisher behaviour in the manuscript evaluation stage. Whereas prior to digitisation, if a manuscript was rejected it might have sunk without trace, now the author may be able to make sure that the book is tested by the market by resorting to self-publishing.⁷⁶ Such a book may not be lost to the publishers forever and several self-published books have subsequently signed up publishing deals with a traditional publisher, but the revenue share is likely to shift significantly in favour of the author as the potential for the book is much better known. Hence the potential for self-publishing may not necessarily lead to more books being self-published but could instead be used as a lever for the authors to get a larger share of the revenue generated.

Looking at data from the US across seven quarters, from February 2014 – September 2015, *Author Earnings*⁷⁷ considers the distribution of authors who are consistently⁷⁸ earning at least \$X per year across four modes of publishing: (i) self-publishing (referred to as indie), (ii) Amazon published, (iii) traditionally published, and (iv) hybrid,⁷⁹ and conditioned on when the author published their first book.⁸⁰ Interestingly, the pattern remains the same whether \$X is \$10K, \$25K, \$50K, \$100K or indeed \$1M which really makes the analysis convincing. The only two categories which really matter are self-published and traditionally published. For those authors who published their first book sometime in the past century, traditionally published authors strongly dominate those who self-publish (for X = 10K, the numbers are 3256 vs. 2137 so that traditionally published authors constitute 60% of the two modes). For the subset who published their first book after 2005, traditionally published authors still dominate but less markedly (for X = 10K, traditionally published authors constitute 55% of the two modes). At the beginning of 2010, the picture changes so that self-published authors now

⁷⁶ Road-testing manuscripts through self-publication is used as part of the support for new authors by the new French digital platform, Librinova. "But can self-publishing coexist with a more traditional approach and can they even complement each other? Apparently yes, according to Laure Prételat and Charlotte Allibert, founders of the new French self-publishing platform Librinova. An alternative to Kindle Direct and Kobo Writing Life, the new digital venture was launched in 2014 with the aim of helping aspiring French authors find a readership by making their titles available online, as well as offering additional services, like editing, design and marketing." Giulia Trentacosti, "France's Librinova: Self-Publishing with a Twist: New digital platform Librinova is changing the face of self-publishing in France" 2Seas Agency July 2016 Available at: <http://2seasagency.com/librinova-self-publishing-twist/>.

⁷⁷ Report: "Individual author earnings tracked across 7 quarters, Feb. 2014 – Sept. 2015", available at: <http://authorearnings.com/report/individual-author-earnings-tracked-across-7-quarters-feb-2014-sept-2015/>.

⁷⁸ By which they mean that the author has earned at least \$X for two of the seven quarters. Their hope is that they have excluded the "one-day wonder".

⁷⁹ An author is classified as 'hybrid' if at least 25% of the author's earnings come from more than one publishing route.

⁸⁰ It is important to note that these are authors earning more than \$10K per year consistently from only that subset of their Kindle books that appear on the Amazon best seller lists. Thus, this clearly underestimates authors' total earnings.

dominate (for $X = 10K$, traditionally published authors constitute 44% of the two modes). Moving to the beginning of 2012, this trend is exacerbated (for $X = 10K$, the numbers are 994 vs. 1673 so that traditionally published authors constitute 37% of the two modes). The consistent picture is that, among those who have published their first book within the last five years, the majority of those who have been successful in selling e-books were self-published. These are authors who have had a meaningful choice between traditional and self-publishing from the beginning of their careers. The number of these authors earning a significant return from their creative works through self-publishing is far from trivial. Even if one has some reservations about the quality or reliability of the data from Author Earnings, the threat posed by self-publishing appears credible and one would expect this to benefit those who have chosen to be traditionally published.

There is a second possible effect of self-publishing. Let us imagine a situation where there are several manuscripts with the publishers, each within the same genre. If a publisher were to publish one of the books, it would command reasonable sales, but – in the event that all of the manuscripts are published by different publishers – the major share of the market would go to a single one of the books. In a pre-digital world, books can only be published successfully through an established publisher. Such a publisher might have little incentive to expend effort in identifying the most commercially viable book of a sub-genre unless it feared that, alternatively, a better book would be published by a competing publisher. If the total number of manuscripts converted to published books is large, the likelihood of a publisher facing competition in this one particular category before most of the demand had been met is relatively small. In a digital world, any author can self-publish using a process which is reasonably quick and inexpensive. The internet increasingly creates mechanisms which enable enough of the potential readership to assess the relative quality of any book, irrespective of whether it is traditionally published or self-published. In this world, a publisher's mistake in selecting the less commercial book for publication has potentially more severe consequences: the author of the better, but rejected book, has the potential to benefit significantly from self-publishing, and such a decision has an adverse effect on the rejecting publisher through increased competition. Moreover, if publishers respond to this threat simply by offering smaller advance payments, but to a greater pool of authors, the incentive for each author to seek out a publisher is much diminished. Consequently, the best books might never be offered to publishers.

This leaves the publisher with two options. The first is to devote more effort to scrutinising incoming manuscripts to increase the probability that the best book is correctly identified.

Alternatively, the publisher can take a step back, accept that some authors will self-publish, use the market for self-published works to identify the ‘best book’, and then approach the author with a view to taking publication onto the next stage, much like *Fifty Shades* described above. In Appendix A below, we show in a very simple illustrative model that cases where the publishers will choose a Wait-and-See strategy and let the market decide can emerge. Each approach has a different impact on the best-seller lists. The first strategy should see a drop off in the number of self-published books entering the list; the second should lead to an increase in the number of successful titles which were originally or previously rejected by the publisher. Since the US focused *Author Earnings* data is generated from best-seller lists, they offer some insight into this. From February 2014 to January 2016, the market share of self-published indie e-books based on unit sales rose from 27% to 43%, matched by a corresponding fall in the market share of Big-5 and other traditional publishers.⁸¹ This may reflect a change in policy where a greater share of books published traditionally originates from self-published books rather than raw manuscripts. The more recent October 2016 reversal of the trends identified by *Author Earnings* where unit sales market share of self-published e-books dropped to 36% could be an indication that (some) publishers are learning how to exist in a digital world. The main beneficiaries in terms of added market share have been Amazon Imprints. If one switches attention to the share of gross \$ sales, the Big-5 continue to lose ground and the main beneficiary of the drop in market share of self-published e-books appear to be small and medium sized publishers and to a lesser extent Amazon imprint. If we are seeing adaptation to a new reality, this is not happening equally across the board.

Even if publishers continue to have an advantage in performing a number of the stages from manuscript to finished book and have the information and machinery to enhance sales, the credibility of self-publishing as an option makes a difference on two fronts. Firstly, the author may be willing to trade off control for money. Secondly, in any negotiation with a publisher, self-publishing is now a viable outside option. Theory at least tells us that this should increase the share of revenue going to the author. The recent increase in the number of books published, the so-called long tail, offers at least some indirect empirical support for this proposition.

⁸¹ Based on revenue shares, the increase for self-published indie books was from 15% to 25%, again matched by a corresponding fall in the market share of Big-5 and other traditional publishers.

5. What are authors really looking for?

The availability of data is a major obstacle in studies of the book industry (Waldfogel and Reimers, 2015). To gain some insight into the choice made by authors, we use a dataset arising from an on-line survey carried out by *Author Earnings*.⁸² At the time we downloaded the data, a total of 1,704 authors had responded to the survey.⁸³ In responding to the question: "Based on primary earnings, what kind of author are you?", 264 declared that they were "traditionally published" and 1440 declared that they were "self-published".⁸⁴ While this indicates that the sample is not representative of the pool of published authors and that in particular self-publishing authors are very overrepresented,⁸⁵ nonetheless we believe that we can learn something about what may motivate the choice of whether to publish traditionally or self-publish.

