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# Oikeuden historiasta tulevaisuuden Eurooppaan

Pia Letto-Vanamo 60 vuotta

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# A Crooked Balance of Interests? Comparing Users' Rights in Printed and Electronic Books

## 1 INTRODUCTION

In a short period of time, the whole media landscape has fundamentally changed. Digitalization has not only transformed the methods of production and distribution, but also the ways in which the media products and services are used. This is most obvious in the case of the daily media – newspapers, television, and telephony – as the arrival of the Internet has challenged the 'old' media in all possible ways. In general, less attention has been paid to the developments in book publishing, although it is still a major pillar of the printed media industry, and is feeling the changes in similar ways as the other branches of the media.

This paper explores how users' rights with electronic books (e-books) differ from their rights of use with traditional printed books. The assumption is that, with the printed book, the users' rights are more extensive, allowing for more freedom to use the content than in the case of the e-book: the printed book can be loaned and resold, whereas the e-book cannot. The main claim is that the balance between the rights of the copyright holder and the user has changed since the advent of e-books, restricting the efficiency of copyright limitations from the viewpoint of the user in many ways.

The basic assumption in this paper is that from the viewpoint of a user, there is a significant difference in the conditions of use between the traditional printed book and the digital book. In the former case, the user owns the book as a physical entity, and as long as the content is not used illegally (for example, selling copies without a license), the user can do whatever he or she wants with his or her own copy. In the latter case, the user does not usually own the book or its digital copy in the same way, as a physical entity; in most cases, the user can only buy the right to have access to a copy and only for a limited period of time in many instances. This can be compared to the difference between owning and renting something. Additionally, in

the case of the digital copy, the usage is normally monitored and controlled by a specific digital rights management (DRM) tool.

This seems to reflect a major change in how copyright as a legal construct is understood. Traditionally, copyright regulation was understood as constructed to establish a balance between the exclusive rights of the original creator (i.e., the author) to decide on the use of his or her work, and the right of the general public to enjoy access to the work. Although the creator has been recognized as having exclusive rights to the products of his or her work, these are balanced by the ‘public interest’ claims, stipulating the conditions on which society agrees to respect and protect the copyrighted works.

In this paper, we ask two questions:

- If our observation is correct and a change has taken place, what kind of a change is it?
- What are its practical consequences, especially from the viewpoint of the users’ rights?

## 2 FOUR APPROACHES TO COPYRIGHT

Copyright governance has traditionally been predicated on a negotiated balance of interests among three main actors: the creator, the publisher, and the user. Originally, the balance was found by acknowledging the private interests of the creator and the publisher on the one hand, and, on the other, public interest, defined in terms of the cultural and social benefits resulting from citizens’ public access to the works.<sup>1</sup> To serve the public interest, certain limitations were imposed on the creators’ privileges, including limits on the duration of copyright, a principle of “fair dealing” that allows members of the public to copy the work for personal use, and employing the works for social and cultural purposes.<sup>2</sup>

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<sup>1</sup> *Ricketson, Sam*: WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment. World Intellectual Property Organization, Geneva. Standing Committee on Copyright and Related Rights, Ninth Session. Geneva, June 23 to 27, 2003. Website: [http://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_9/sccr\\_9\\_7.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/sccr_9/sccr_9_7.pdf); *Hugenholtz, P. B., – Senfleben, M. R. F.*: Fair use in Europe: In search of flexibilities. 2011. Retrieved October 18, 2012, from <http://ssrn.com/abstract=1959554> or <http://dx.doi.org/10.2139/ssrn.1959554>; European Copyright Code: The Wittem Project: European copyright code. 2010, p. 121. Website: [http://www.copyrightcode.eu/Wittem\\_European\\_copyright\\_code\\_21%20april%202010.pdf](http://www.copyrightcode.eu/Wittem_European_copyright_code_21%20april%202010.pdf).

