

April 7, 2013

# The Slow Death of the American Author

By SCOTT TUROW

LAST month, the Supreme Court **decided** to allow the importation and resale of foreign editions of American works, which are often cheaper than domestic editions. Until now, courts have forbidden such activity as a violation of copyright. Not only does this ruling open the gates to a surge in cheap imports, but since they will be sold in a secondary market, authors won't get royalties.

This may sound like a minor problem; authors already contend with an enormous domestic market for secondhand books. But it is the latest example of how the global electronic marketplace is rapidly depleting authors' income streams. It seems almost every player — publishers, search engines, libraries, pirates and even some scholars — is vying for position at authors' expense.

Authors practice one of the few professions directly protected in the Constitution, which instructs Congress “to promote the progress of Science and the useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” The idea is that a diverse literary culture, created by authors whose livelihoods, and thus independence, can't be threatened, is essential to democracy.

That culture is now at risk. The value of copyrights is being quickly depreciated, a crisis that hits hardest not best-selling authors like me, who have benefited from most of the recent changes in bookselling, but new and so-called midlist writers.

Take e-books. They are much less expensive for publishers to produce: there are no printing, warehousing or transportation costs, and unlike physical books, there is no risk that the retailer will return the book for full credit.

But instead of using the savings to be more generous to authors, the six major publishing houses — five of which **were sued** last year by the Justice Department's Antitrust Division for fixing e-book prices — all rigidly insist on clauses limiting e-book royalties to 25 percent of net receipts. That is roughly half of a traditional hardcover royalty.

Best-selling authors have the market power to negotiate a higher implicit e-book royalty in our advances, even if our publishers won't admit it. But writers whose works sell less robustly find their earnings declining because of the new rate, a process that will accelerate as the market pivots more toward digital.

And there are many e-books on which authors and publishers, big and small, earn nothing at all. Numerous pirate sites, supported by advertising or subscription fees, have grown up offshore, offering new and old e-books free.

The pirates would be a limited menace were it not for search engines that point users to these rogue sites with no fear of legal consequence, thanks to a provision inserted into the 1998 copyright laws. A search for “Scott Turow free e-books” brought up 10 pirate sites out of the first 10 results on Yahoo, 8 of 8 on Bing and 6 of 10 on Google, with paid ads decorating the margins of all three pages.

If I stood on a corner telling people who asked where they could buy stolen goods and collected a small fee for it, I’d be on my way to jail. And yet even while search engines sail under mottos like “Don’t be evil,” they do the same thing.

Google is also at odds with many writers because in 2004 it partnered with five major libraries to scan and digitize millions of in-copyright books, without permission from authors. The Authors Guild (of which I am president) sued; years later, with a proposed settlement scuttled by the judge, the litigation goes on.

Google says this is a “fair use” of the works, an exception to copyright, because it shows only snippets of the books in response to each search. Of course, over the course of thousands of searches, Google is using the whole book and selling ads each time, while sharing none of the revenue with the author or publisher.

It got worse in 2011, when a consortium of some of Google’s partner libraries, the Hathi Trust, decided to put online some 200 books that the group had unilaterally decided were “orphans,” meaning they couldn’t locate the copyright owners. The “orphans” turned out to include books from writers like the best-selling novelist J. R. Salamanca — alive and well in Maryland — and the Pulitzer Prize winner James Gould Cozzens, whose copyrights were left to Harvard. The Authors Guild sued, and Hathi suspended the program. But that litigation also continues, even while millions of copyrighted works are stored online, one hacker away from worldwide dissemination for free.

The fracas with the Hathi libraries is emblematic of new fractures in traditional literary alliances. For many academics today, their own copyrights hold little financial value because scholarly publishing has grown so unprofitable. The copyrights of other authors, by contrast, often inhibit scholars who want to quote freely from those works or use portions in class. Thus, under the *cri de coeur* that “information wants to be free,” some professors and others are calling for copyright to be curtailed or even abandoned. High-minded slogans aside, these academics are simply promoting their own careers over the livelihoods of other writers.