One of the questions asked in the survey is: "How do you plan on or hope to publish your next work?"⁸⁶ The answer allows the sample to be split into four subsamples. The largest subsample, 1366 respondents, consists of authors who declared that they are currently self-published and plan on remaining so. The second largest, 159 respondents, consists of authors who declared that they are currently traditionally published and who plan on remaining so. However, there are also subsamples where the author wishes to switch from traditional to self, 88, and from self to traditional, 66. Of the 1421 who were content with their current mode of publishing, 338 or 22% had experience of both forms in the past. Interestingly, a larger fraction of the 154 who would like to switch in the future, 44%, have prior experience of switching. This increased fraction of experienced authors among those wishing to switch is driven entirely by the fact that 60% of those who are published traditionally have self-published in the past. Hence the majority of authors who are planning a future switch to self-publishing are taking an informed decision based on extensive experience, while those planning a future switch from self-publishing to using a traditional publisher are much more basing their decision on expectations.

⁸² Dataset and report are available at the following link: <http://authorearnings.com/results/>. The website was visited on 18 February 2016.

⁸³ It is important to note that this is an open survey to which people continue to add responses. For this reason alone, this is not a representative survey. Furthermore, since the first respondent took the survey on the 8 February 2014, while the last in our sample took the survey on 18 February 2016, we cannot guarantee that the same person did not take the survey several times. We have also removed a number of outliers where authors have provided extreme responses, such as an estimated total earning from traditionally published books of \$160M or publishing in excess of 200 books.

⁸⁴ Of the latter, 20 also declared that their primary publisher, based on earnings, was either one of the Big-Five or a smaller publisher.

⁸⁵ Data on the number of authors who self-publish and the number of books self-published is very poor.

⁸⁶ This question is answered by 1679 of the respondents, leading to a loss of 8 self-publishers and 17 traditional publishers.

More generally, the respondents who classify themselves as self-published have less long-term experience of the industry.⁸⁷ While roughly a third of the traditionally published authors published their first book before the advent of the Kindle in 2007, the corresponding figure for self-published authors was only about 7%.

One set of questions relate to the “performance” of the respondents. The averages for the four groups are reported in Table 4 below. To focus on switching vs staying, we have blacked out the cells asking traditional published (/self-published) about their experience related to books they may have self-published (/traditionally published).⁸⁸

Table 4: levels of success

Now: Future:	Traditional Traditional	Traditional Self	Self Traditional	Self Self
Average number of traditionally published books	30.0	8.2	0.8	1.3
Average number of self-published books	2.2	2.2	7.1	10.0
Self-reported average income: traditional	\$73,523	\$32,946	\$1,119	\$1,582
Self-reported average income: self	\$4,816	\$6,970	\$15,137	\$45,310
Number reporting that they are earning a full time living of writing	69	20	10	350
% reporting that they are earning a full time living of writing	43%	27%	15%	26%
Total sample	159	88	66	1366

Note that in all cases, those who wish to switch are on average doing less well than those who plan to stay with their current method of publishing. While the desire to switch may be caused by both a pull and a push factor, the “Trad to Self” group of switchers appear to have – broadly speaking – a positive experience from their past foray into self-publishing, where this group on average does better than those traditionally published authors who do not want to switch. By contrast, the “Self to Trad” group combine less experience of traditional publishing with less positive outcomes when they have tried it. This adds to the impression that the two (small) groups desiring to switch the mode of publishing may be different.

A second set of questions relate to what aspect of either traditional publishing or self-publishing they are satisfied with. The options for answers reflect what is often assumed to be the main

⁸⁷ Those authors which less than one year of experience have been eliminated.

⁸⁸ The values in those cells are positive but small.

benefits or challenges of a particular form of publishing and are presented in Tables 5 and 6 below. For traditional publishing, the issues are – broadly speaking – centred around the quality of editing, the income generated, the effectiveness with which the books are distributed and the working relationship with the publisher. For self-publishing, the issues are about the new additional tasks the author takes on: the quality of the final product, how much effort has to be put into sales, how well the book is distributed and how many copies are eventually sold.

Table 5: Response to the question: If traditionally published,⁸⁹ which of the following are you satisfied with?

Now: Future:	Traditional Traditional	Traditional Self	Self Traditional	Self Self
The editing I received	83%	65%	25%	6%
The promotional efforts I received	42%	8%	6%	1%
My sales	42%	12%	13%	0%
The price of my works	54%	14%	19%	2%
The print distribution I received	51%	31%	13%	2%
The e-book distribution I received	60%	16%	19%	2%
My relationship with my publisher	67%	26%	19%	2%
Total sample	156	86	16	260

Those who prefer to continue to publish traditionally are satisfied with the services they receive and much more so than any of the other subsamples. This is particularly the case with editing, something which has been found in another recent survey.⁹⁰ The exceptions relate to income generation. They may be (just) more satisfied than not on average about the price at which their book is sold, but not with the promotional effort and the resulting sales.

As one might have expected, those who wish to switch to self-publishing are less satisfied across the board and, more interestingly, only the editing support received more than 50% approval. This suggests more of a push factor and, in particular, that the authors who wish to switch are very unhappy with the income generated [they are unhappy with sales, price and

⁸⁹ Excluding authors who report never to have used a traditional publisher. The sample excludes five authors who self-report as traditionally published but who apparently have never published a book traditionally.

⁹⁰ A more recent survey commissioned by authors Jane Friedman and Harry Bingham, mainly covering traditionally published authors, finds that more than ¾ of respondents found both the editorial input and the copy editing of their publisher to be good or excellent, see Q7 and Q8 in report available at <https://janefriedman.com/author-survey-results/>.

promotions] and with the way the publisher handles e-book sales. Some of those who see themselves as self-published have experience of traditional publishing. While it is easy to dismiss the negative attitude of those who want to continue as self-published as arising from self-confirmation bias, note that even the small number with this experience who want to switch are negative about the support they received when they published traditionally, though not nearly as much as those who are currently self-published and who wish to remain so. However, despite this negative experience of support, they are still ready to switch.

Turning to the level of satisfaction by those who have experience of self-publishing in Table 6 below, across the board every group are on average very satisfied with the overall quality of the final book.

Table 6: Answer to the question: If self-published,⁹¹ which of the following are you satisfied with?

Now: Future:	Traditional Traditional	Traditional Self	Self Traditional	Self Self
The quality of my final product	72%	84%	84%	84%
How much time I spend promoting	28%	35%	21%	30%
The distribution of my work	32%	45%	25%	50%
My current sales	20%	27%	10%	37%
Total sample	79	55	63	1348

Concerns about how “good” the final product looks does not seem to be important in determining the mode of publishing. Notice an interesting difference between the two subsamples of future switchers. Among those who self-report as self-published, switchers are otherwise less satisfied and presumably hope life will be better after the switch. For those who self-report as traditionally published, switchers are otherwise more satisfied and, as these are also more experienced, they appear to believe that the grass will be greener.

A final two questions relate to how self-published authors deal with two of the important tasks normally undertaken by a publisher: editing and the design of cover art. The responses are covered in Table 7. Note first of all that very few in either subgroup rely solely on themselves to do the editing with no added help. Secondly, among those who plan to self-publish next time, many more expect to use professional services to deliver editing. In particular those who have past experience of self-publishing and who want to switch to that mode are seemingly

⁹¹ Excluding authors who report never to have self-published. Note that for those who currently see themselves as self-published, the sample excludes 21 respondents who apparently have never self-published.

prepared to hire professional help, an insight which is confirmed in the later regressions, see Table 10 below. Among our sample, self-publishers are not necessarily wanting to retain control over all aspects of publishing. However, cover art appears to be an area where those who plan to stick with self-publishing are more self-reliant than either group of switchers. If we focus on those who hired professional help both with editing and cover art, overall 36.5% of the sample does so. Three of the four subsamples are very similar while the non-switching traditionally published author subsample has significantly fewer who use professional help with self-publishing.