<sup>2</sup> *Sirinelli, Pierre*: Exceptions and limits to Copyright and Neighbouring Rights. Workshop

In the literature, the arguments for copyright are usually divided into four different approaches: the economic rights approach, the moral rights approach, the utilitarian approach, and the citizens' rights approach.<sup>3</sup>

The economic rights approach is based on conceiving the end product as a result of creative work, over which the creator has an exclusive right to decide upon. This includes selling all ownership rights to another party at a price which is freely at the creator's discretion to determine. In its extreme, this approach does not recognize any moral rights of the creator – if desired, the creator can sign over all rights to another party (a publisher) leaving him or her without any claims concerning the further use of the work. This conception of copyright is usually connected to Anglo-American legal tradition.

The moral rights approach is derived from the notion that there is an inseparable connection between the work and its original creator, independent from its ownership. This gives the creator a right to supervise the use of his or her work – that its original form is respected and that he or she is recognized as the original author in all uses of the work. In the background is a strong influence of the natural rights philosophy, according to which the creator has a natural right to all of his or her creations, and this right cannot be declined or denied by simply handing over the work to the user or the economic rights to another party. This way of understanding copyright is usually linked with Continental European law.

The utilitarian approach emphasizes the social utility of copyright as the creator's exclusive rights, encouraging him or her to continue creative production for the benefit of the public (and society) in the form of more new works. The creator's remuneration is thought to consist of two components, the pay for the actual work plus an incentive to continue production. In this way, the balance between the creator's economic interest and the public interest are met efficiently and beneficially for both parties. Additionally,

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on Implementation Issues of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Geneva, December 6 and 7, 1999. Website: [http://www.wipo.int/edocs/mdocs/copyright/en/wct\\_wppt\\_imp/wct\\_wppt\\_imp\\_1.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/wct_wppt_imp/wct_wppt_imp_1.pdf); *Hugenholz, P. B.*: Copyright and freedom of expression in Europe. In R. C. Dreyfuss – H. First – D. L. Zimmerman (eds.), *Expanding the boundaries of intellectual property* (pp. 343–364). Oxford University Press, Oxford 2001; Ricketson 2003; European Copyright Code 2010, pp. 123–126.

<sup>3</sup> *Guibault, L.*: Copyright limitations and contracts. An analysis of the contractual overridability of limitations on copyright. Kluwer Law International, Boston 2002; *May, C. – Sell, S. K.*: Intellectual property rights: A critical history. Lynne Rienner, London 2005; *Davies, Gillian*: Copyright and the Public Interest. Second Edition. Modern Legal Studies. Sweet & Maxell, London 2002.

understanding copyright in this way creates an incentive to other potential actors for creative work.

The approach centered on the citizens' rights accentuates democracy as a system based on informed citizenry, enjoying the freedom of speech and expression. The basic idea is that all new knowledge and novel forms of culture are necessarily based on earlier achievements, and if citizens are restricted or denied the access to the existing works of art and science, societies will eventually regress. From this follows that while the creators' exclusive rights are recognized and respected, they must be balanced with exemptions to allow the widest possible public access to their works. One application of this is the Public Domain Movement which aims to make the works (mostly scientific articles) freely available with the active consent of the authors.

The first two approaches concentrate only on the authors' rights, but the latter two perspectives take users' rights into consideration. The utilitarian approach takes into account the need for an incentive to create. The approach focusing on citizens' rights demands acknowledging the rights that the users have or should have. The problem is, however, that the concept of users' rights is seldom explicitly defined. In this article, we see users' rights as the requirements set out in the copyright system to not only protect authors, but also to promote reading and other uses of copyrighted products. The limitations imposed on the authors' privileges in copyright legislation aim at securing users' rights.