Even libraries and authors, usually allies, have grown less cozy. No one calls our public library system socialistic, though it involves free distribution of the goods authors produce, and even though in many Western nations, authors get a tiny fee when libraries lend their works. Authors happily accept our system, because libraries have nurtured them as writers and readers.

Now many public libraries want to lend e-books, not simply to patrons who come in to download, but to anybody with a reading device, a library card and an Internet connection. In this new reality, the only incentive to buy, rather than borrow, an e-book is the fact that the lent copy vanishes after a couple of weeks. As a result, many publishers currently refuse to sell e-books to public libraries.

An even more nightmarish version of the same problem emerged last month with the news that Amazon had a patent to resell e-books. Such a scheme will likely be ruled illegal. But if it is not, sales of new e-books will nose-dive, because an e-book, unlike a paper book, suffers no wear with each reading. Why would anyone ever buy a new book again?

Consumers might save a dollar or two, but the big winner, as usual, would be Amazon. It would literally own the resale market and would shift enormous profits to itself from publishers as well as authors, who would lose the already meager share of the proceeds they receive on the sale of new e-books.

Many people would say such changes are simply in the nature of markets, and see no problem if authors are left to write purely for the love of the game. But what sort of society would that be?

Last October, I visited Moscow and met with a group of authors who described the sad fate of writing as a livelihood in Russia. There is only a handful of publishers left, while e-publishing is savaged by instantaneous piracy that goes almost completely unpoliced. As a result, in the country of Tolstoy and Chekhov, few Russians, let alone Westerners, can name a contemporary Russian author whose work regularly affects the national conversation.

The Constitution's framers had it right. Soviet-style repression is not necessary to diminish authors' output and influence. Just devalue their copyrights.

*Scott Turow, a lawyer, is the president of the Authors Guild and the author of the forthcoming novel "Identical."*



**MORE IN OPINION** (5 OF 18 ARTICLES)

**Room for Debate: A I  
Futility for the Pentag**

[Read More »](#)



Request PDF | On Nov 9, 2017, Christopher J. Ha published The Slow Death of a Perfect Creation: The Endangered American Theatre Organ | Find, read and cite all the research you need on ResearchGate. To read the file of this research, you can request a copy directly from the author. Request file. Download citation. Parsons and I were friends and colleagues from 1963 until his death in 1979. I recall, herein, a small part of our personal and intellectual relationship, especially that portion having to do with the creation of The American University. Read more. Article. Henry David Thoreau, who was both author and naturalist, walked and walked and walked. But even he couldn't match the feat of someone like Constantin Brancusi, the sculptor who walked much of the way between his home village in Romania and Paris. Or indeed Patrick Leigh Fermor, whose walk from the Hook of Holland to Istanbul at the age of 18 inspired several volumes of travel writing. From recent decades, the environmentalist and writer John Francis has been one of the truly epic walkers. Francis was inspired by witnessing an oil tanker accident in San Francisco Bay to eschew motor vehicles for 22 years. Instead he walked. And thought. He was aided by a parallel pledge not to speak which lasted 17 years. But you don't have to be an author to see the value of walking. A particular kind of walking. I would like Americans to ponder the following perfectly appropriate Axiom by Karl Popper that should wake up even Politically Correct dimwits with its clarity. "Unlimited tolerance must lead to the disappearance of tolerance. If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them." Therefore, dear Americans, you must never allow the intolerance of Sharia to take root in your soil. These treasonous Muslims should be removed from office based entirely on the fact that their adherence to their Quran prohibits them from ever fully assimilating and or integrating among none Muslim Americans. A dining experience beloved by generations of hungry Americans is in danger of being spoiled by the coronavirus pandemic. Buffets - from the humblest hotel breakfasts to the grandest casino banquets - are struggling to stay afloat as new health restrictions come into place and wary diners eschew the self-serve dining tradition. As many buffets go out of business across the US, others are innovating and trying desperately to keep the business model relevant and appetising. Jack's Fresh, which specialises in Asian food and American sandwiches, is currently making around \$500 (£398) per day, down from an average of \$3,500 before the pandemic, she says. "No people work in this area," says Mrs Yin, referring to the commuters that have mostly been working from home since March.