Table 7: If self-published,⁹²what degree of editing do you employ and how do you source your cover art?

Now:		Traditional	Traditional	Self	Self
Future:		Traditional	Self	Traditional	Self
Total sample		79	54	63	1348
Editing	Hired freelance Editor	49.4%	57.4%	46.0%	54.0%
	Friends and family	13.9%	11.1%	28.6%	19.1%
	Critique group / other authors	19.0%	22.2%	20.6%	15.9%
	None	13.9%	7.4%	4.8%	9.9%
Cover	Hires professional cover designer	57.0%	66.7%	63.5%	55.6%
	Creates own	35.4%	29.6%	23.8%	39.4%
	Purchases pre-made covers	3.8%	3.7%	12.7%	4.7%

From table 7, it appears that those who plan to switch are different and that, within this group, those who currently traditionally publish are different from those who self-publish. The group wishing to switch to self-publishing have more experience of that process but this does not appear to give rise to a desire to do everything themselves but possibly to a confidence that they can acquire the necessary services separately rather than as a bundle through a traditional publisher.⁹³

We want to explore the probability of being a successful author and to examine the characteristics of those authors who want switch the current way of publishing further. We will assume that an author is successful (either as a self-publisher or via traditional publishing) if

⁹² We interpret this as respondents reporting that they have self-published at least one book.

⁹³ See survey commissioned by Friedman and Bingham, <https://janefriedman.com/author-survey-results/>. Of those who have self-published, 50% report that they would pay for high level editorial assistance and 73% that they would pay for cover design. The survey (Q26) illustrate an appreciation that services normally undertaken by the publishers can be obtained from the market.

they have published at least one book during the last year and reported that the income earned covered living cost. Table 8 shows that only about a quarter of the authors are successful in this sense.

Table 8: Successful and unsuccessful authors

	Successful	Unsuccessful	Sample
Self-published	27.03%	72.97%	1,269
Self-published (min wage + 2 years exp)	28.78%	71.22%	879
Traditional published	40.08%	59.92%	237
Traditional published (min wage + 2 years exp)	39.30%	60.70%	201

Table 8 also includes information about a subsample of more experienced respondents which we will use as a robustness check later. The subset excludes those authors who have less than two years of experience, as well as those authors who claim they earn enough money to cover their living expenses but whose actual annual income is less than the average minimum wage in the US.⁹⁴ Note that the division between the two groups (successful and unsuccessful) is very similar.

Table 9 provides a description of the variables used in the subsequent analysis.

Table 9: Description variables

Variable	Description	Actual question asked:
Self	= 1 if self-published; 0 if traditional published	Based on primary earnings, what kind of author are you?
Trad	= 1 if traditional published; 0 if self-published	Based on primary earnings, what kind of author are you?
No. of books Trad	Total number of books traditionally published by the author to date	How many books have you traditionally published?
No. of books self	Total number of books self-published by the author to date	How many books have you self-published?
Experience of Trad	Number of traditionally published books by self-published author. (Self)*(No. of books Trad)	
Experience of Self	Number of self-published books by traditionally published author. (Trad)*(No. of books Self)	

⁹⁴ See e.g. <http://poverty.ucdavis.edu/faq/what-are-annual-earnings-full-time-minimum-wage-worker>. For 2012, a full-time minimum wage employee earned \$15,080 annually.

Pre-Kindle	First book published before 2007	In what year did you publish your first title?
Full-time	= 1 if YES; 0 otherwise	Are you earning a full time living off your writing?
Hire Editor	Hire Editor = 1 if answered: "Hired freelance editor"	If self-publish, what level of editing do you employ? (a) None; (b) Friends and family; (c) Critique group/other authors; (d) Hired freelance editor.
Purchase cover	Purchase cover = 1 if answered either "I purchase pre-made covers" or "I hire a professional cover designer"	If self-publish, how do you source your cover art? (a) I created my own; (b) I purchase pre-made covers; (c) I hire a professional cover designer.
Success Trad Success Self	Exp. Trad (Exp. Self) = 1 if at least one book traditionally (self-) published. Success Trad = (Full-time)*(Exp. Trad) Success self = (Full-time)*(Exp. Self)	
Big publisher	5 = 1 if answer is "Big 5 Publisher"	Who is your primary publisher, based on earnings?(a) Big 5 Publisher; (b) Small Publisher; (c) Vanity Press; (d) Amazon Imprint; (e) Self-Published.
Self to Trad Trad to Self	Self to Trad = 1 if Self = 1 and hope to publish traditionally next Trad to Self = 1 if Trad = 1 and hope to self-publish next	How do you plan on or hope to publish your next work?

We first explore the data by estimating what determines the probability that an author is successful in terms of being able to earn a living from writing either as a self-published or traditionally published author, using a probit model.⁹⁵ For self-published authors, we expect that success may depend on whether they first came to publishing before the Kindle was introduced, on whether they have experience of traditional publishing and on whether they purchased professional help with the publishing process, either by getting help with editing or cover design or both. The equation is given by:

$$\begin{aligned}
Success\ self_i = & \alpha_0 + \beta_1 \cdot Pre\ Kindle_i + \beta_2 \cdot Experience\ of\ trad_i \\
& + \beta_3 \cdot Hire\ Editor_i + \beta_4 \cdot Purchase\ cover_i + \mu_i
\end{aligned} \tag{1}$$

where μ_i is the error term.

⁹⁵ This model is widely used in the satisfaction literature (Boes and Winkelman, 2005; Van Praag and Ferre-i-Carbonell, 2004).

For traditionally published authors, we expect the probability of success to depend on whether they first came to publishing before or after the Kindle was introduced, on whether they have experience of self-publishing and on whether they are publishing through one of the Big 5 publishers.

$$\begin{aligned}
 \text{Success trad}_i = & \alpha_0 + \beta_1 \cdot \text{Pre Kindle}_i + \beta_2 \cdot \text{Experience of self}_i \\
 & + \beta_3 \cdot \text{Big 5 Publishers}_i + \mu_i
 \end{aligned}
 \tag{2}$$

The results are given in table 10 below:

Table 10: Probability of being a successful writer.

VARIABLES	(1) Success Self	(1a) Success Self	(2) Success Trad	(2a) Success Trad
Pre-Kindle	-0.0979** (0.049)	-0.0064 (0.050)	-0.0751 (0.063)	-0.0093 (0.068)
Experience of Trad	0.0113** (0.005)	0.0198*** (0.004)		
Experience of Self			0.0209** (0.008)	0.0233*** (0.009)
Hire editor	0.1209*** (0.041)	0.1468*** (0.049)		
Purchase cover	0.0029 (0.027)	0.0041 (0.033)		
Big 5 publishers			0.2321*** (0.062)	0.2632*** (0.065)
Reduced sample	NO	YES	NO	YES
Robust s.e.	YES	YES	YES	YES
Observations	1,269	879	237	201

Standard errors in parentheses; *** p<0.01, ** p<0.05, * p<0.1

Authors who publish with any of the Big 5 traditional publishers are more likely to be successful. In all the regressions, and hence for both equation (1) and (2), the coefficient on the experience of the other mode of publishing is statistically significant and positive. In other words, previous experience in the alternative mode of publishing increases the probability of success in the current mode of publishing. Experience matters and appears to be transferrable across the different modes of publishing, though the reason may possibly differ. Past experience of self-publishing by a traditionally published author may have been the reason the author was discovered in the first place, as illustrated by case study 2 above. Past experience in traditional publishing may help the self-published authors to identify the best people to support them. From Table 7 above as well as other surveys,⁹⁶ it is clear that many self-

⁹⁶ <https://janefriedman.com/author-survey-results/>.

publishing authors use professional support and in particular rate support with editing highly. Table 10 illustrates that there is a reason for this. For self-published authors, while a greater proportion use professional help with their cover design, it is the effect of hiring a professional editor which is highly significant in explaining success.