### 3 COPYRIGHT LIMITATIONS AND EXEMPTIONS

The global copyright regulation is a mixture of all four approaches. Although there are well-established international copyright laws based on international treaties (the two fundamental ones are the Berne Convention from 1886 and the Agreement on Trade Related Aspects of Intellectual Property Rights [TRIPS] from 1994), the national copyright regimes differ significantly in detail – meaning that any country comparison needs to be conducted very carefully. It has been pointed out that the main difference between the international copyright regime and the national laws concerns the balance of rights: the international treaties concentrate on securing the creators' economic rights, whereas the national legislation stresses the societal and



welfare aspects – citizens' democratic, cultural, and social rights.<sup>4</sup> In order for the copyright system to serve the public interest and guarantee user rights, it has been agreed, especially for social and educational purposes, that several limitations be imposed on the creators' privileges.

Because the international copyright treaties are in their nature the products of compromises on the basis of coordinating the national copyright regimes, they leave much discretion to the nation states. This has meant that there are two categories of limitations and exceptions: general limitations stipulated in the international treaties, in which all signature countries must apply their domestic laws, and specific limitations and exceptions which are allowed under the treaties, but whose implementation is solely the responsibility of the signature countries.

### 3.1 General limitations

The general limitations coordinated through the treaties, which all signatory states are obliged to implement in their national legislation, are rather flexible and leave much discretion to signatories. One of the basic stipulations concerns what constitutes a copyrightable work: only an original work, reflecting “some level of intellectual creativity” should be protected by copyright.<sup>5</sup> How this is determined varies from country to country. Other general stipulations include the distinction between an idea and its expression – that is, the idea does not get protection, only its expression. The same type of demarcation applies to the difference between factual contents and their expression – the expressions of facts are protected, the facts are not. A major issue of global coordination concerns the duration of copyright protection which, as a global standard, was the lifetime of the author plus 50 years; however, in recent decades, this has been extended to the lifetime plus 70 years.<sup>6</sup>

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<sup>4</sup> *Okediji, R. L.*: The International copyright system: Limitations, exceptions and public interest considerations for developing countries. UNCTAD – ICTSD Project on IPRs and Sustainable Development. Issue Paper No. 15, March 2006. Retrieved October 18, 2012, from Geneva: International Centre for Trade and Sustainable Development (ICTSD) & United Nations Conference on Trade and Development (UNCTAD). Website: [http://unctad.org/en/Docs/iteipc200610\\_en.pdf](http://unctad.org/en/Docs/iteipc200610_en.pdf).

<sup>5</sup> *Okediji* 2006, p. 11.

<sup>6</sup> *Okediji* 2006, pp. 10–11.

The other set of limitations and exceptions – those allowed under the international treaties but whose precise form and content are left to the national governments to decide – include a number of means to limit the creators' exclusive rights. Most limitations aim at allowing the widest possible public access to the copyrighted works, without essentially harming the copyright owner's right and, in many cases, compensating the copyright owner for the potential financial loss resulting from the specific limitation. Here we concentrate only on those limitations and exceptions relevant to our focus. How do they relate to the user's rights in the transformation from the printed book to the digital version?

In this category, there are two kinds of limitations: uncompensated and compensated. Compensated limitations concern mostly broadcasting and recording rights and, thus, will be discussed more here.<sup>7</sup> On the other hand, many uncompensated limitations do have direct relevance to the copyright of books. These include such issues as personal use, use for criticism or review, educational purposes, reproduction by the press, libraries, and limitations involving people with disabilities. Although there are many differences how these limitations are applied from country to country, in one form or another, they are recognized as necessary for informational, scientific, educational, and social purposes. What interests us is how these limitations apply in the case of digital works. As digital books are often distributed online and, thus, may transgress national boundaries, what jurisdiction can be applied to them?

Another important issue that concerns the use of copyrighted works is the concept of the ownership of the copy (e.g., a book), and the conditions under which the ownership can be handed over to another person. In the case of a printed book, this is clear: a copy of a book can be donated, inherited, traded in the secondary market, or even destroyed. The owner of the copy has a sovereign power over it. How is this arranged in the case of digital books?