We next explore that the data contains information about the authors' future plans about publishing by estimating what determines the desire to switch from their current mode to a different mode. We estimate the following two equations:

$$\begin{aligned}
 \text{Self to Trad}_i &= \alpha_0 + \beta_1 \cdot \text{Pre Kindle}_i + \beta_2 \cdot (\text{Success Self}_i) \cdot (\text{Exp. Trad}_i) \\
 &+ \beta_3 \cdot (1 - \text{Success Self}_i) \cdot (1 - \text{Exp. Trad}_i) + \beta_4 \cdot (1 - \text{Success Self}_i) \cdot (\text{Exp. Trad}_i) \\
 &+ \beta_5 \cdot \text{Hire Editor}_i + \beta_6 \cdot \text{Purchase cover}_i + \mu_i
 \end{aligned} \tag{3}$$

where μ_i is an error term. Note that the dummy variable: $\text{Success Self}_i \cdot (1 - \text{Exp. Trad}_i)$ is the excluded variable and identifies the successful self-published author with no experience of traditional publishing. By way of interpretation, $(\text{Success Self}_i) \cdot (\text{Exp. Trad}_i)$ measures the number of traditionally published book which a successful self-published author has published. In other words, it is the extent of the activity in one mode by a successful author in the other mode. The other combined variables are interpreted similarly.

$$\begin{aligned}
 \text{Trad to Self}_i &= \alpha_0 + \beta_1 \cdot \text{Pre Kindle}_i + \beta_2 \cdot (\text{Success Trad}_i) \cdot (\text{Exp. Self}_i) \\
 &+ \beta_3 \cdot (1 - \text{Success Trad}_i) \cdot (1 - \text{Exp. Self}_i) + \beta_4 \cdot (1 - \text{Success Trad}_i) \cdot (\text{Exp. Self}_i) \\
 &+ \beta_5 \cdot \text{Big 5 Publishers}_i + \mu_i
 \end{aligned} \tag{4}$$

Note that the dummy variable: $\text{Success Trad}_i \cdot (1 - \text{Exp. Self}_i)$ is the excluded variable.

The results of the estimations are given in Table 11 below for both the full sample and for the subsample of more experienced authors.

Table 11: Probability of switching the way of publishing in the future

VARIABLES	(3)	(3a)	(4)	(4a)
	Self to trad	Self to trad	Trad to self	Trad to self
Pre-Kindle	0.0051 (0.024)	0.0010 (0.025)	-0.0490 (0.062)	-0.0449 (0.065)
(Success Self) (Exp. Trad)	-0.0023 (0.029)	-0.0101 (0.035)		
(Success Trad) (Exp. Self)			0.2589** (0.111)	0.2464** (0.124)
(1 - Success Self) (1 - Exp. Trad)	0.0217	0.0268		

	(0.018)	(0.022)		
(1 - Success Trad) (1 – Exp. Self)			0.3063***	0.2507**
			(0.105)	(0.118)
(1 - Success Self) (Exp. Trad)	0.0565**	0.0544**		
	(0.022)	(0.026)		
(1 - Success Trad) (Exp. Self)			0.3727***	0.3599***
			(0.104)	(0.115)
Hire editor	-0.0246**	-0.0281*		
	(0.012)	(0.015)		
Purchase cover	0.0389***	0.0374**		
	(0.013)	(0.016)		
Big 5 publishers			-0.0971	-0.1673**
			(0.071)	(0.076)
Min wage + 2 years exp	NO	YES	NO	YES
Robust s.e.	YES	YES	YES	YES
Observations	1,269	879	237	201

Standard errors in parentheses; *** p<0.01, ** p<0.05, * p<0.1

Looking at the first two columns, the probability of switching from self to traditional publishing is statistical and significantly determined by a lack of success in the past combined with experience of traditional publishing. Self-published authors are more likely to switch if they are not currently purchasing professional support for editing and if they are currently paying for cover design. This may reflect the budget which these authors have and how they have allocated it in the past and a realisation that editorial support is important for success.

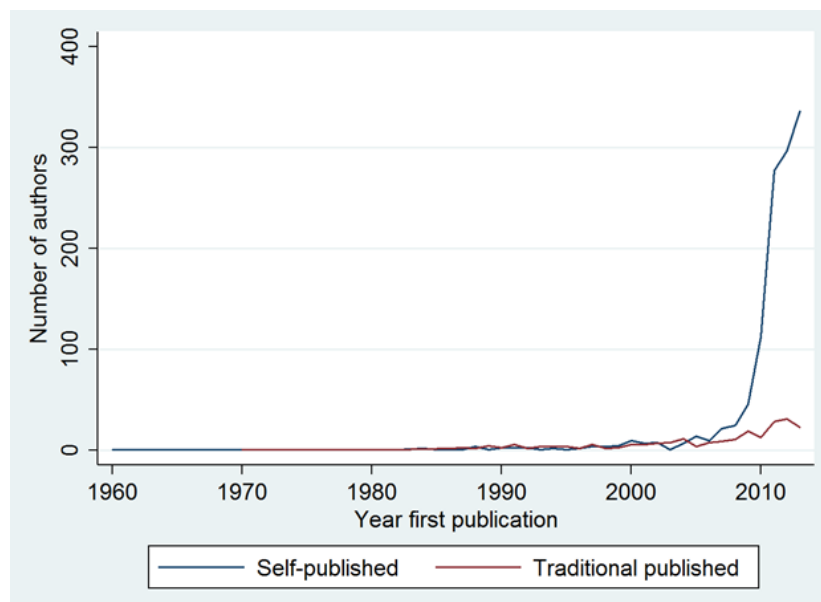
For authors contemplating a switch from traditional publishing to self-publishing, unsurprisingly there is less appetite for change if they are currently with one of the Big-5 publishers. When it comes to the effect of success and experience, generally the lack of past success – in terms of making a living from writing – increases the probability of wanting to switch. Secondly, the more experience an author has of the mote to which switching is contemplated, the more likely switching becomes. The group most likely to switch consist of those who have not found success from traditional publishing and who have significant experience of self-publishing.

While it is important not to over-interpret the results since the data does have significant flaws and are not representative of the full set of authors, it does suggest that there are important differences between the different groups of authors and that experience is an important driver of both current and future decisions by the authors.

6. Future problems: the long tail and new gatekeepers

Above we have argued that authors are likely to benefit financially from digitalisation, either directly through self-publishing or indirectly through negotiating better terms. Interestingly, and possibly unique to the creative industries, but especially for books, there is a significant adverse effect on authors from over-entry into the industry. This phenomenon is often referred to as the long tail,⁹⁷ i.e. the huge number of books which are hard to assess and rank in terms of quality and which hardly sell any copies at all. Figure 2 illustrates the long-tail phenomenon by showing that the vast majority of the respondents to the *Author Earnings* survey published their first book between 2010 and 2013 and most of these self-publish their books.

Figure 2: Number of authors by year of first published book



The large number of available books creates a problem both for the author and for the potential reader. In the past, publishers have served as gate-keepers together with professional established book reviewers. The large increase in self-published books has not only undermined the role for the publishers but for the position of reviewers who could never hope to cover even a fraction of books published. While some have welcomed a world without gate-keepers, they have also pointed out that such a world is not for all.

“Saying there shouldn’t be any gatekeepers in publishing is to ignore all the readers who prefer to have some sorting done. And these readers vary considerably in how much sorting they like. The fact that self-published ebook authors now out-earn their traditional counterparts shows that even without gatekeepers and sorting, readers are going to stumble upon a LOT of indie

⁹⁷ See e.g. Brynjolfsson et al. (2006, 2010).

titles. And the fact that these titles have higher average customer reviews shows that gatekeepers aren't needed in order to ensure a quality reading experience. So this isn't about gatekeepers being necessary. This is about gatekeepers augmenting an already successful and maturing indie literature landscape."⁹⁸

The need for “gate-keepers” – or at least information aggregators – arises because books are experience goods where sampling is costly in time because the quality of the book is not known for sure until the very last page has been read and potentially not very informative (the author may be a one-hit wonder). Sampling a chapter may help a reader decide whether they like the writing style, but is not determinative of whether the author is able to deliver an appropriate plot or captivate a reader for the entire length of the book. Moreover, for most books and most readers, the book will only be read once. In that way, books differ from other products provided by the creative industry, such as music and video games, where much can be learned by sampling and where the product is likely to be used more than once. One consequence is that, as consumers, we experiment very little, selecting works from tried and tested authors, or adopt the view of others, relying either on traditional reviews by “experts”, by the mass of customer reviews enabled by the internet, or by the recommendations from trained book store staff, see Chavelier et al. (2006).

Strategies for authors such as setting very low or even zero prices, may well backfire because readers search less carefully when the book is (almost) free and hence the match between author and book is on average less good. A poor match may result in a negative review for that reason alone. Zegners (2016) finds this effect.

Searching for books is simultaneously facilitated by the internet and disabled by the “needle in a haystack” phenomenon, particularly as it is easy to lose confidence that you will recognise a needle when you see it. In all this, the author and the reader face a linked problem: how can an author make themselves visible so that their work may be found? This problem may be solved for some consumers by evermore sophisticated internet services, but it is unlikely to be solved for all. This presents a problem with achieving the policy objective of cultural diversity which is likely to exacerbate existing problems with access for all, see Shaver (2014).

A problem with gate-keepers is that most readers would prefer only to consult one and most authors would prefer to deal with only one. This preference for monopoly from the service perspective may store up problems for the future, especially if it is inevitable that for gate-

⁹⁸ Hugh, Howey, Gatekeepers for Indie Publishing, blogpost posted on 8.6.2015. <http://www.hughhowey.com/gatekeepers-for-indie-publishing/>

keepers to be useful they also have to be powerful. In that case, we may just have swapped one group of powerful intermediaries with another.

7. Conclusions

This paper has shown how the book industry has been changed significantly by digitalisation once there was significant entry of e-readers into the market. The internet and in particular the development of the e-book has created new types of service providers and retailers. These challenge traditional publishers by enabling authors to completely by-pass them or at least threaten to do so. The likely effect of reducing the cost of entry for an author who can navigate the self-publishing maze is an increase in the number of works published. Arguably the main question is then no longer how can we ensure that the financial rewards to authors are such that adequate numbers and variety of books are produced and published. Indeed, the incentives now appear too powerful and, just as disruptive technology in other markets has challenged how these markets have been governed legally, we may need to do the same for creative industries and the design of copyright laws.

With self-publishing, authors are able, at least, to remain the owners of their rights, meaning that authors are better-placed to exploit their rights themselves, or hire experts for specific roles. This does not mean that traditional publishers are obsolete. Traditional publishers offer important support to authors in the production, distribution and marketing of their works, without requiring any up-front expenditure by the author. Large publishing houses have in-house expertise in each of these different stages. Most self-published authors will struggle to fill all these roles to such a high standard themselves, and so may need to contract this out to experts if they want to compete in a potentially global marketplace. Overall, self-publishing requires authors to be real entrepreneurs.

Ultimately, it may not be the power of internet platforms which shape this industry, other than possibly for the narrow set of best-sellers, but rather the ways in which authors and consumers deal with the 'long-tail' problem. The risk of market failure has thus shifted focus to the implication of asymmetric information about the quality of books and future interventions may be necessary to ensure that the market functions in the interest of both readers and authors.

The paper has focused on the UK with developments mirroring, but mostly lagging slightly behind the US. That is not to suggest that similar developments are not happening elsewhere. Clearly diffusion of existing digital innovation are taking place outside the US-UK markets.

But so are innovations as illustrated for example by the new French digital platform Librinova. One of the apparent barriers to innovation is the tradition in a number of countries, including EU member states, to have fixed prices on books, an intervention which because it is carried out on a national basis is beyond the reach of EU competition law enforcement. Smaller countries who have abandoned fixed book prices such as Denmark appear to perform well on most relevant fronts, including the number of books produced and the fraction of the population who buy and read books. Appendix B summarises the Danish experience to provide a counterweight to the obvious criticism that all we are picking up is the behaviour of a few mavericks in the wild west of UK publishing.

Appendix A: Simple theoretical model for publisher behaviour

Consider two books, X and Y, by different authors but in the same genre, with significant latent demand. We will assume that one of the books strictly dominates the other in the sense that if both were marketed at the same time, one would attract a disproportionate amount of the aggregate demand. This will be referred to as the “better book” in the following, where ‘better’ refers to its ability to generate revenue. We want to allow for the book to be published through a traditional publisher or self-published. For simplicity we will assume that there is only one publisher.⁹⁹ Demand is summarised as follows where, for simplicity, we treat price, P , as exogenous:

	Probability	Demand if only one is published	Demand if both are published	
			Demand for X	Demand for Y
X is the better book	α	D_X	$D_{X Y}$	$d_{Y X}$
Y is the better book	$1 - \alpha$	D_Y	$d_{X Y}$	$D_{Y X}$

We will assume that $D_{i|j} + d_{j|i} > D_i > D_{i|j}$ where $i, j = X, Y, i \neq j$, which amounts to assuming that even if i is the better book, if j is also available, some sales of i are lost to j ($D_i > D_{i|j}$) and some people want j and not i so that demand is expanded by j 's presence ($D_{i|j} + d_{j|i} > D_i$).

We will assume that while the loss in demand from choosing the less good book is small if only one book is published, i.e. $|D_X - D_Y|$ is small, the loss in demand from publishing the less good book if both books are published is very significant, i.e. $|D_{i|j} - d_{i|j}|$ is large.

The order of decisions is as follows:

1. The publisher receives manuscript X and has to decide whether to publish X, to search for any alternatives or to reject it. Searching for another manuscript costs C but will identify Y for sure. The publisher is able to judge which is the better book. On the basis of that publisher makes final publishing decision.
2. Any rejected or undetected author decides whether or not to self-publish.
3. If no manuscript has been accepted by the publisher, it can wait until self-publishing makes clear which book is the better one and then makes an offer for any self-published book. Remaining demand is reduced by S , the amount of demand met by the author.

⁹⁹ While this is extreme, given the sheer volume of manuscripts, the chance that the two books are discovered by two different publishers at the same time is small.

We will assume that the costs for a publisher to develop a book is F , which the cost for a self-publishing author is f . These costs include producing and marketing the book. One would expect there to be a difference between F and f , with $F \geq f$ as the optimal marketing campaign for the Publisher to be more effective and hence in equilibrium would be allocated a bigger budget. In line with that, we assume that the author can only realise a fraction, μ , of the total potential demand. Finally, the publisher has to pay an advance, A , to any author it signs up.