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<sup>7</sup> Okediji 2006, pp. 14–15.

### **3.2 Limitations and exceptions from the viewpoint of user rights**

From the viewpoint of user rights, we can make a distinction between two types of rights in copyright law: those related to basic citizens' rights, such as access to information, the needs of education, and the use for social purposes (people with special needs, people in institutions, etc.); and those related to creative purposes – scientific, artistic, etc. uses of copyrighted works. They partly overlap; for example, access to factual information is required in science, but principally, they refer to somewhat different needs in regard to the access and use of copyrighted works.

A prerequisite for both classes of rights, but especially for the latter type, is full ownership of a copy of a work – whether the original copy is in a material form (a printed book) or in a digital form (e-book) – so that the user is able to reproduce the work for his or her own creative purposes for further study and reflection. This must also include the full determination of the further use of the copy, including donating the copy or signing it off to a secondary market.

All of these conditions have applied, in one form or another, in most countries in the case of printed books; further, this has been a central element in the conceived balance between the creators' exclusive rights and the public interest based on copyright limitations.

In summation, the main challenge to this balance is that the risk of copyright infringement grows when copyrighted material is used in a digital environment. Thus, digital material is protected with tools called DRM technologies. These have been highly criticized as they are perceived as restricting the freedom of users and, as such, pose a threat to the application of the earlier agreed and adopted copyright limitations.

Now the question is: To what degree are these prerequisites in force concerning digital books; and, if they are found wanting, what are the consequences from the viewpoint of general societal conditions for creative work?

## 4 E-BOOK: FROM TRADITIONAL VALUE CHAIN TO SOMETHING ELSE<sup>8</sup>

E-book sales are low in Finland. Retailers are few, the e-reading devices are scarce, and prices remain high. The amount of Finnish literature available in an e-book format is still minimal.<sup>9</sup> For the last couple of years, many publishers have made both a traditional and an electronic version of a new fictional book, but they have shown no interest in digitizing older content. Neither does it help that generally accepted global standards on e-book file formats, data platforms, reader software, and DRM have yet to be developed.

The change from the traditional model of book production to the digitalized environment is radical. In the following, we analyze this change with reference to the value chain process.

### 4.1 Traditional value chain

The traditional publishing value chain starts with the author who produces a manuscript and offers it to a publisher. The publisher selects for publication the best manuscripts from among those offered. Print-ready files are delivered by the publisher to the printing house. The end product, the book, is then distributed through retailer channels and sold. In addition to traditional bookstores, the Internet has become a permanent channel, a long way ahead of e-books. In Finland, publishers do not sell traditional books directly to

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<sup>8</sup> Additional information for Chapters 3 and 4 was retrieved from interviews with a number of experts working in the publishing business. The interviewed experts were *Niko Aula*, Publishing Manager, Gummerus Publishers, September 11, 2012; *Jarmo Heikkilä*, Managing Director, Ellibs, September 19, 2012; *Annikka Heinonen*, E-book Product Manager, Gummerus Publishers, September 24, 2012; *Sakari Laiho*, Director, Finnish Book Publishers Association, September 17, 2012; *Kristiina Markkula*, E-reading Project Director, Federation of the Finnish Media Industry, September 18, 2012; *Virva Nousiainen-Hiiri*, Helsinki City Library, September 26, 2012; *Fredrik Rahka*, Head of Digital Publishing, Otava Publishing Company, October 3, 2012.

All interviews were conducted by Anna-Laura Markkanen. The authors express their gratitude to all the experts.

<sup>9</sup> According to the publishers' statistics, 789 e-books were published in Finland in 2011, whereas the total number of books was 4,554. However, it is not reported if all e-books were commercially available. See Publishers Association: Facts and figures. 2012. Retrieved October 18, 2012, from Finnish Book Publishers Association, <http://www.kustantajat.fi/en/>.

libraries but through wholesalers, such as Kirjavälitys ([www.kirjavalitys.fi](http://www.kirjavalitys.fi)) or BTJ ([www.btj.fi](http://www.btj.fi)), formerly known as Kirjastopalvelu (Library Services).



**Figure 1.** Traditional publishing value chain.

Technological developments have brought changes to the value chain and the actors in book publishing. However, the publishing industry has struggled with falling consumer demand; thus, not all changes are associated exclusively with the transition to a digital environment. Old players have had to adapt to a new environment.

## 4.2 The digital challenge

Digital publishing has introduced new tasks to publishers, but the essential constituent tasks remain unchanged: to find books that people want to read, to ensure that potential readers know about them, and to make them available in distribution outlets.

However, digital technology allows writers to sell their works directly to booksellers, bypassing publishers. An example is CrimeTime,<sup>10</sup> a cooperative publishing company founded by Finnish authors of detective novels. The company sells the books directly online and has outsourced many of the tasks previously handled by traditional publishing companies. The authors benefit by enjoying higher royalties.

A new element in the e-book value chain is the protection and management of digital content. In the case of an individual book, although the terms for DRM are formally negotiated between the author and the publisher, they are written and determined by the publisher and implemented by the provider of the technological system. In Finland, the Adobe Digital Editions DRM is widely used e-book reader software. It allows the publisher to decide the limits of the users' rights, for example, whether readers can make copies of the book for private use or print parts of the book.

<sup>10</sup> CrimeTime, reiluja rikoksia. Retrieved October 18, 2012, from <http://www.crime.fi/>.

A consideration is that e-book prices are high compared to traditional books. The publishers argue that this is because of high value-added tax (VAT), which for printed books is 9%, whereas for e-books it is 23%.<sup>11</sup> Another reason for high prices is that business models are not yet fully established. E-book sales are low, but no publisher has been bold enough to be the first to lower prices. Thus, pricing strategy is one of the current hot topics among publishers.

### 4.3 New players in the value chain

The transition to digital publishing has introduced new players to the publishing value chain. These include online stores, (content) platforms, technological system providers, media companies, and Internet service providers.

Emerging actors can assume different roles: one may act as a technology provider (e.g., Securycast), another as a content provider (e.g., OverDrive),

New type of player	Example
Technology service providers/ partners	Securycast (www.securycast.com)
Platforms/system providers	OverDrive (www.overdrive.com)
Online stores selling only e-books	ELibris (www.elibris.fi)
Online stores selling traditional and electronic books	AdLibris (www.adlibris.com)
Online versions of traditional bookshops	Suomalainen kirjakauppa and suomalaisen.com (www.suomalainen.com)
System provider and retailer	Ellibs (www.ellibs.fi)
System provider, retailer (Internet service provider)	ElisaKirja (www.elisakirja.fi)

<sup>11</sup> Suomalaiset suosivat edelleen perinteisiä kirjoja sähköisten sijaan. Helsingin Sanomat, 13 July 2012. Retrieved October 18, 2012, from <http://www.hs.fi/kotimaa/Suomalaiset+suosivat+edelleen+perinteisi%C3%A4+kirjoja+s%C3%A4hk%C3%B6isten+sijaan/a1305583002438;E-kirja+etenee+USA:ssa,+matelee+Suomessa.+Kauppalehti,+July+21,+2012>. Retrieved October 18, 2012, from <http://www.kauppalehti.fi/etusivu/e-kirja+etenee+usassa,+matelee+suomessa/201207219093?ext=rss>.