We will assume that an author knows whether her manuscript has been rejected and whether a competing book has been published by a publisher. Assume for simplicity that if someone is publishing the better book, self-publishing the other book is never profitable, i.e.

$$P\mu d_{j|i} - f < 0 \quad (\text{A.1})$$

However self-publishing the better book is:

$$P\mu D_{j|i} - f > 0 \quad (\text{A.2})$$

Moreover, assume that the expected return to an author from self-publishing given that both books are published, is positive. Formally:

$$\Pi_X^a = \alpha(P\mu D_{X|Y} - f) + (1 - \alpha)(P\mu d_{X|Y} - f) > 0 \quad (\text{A.3})$$

$$\Pi_Y^a = \alpha(P\mu d_{Y|X} - f) + (1 - \alpha)(P\mu D_{Y|X} - f) > 0 \quad (\text{A.4})$$

This ensures that both authors would self-publish if no publisher has picked up the book and if they chose whether or not to self-publish simultaneously. Simultaneity of publishing decision seems natural in this case.¹⁰⁰ This is the most conservative assumption one could make in terms of likely profitability of the self-publishing option. If the authors ignored the possibility that they would face competition, possibly from a better book, their expected profits would be higher.

The key implication of assumptions (A.1) and (A.2) is that if the publisher fails to publish the better book, the author will choose to self-publish. The consequences for the publisher is that if he searches for the better book, there will be no competition whereas if he does not, and manuscript X is not the better book, he will face competition.

¹⁰⁰ Note that if the decision making was sequential, if Y waits, X would want to publish now in order to deter Y if X is the better book, while if Y commits to publish, X would wait in order to save the costs of publishing the less financially valuable book. Whether it would be more valuable to be the leader than the follower depends on how many sales is lost if you have the better book but face competition.

Lemma 1: A publisher is more likely to search for the better manuscript when self-publishing is a credible threat.

Proof: If self-publishing is not a credible option, searching is more profitable if

$$(1 - \alpha)P(D_Y - D_X) > C \quad (\text{A.5})$$

If self-publishing is a credible option and the publisher does not search, expected profit is given by

$$\Pi_{NS}^p = \alpha(PD_X - A - F) + (1 - \alpha)(Pd_{X|Y} - A - F) \quad (\text{A.6})$$

While if the publisher does search, the expected profits is given by:

$$\Pi_S^p = \alpha(PD_X - A - F) + (1 - \alpha)(PD_Y - A - F) - C \quad (\text{A.7})$$

Comparing (A.6) and (A.7), searching is more profitable if the expected value of gained net sales if searching exceed the cost of searching:

$$(1 - \alpha)P(D_Y - d_{X|Y}) > C \quad (\text{A.8})$$

Comparing (A.5) with (A.8) it is clear that (A.8) is much more likely to hold which prove the lemma. \square

This result does not necessarily imply that publishers will become more active. The opposite could happen because of the assumption that if the publisher publishes neither manuscript, both authors will self-publish. This opens up an additional strategy for the publisher, a Wait-and-See strategy, in which the Publisher let the market identify the better book and then uses the fact that it has greater ability to commercialise the book to sign up the better book once it has proven itself, much like *Fifty Shades of Grey*, in the case study above.

The aim is to understand whether such a wait-and-see strategy could ever be optimal. To give this outcome the best chance to emerge, assume that the fee, A , paid to the author is equal to the author's expected benefit from self-publishing the book. If the author does not know which manuscript the publisher was looking at first, nor whether the publisher has sought out both manuscripts, she will not know at the pre-publishing stage whether self-publishing will be a success or not. In that case, the author does not update her belief following an offer and the expected profits from self-publishing for X and Y respectively would be given by (A.3) and (A.4) respectively. Using these, the expected fee to the Publisher given search is then

$$E(A_S) = \alpha P \mu(\alpha D_{X|Y} + (1 - \alpha) d_{X|Y}) + (1 - \alpha) P \mu(\alpha d_{Y|X} + (1 - \alpha) D_{Y|X}) - f \quad (\text{A.9})$$

The expected fee if the publisher chose the Wait-and-See strategy would, since the cost of publishing is by then sunk, be $P\mu(D_{X|Y} - S)$ and $P\mu(D_{Y|X} - S)$ respectively to X or Y, so that the expected fee would be

$$E(A_w) = P\mu(\alpha D_{X|Y} + (1 - \alpha)D_{Y|X}) - PS \quad (\text{A.10})$$

Using (A.9) and (A.10), note that we can write $E(A_w) - E(A_s)$ as:

$$E(A_w) - E(A_s) = \alpha(1 - \alpha)P\mu(D_{X|Y} - d_{X|Y} + D_{Y|X} - d_{Y|X}) + f - PS$$

Hence unless the loss in sales is very significant, we would expect the publisher to have to pay the author more if it adopted the wait-and-see strategy. The question is then whether even so, it might be the more profitable strategy.

Lemma 2: *If the cost of searching for and evaluating manuscripts is relatively high and the self-publisher relatively poor at realising total potential demand, the publisher will choose to let authors self-publish first and then purchase the rights to the more successful books.*

Proof: From Profit to the Publisher if choosing Search is, from (A.7) given by

$$\Pi_S^p = P(\alpha D_X + (1 - \alpha)D_Y) - E(A_s) - F - C \quad (\text{A.11})$$

While the profit from choosing Wait-and-See is:¹⁰¹

$$\Pi_W^p = \alpha(PD_{X|Y}) + (1 - \alpha)(PD_{Y|X}) - E(A_w) - F - PS \quad (\text{A.12})$$

Note that Wait-and-See dominates Search if:

$$C - PS > P\left(\alpha(D_X - D_{X|Y}) + (1 - \alpha)(D_Y - D_{Y|X})\right) + E(A_w) - E(A_s) > 0$$

Note first that for the Wait-and-See to be profitable for the publisher, the cost of searching has as a minimum to exceed the costs of lost sales due to self-publishing. Using (A.9) and (A.10) we can write this as:

$$C - f > P\left(\alpha(D_X - D_{X|Y}) + (1 - \alpha)(D_Y - D_{Y|X})\right) + \alpha(1 - \alpha)P\mu(D_{X|Y} - d_{X|Y} + D_{Y|X} - d_{Y|X})$$

Notice that the first term on the right-hand-side is relatively small as we have assumed that the weaker book does not impose much of a competitive constraint on the better book. For the

¹⁰¹ In calculating this, we make two assumptions, both of which makes the Wait-and-See strategy less attractive. One is that despite the author having expended f , the publisher still have to expend F to reach the bigger audience. The second is that we have not included any costs for finding and reading manuscript X in the first place.

second term to be small, μ must be relatively small. The key parameters are then C and μ . In other words, the cost of searching for and evaluating manuscripts has to be relatively high and the self-publisher relatively poor at exploiting total demand.

The model demonstrate how self-publishing could in theory either lead to more effort by the publisher or more initial self-publishing.

Appendix B – The Danish Experience

Denmark is an interesting case both because of recent liberalisation of the market and because it has been subject to extensive scrutiny, providing us with reasonably reliable information about recent developments. The market for books in Denmark has been gradually liberalised starting in 2000 with the end to exclusivity for booksellers, and completed in 2011 with the complete removal of restrictions on price setting. Books are no longer covered by a fixed book price agreement and books can be sold at other retail outlets, including supermarkets. The effect of this has been monitored extensively, first by a report in the 2010 Annual Report from the Danish Competition Authority,¹⁰² then by a report commissioned by the Competition Authority in 2013 aimed to evaluate the effect of the liberalisation on consumers,¹⁰³ and more recently through a new official panel, “Bog- og Litteraturpanelet”,¹⁰⁴ established by the Danish Ministry for Culture.¹⁰⁵ The first annual report of the panel focused on development in publishing, a task necessitated by substantial changes in the sector coupled with relatively poor data.¹⁰⁶ The second report focused on non-standard forms of publishing including self-publishing.¹⁰⁷ In addition to the information contained in these reports, the Danish National Statistics Office has started to collect more extensive data on book publishing, including, from 2012 information about e-books.¹⁰⁸

We will focus on the developments in e-book availability and on the incidence of self-publishing. However it worth noting one of the conclusions from the evaluation on the impact on consumers. According to the 2010 report by the Competition Authority, one effect of liberalisation, which has made books cheaper and has increased the type of outlets where books are available, is on the number of people who has started to purchase books.¹⁰⁹ The find that

¹⁰² Chapter 4 in Konkurrenceredegørelse 2010, available at: <http://www.kfst.dk/Indhold-KFST/Nyheder/Pressemeddelelser/2010/~media/29CF27D46CEC43E990D329158DFD9896.pdf>

¹⁰³ “Liberaliseringen af bogmarkedet - en evaluering set med forbrugernes øjne”, available at: <http://www.kfst.dk/~media/KFST/Publikationer/Dansk/2013/20131113%20Liberaliseringen%20af%20bogmarkedet%20nov.pdf>.

¹⁰⁴ <http://slks.dk/bogen-2015/om-panelet/>.

¹⁰⁵ Kulturministeriet, web pages at: <http://english.kum.dk/>.

¹⁰⁶ “Bogens og litteraturens vilkår 2015”, available at: http://slks.dk/fileadmin/user_upload/Danmark_Laeser/Bogen_2015/Bogen_og_litteraturens_vilkaar_2015.pdf and http://slks.dk/fileadmin/user_upload/dokumenter/Litteratur/Books_and_literature_2015_annual_report_of_the_Book_and_Literature_Panel_.pdf (shorter version in English).

¹⁰⁷ Nils Bjervig, Bjervigs Bureau: Alternative publikationsformer i Danmark og deres position på det danske bogmarked. Available at: http://slks.dk/fileadmin/user_upload/Danmark_Laeser/Bogen_2015/Nils_Bjervig_Alternative_publicationsformer_i_Danmark.pdf

¹⁰⁸ Danmarks Statistik: <http://www.dst.dk/da/Statistik/emner/film-boeger-og-medier>. To find the data, go to “Statistikbanken” and then to “Kultur og kirke” from which Bog02 containing the most recent statistics can be found.

¹⁰⁹ See box 4.5 on page 107 of “Konkurrenceredegørelse 2010”.

there are 7% of consumers who have started buying books [2% have stopped] following the liberalisation. The main reasons given by that 7% are: more time available to read, lower prices and, interestingly, for 11% of this group, not having to go to a bookstore. Moreover, the new group of book buyers differ from the national average on income, they are poorer, and education, they have less formal education, but not in terms of age or location. In other words, liberalisation increased access to literature.

Assessing the liberalisation is naturally not easy given the number of other significant events which has occurred in the market for books, in particular digitalisation. The data reported on in the reports show similar trends but are hard to compare. Below is a table taken from the official statistics, where data on e-books have only been collected consistently since 2012, which demonstrate that e-books constitute a significant and growing fraction of total publications.

Table B.1: Commercial publications by year and medium

Year	2012	2013	2014	2015
Printed books	13041	13023	13351	13477
E-books	5247	6160	6676	7415
E-books as fraction of all books	28.7%	32.1%	33.3%	35.5%

Source: Danmarks Statistik, BOG02

Moreover, in line with what has been observed for the US and the UK, the number of books is growing, obviously most strongly for the new medium, e-books, but also printed books. The statistical material does not enable us to identify books only provided in one format, but the table suggests that a predicted adverse effect on the amount of books published has not materialised. The table consists of both fiction and non-fiction. Looking within the various categories, it is evident that the growth in e-books has not just come from novels – a concern had been expressed about the effect of best-selling crime novels – other areas such as for example books for children and poetry has seen growth slightly above the average for all books.

The increase in the publication of e-books does not necessarily translate to an increase in revenue from e-books. From the annual statistics produced by the publishers association¹¹⁰, total revenue from book sales from publishers dropped from 2014 to 2015 from DKR 1808.9 mill to DKR 1646.9 mill while sales of e-books dropped from DKR 53.1 mill to DKR 48 mill,

¹¹⁰ Forlæggerforeningens årsstatistik 2015. Available at: <http://danskeforlag.dk/sites/default/files/Statistik/Danske%20Forlags%20C3%85rsstatistik%202015.pdf>.

implying that the share of e-books out of total revenue staid constant at approximately 2.9%.¹¹¹ It is not clear whether this is merely the revenue to the publishers, in which case it may not be accounting for revenue generated through self-publishing. The size of the self-publishing sector hence matters.

In the report for Bog- og Litteraturpanelet, self-publishing is defined as the publication of a book where the author funds the publication and excludes books where publication is specifically funded [completely or partially] by a charitable foundation but includes crowd-funded books. As in the US and UK, getting good data appear challenging, partly because of a lack of consistent use of ISBN.¹¹² The report uses a fairly involved, and to all appearances careful, method to identify various types of publishers, including self-publishers. Overall in 2014, self-publishing appears to be 15% of the Danish book market; about 11% of the printed books and 21% of e-books. At least in terms of numbers of books, this is significant.¹¹³

Some of the information used in the report was collected using an internet based questionnaire, which was activated by 571 individuals, of which 205 answered, the remaining chose not to answer after having opened to questionnaire. Of the 205, 26% were full time authors, 50% part-time, and the remaining 24% “hobbyists”. The three main reasons given for self-publishing were: creative freedom (59%), better economic performance (43%) and having been rejected by traditional publisher (38%).¹¹⁴ The report also investigates what sort of help self-publishers seek out. While 25% of all the self-publishing authors do everything them-selves, the rest purchase one or more of the possible services. Of the 75% who did purchase one or more external service, 83% obtained help with printing, 68% with cover design, 63% with proof reading and 60% with distribution.¹¹⁵ Finally 46% of self-publishing authors have previously published using a traditional publisher, a fraction which increases to 73% if we focus on those who classify themselves as full-time authors. This does not look dramatically different from findings from the US/UK.

It is hard to judge the structure of the publishing industry in Denmark. While the Panel does report on publications across publishers, it only gives a very partial picture of the markets

¹¹¹ The 2013 report “Liberaliseringen af bogmarkedet - en evaluering set med forbrugernes øjne”, using a questionnaire, estimate the market share at 4%.

¹¹² Of the 4247 e-books available through Saxo Publish, the leading Danish internet retailer, in January 2015, 861 were labelled self-published and had ISBN numbers. Another 760 e-books were published without ISBN.

¹¹³ The financial incentives to self-publish may be similar to the US/UK. “Liberaliseringen af bogmarkedet - en evaluering set med forbrugernes øjne”, page 33 provides a breakdown of who gets what on a DKR 250 book. The author gets on average 12%, quite close to the OECD (2012) estimate.

¹¹⁴ Table 4.

¹¹⁵ Table 5.

structure. However, judging from their figure 8,¹¹⁶ both printed and e-books are dominated by three or four publishers. This may underestimate how concentrated the market is as several of the large publishers appear to specialise.

Denmark has also experienced the entry of new types of firms. One example is the internet bookstore, Saxo.com, who in addition to selling printed and e-books, also offers various support services for self-publishing authors. Another example is Mofibo, a subscription service akin to Scribd or KU. Finally the libraries have also innovated to offer digital lending through a service known as eReolen.

To summarise, while e-books have not reached the market share observed in the US and UK, the trends are very similar

¹¹⁶ http://slks.dk/fileadmin/user_upload/Danmark_Laeser/Bogen_2015/Bogen_og_litteraturens_vilkaar_2015.pdf p. 17.

References

- Aguzzoni, Luca and Argentesi, Elena and Ciari, Lorenzo and Duso, Tomaso and Tognoni, Massimo, Ex-Post Merger Evaluation in the UK Retail Market for Books (June 14, 2013). Quaderni - Working Paper DSE N° 889; DIW Berlin Discussion Paper No. 1310.
- Anderson, M. and Madruger, J. (2012). Learning from the Crowd: Regression Discontinuity Estimates of the Effects of an Online Review Database, *Economic Journal*, 122, 957-989.
- Baye, M. R., De Los Santos, B., and Wildenbeest, M. R. (2013). "Searching for physical and digital media: the evolution of platforms for finding books", NBER working paper series 19519.
- Beck, J. (2012). "Advance contracting, word-of-mouth, and new-product success in creative industries: a quantification for books", *Journal of Media Economics*, 25(2), 75-97.
- Becker, Buhse, Günnewig and Rump (2003), *Digital Rights Management: Technological, Economic, Legal and Political Aspects* (Springer 2003)
- Benhamou, F. (2015). "Fair use and fair competition for digitalized cultural goods: the case of ebooks", *Journal of Cultural Economics*, 39, 123-131.
- Bently, L. and Sherman, B. (2014), *Intellectual Property Law* (OUP 2014)
- Boes, S. and Winkelmann, R. (2005). Ordered Response Models, *Modern Econometric Analysis*, Springer, pp. 167-181.
- Brynjolfsson, Erik and Hu, Yu Jeffrey and Smith, Michael D., 2006, "From Niches to Riches: Anatomy of the Long Tail", *Sloan Management Review* 47(4), 67-71.
- Brynjolfsson, Erik and Hu, Yu Jeffrey and Smith, Michael D., 2010, "Research commentary-long tails vs. superstars: the effect of information technology on product variety and sales concentration patterns", *Information Systems Research* 21 (4), 736-747
- Buydens, M. & Dusollier, S. (2001), 'Les exceptions au droit d'auteur: évolutions dangereuses' (2001) 22 *CCE* 10
- Carolan, Simon and Christine Evain, (2013), "Self-Publishing: Opportunities and Threats in a New Age of Mass Culture", *Publishing Research Quarterly* 29, 285-300.
- Chevalier, J.A.; Beinecke, W.S.; and Mayzlin, D. (2006). "The effect of word of mouth on sales: Online book reviews", *Journal of Marketing Research*, 43(3)
- D'Agostino, G. (2010), *Copyright, Contracts, Creators New Media, New Rules* (Edward Elgar 2010)
- Doctorow, C. (2009). "Why free e-books should be part of the plot for writers", *The Guardian*, Tuesday 18 August 2009.
- Forman, C., Ghose, A., and Goldfarb, A. (2009). "Competition between local and electronic markets: how the benefit of buying on-line depends on where you live", *Management Science*, 55(1), 47-57.
- Galopin, B. (2012), *Les exceptions à usage public en droit d'auteur* (IRPI 2012)
- Geiger, C. (2004), *Droit d'auteur et droit du public à l'information* (IRPI 2004)
- Gervais, D. (2012), *The TRIPS Agreement: Drafting History and Analysis* (4th ed., Sweet & Maxwell, London 2012)

- Gibson, J.; Johnson, P.; and Dimita, G. (2015). "The Business of Being an Author: A Survey of Authors Earnings and Contracts", Queen Mary University of London, [https://www.alcs.co.uk/Documents/Final-Report-For-Web-Publication-\(2\).aspx](https://www.alcs.co.uk/Documents/Final-Report-For-Web-Publication-(2).aspx)
- Gilbert, R. J. (2015). "E-books: a tale of digital disruption", *Journal of Economic Perspectives*, 29(3), 165-184.
- Goldstein, P. (2003), *Copyright's Highway: From Gutenberg to the Celestial Jukebox*, Stanford Law and Politics, Stanford University Press.
- Greco, A. N. (1945). "The book publishing industry", Boston: Alyn & Bacon, 2nd Edition.
- Griffiths, I., and Milmo, D. (2012). "Amazon makes UK publishers pay 20% VAT on ebook sales", *The Guardian*, Sunday 21 October 2012.
- Grosheide, WF. (2001), "Copyright Law from a User's Perspective: Access Rights for Users", *European Intellectual Property Review* 23(7), 321–5.
- Guibault, L. (2002), *Copyright and Contracts: an analysis of the contractual overridability of limitations on copyright* (Kluwer 2002)
- Hilton, J. III., Wiley, D. (2010). "Free: why authors are giving books away on the internet", *TechTrends*, 54(2), 43-49.
- Hilton, J. III., Wiley, D. (2011). "Free e-books and print sales", *Journal of Electronic Publishing*, 14(1).
- Oxford Review of Economic Policy (2001) 17 (2): 217-234.
- Hugenholtz, P.B. (2000), 'Why the Copyright Directive Is Unimportant, and Possibly Invalid' (2000) 11 *EIPR* 501
- Kay, John, 2016, Rent Seeking in the Digital Economy, Keynote speech to the CREATE festival, London. Slides available at: <https://drive.google.com/file/d/0B0CpNLGeVtGlcNjyZmhXNThGeEk/view> .
- Lee, Y. J. Tan, Y. and Hosanagar, K. (2009). Do I follow My Friends or the Crowd? Information Cascades in Online Film Rating, Proceedings of the 19th Workshop on Information Technology and Systems (WITS).
- Nelson, P. (1970). Information and Consumer Behaviour, *Journal of Political Economy*, 78, 311-329.
- OECD (2012), "E-books: Developments and Policy Considerations", OECD Digital Economy Papers, No. 208, OECD Publishing. <http://dx.doi.org/10.1787/5k912zxcg5svh-en>
- Poort, Joost and Nico van Eijk, 2015, "Digital fixation: the law and economics of a fixed e-book price", *International Journal of Cultural Policy* (forthcoming, available on-line)
- Shaver, Lea, 2014, "Copyright and Inequality", *Washington University Law Review*, 92, 117-168.
- Sterling, J.A.L. (2015), *Sterling on World Copyright Law*, 4th ed., Sweet & Maxwell.
- Thompson, John B., 2012, *Merchants of Culture*, 2nd edition, Plume.
- Van Praag, B. M. S. and Ferre-i-Carbonell, A. (2004). Happiness Quantified: A Satisfaction Calculus Approach, *Oxford University Press*.
- Vaver, D. (2006), 'Publishers and copyright: Rights without duties?' Version of paper presented at the Sixth International Publishers Association copyright symposium,

Montreal, April 23-25 2006, on Publishing & The Public Interest, at the Panel on the public image of publishers and copyright, Working Paper No 24/2006.

Waldfoegel, J; and Reimers, I. (2015). “Storming the Gatekeepers: Digital Disintermediation in the Market for Books”, *Information Economics and Policy*, 31, 47-58.

WIPO (2008), *Managing Intellectual Property in the Book Publishing Industry*, World Intellectual Property Organization.

Wiseman, L. (2007), “Copyright and the Regulation of the Australian Publishing Industry”, in Carter, D. & Galligan, A. (Eds.) *Making Books: Contemporary Australian Publishing*. St Lucia, Queensland, University of Queensland Press.

Zegners, Dainis, (2016a). “Voluntary Disclosure of Product Information: The Case of E-book Samples”. Available at SSRN: <http://ssrn.com/abstract=2380216>

Zegners, Dainis, (2016b). “Building an Online Reputation with Free Content: Evidence from the E-book Market”. Available at SSRN: <http://ssrn.com/abstract=2753635>



RCUK Centre for Copyright and
New Business Models in the
Creative Economy

College of Social Sciences / School of Law
University of Glasgow
10 The Square
Glasgow G12 8QQ
Web: www.create.ac.uk