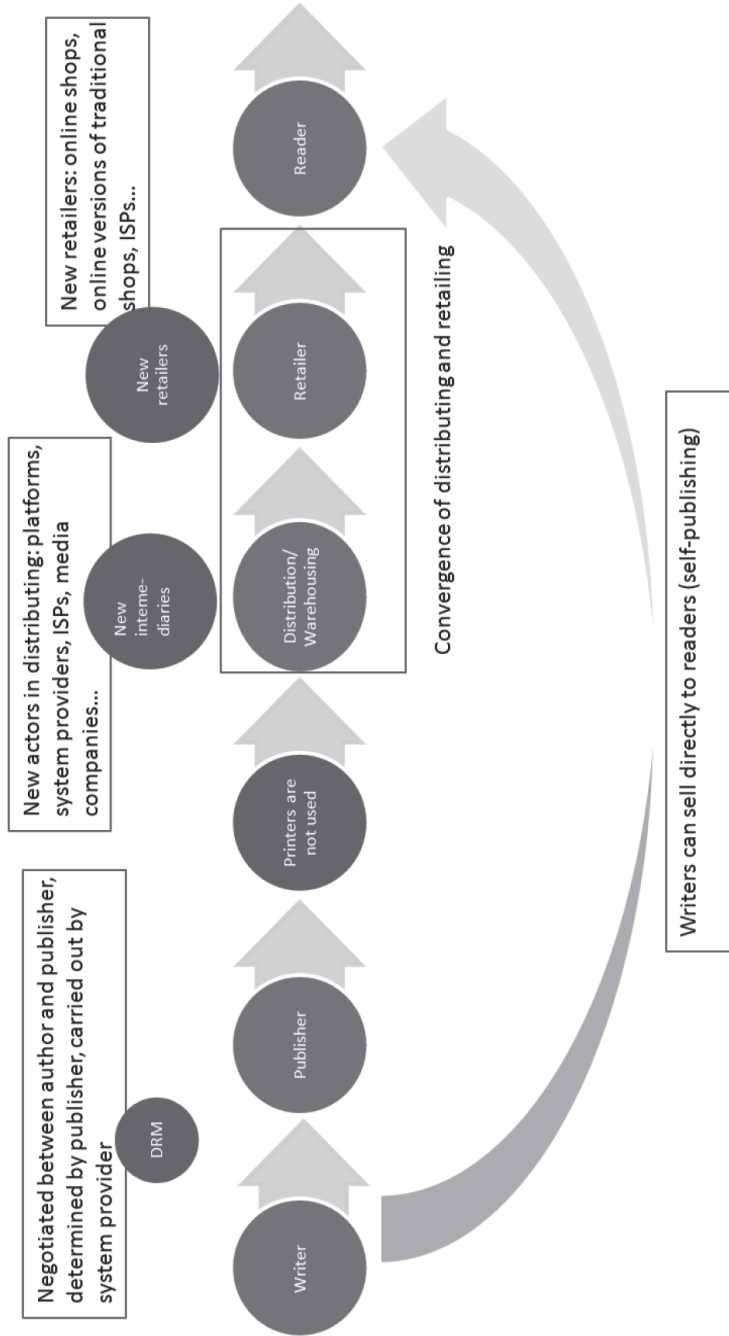
a third as an online shop (e.g., AdLibris), and a fourth as all of the above (e.g., ElisaKirja, Ellibs). In the e-book market, Internet and media companies now play new and different roles, offering combinations of devices, content, and platforms.

An additional new dimension is the internationalization of the publishing business. The e-publishing market is much more open to international platforms and data providers than before, when jobs in publishing production generally required Finnish language skills or precise knowledge of the local infrastructure. For example, an American e-book distributor, OverDrive, an important content provider for Helsinki City libraries, has no staff in Finland and conducts its business online from the United States.

Opening the value chain to new communities, such as readers, may help provide a new kind of enriched content to the general public or build new business possibilities based on direct interaction, for example, in the form of virtual book clubs. Lucy Küng<sup>12</sup> asks whether the industry can really take off if e-books are regarded as an alternative to paper, rather than an entirely new category of creative media product. However, if e-books are viewed in the broadest possible sense, it is possible that the value chain will not change per se, but that new players and operations will be introduced to support the old ones.

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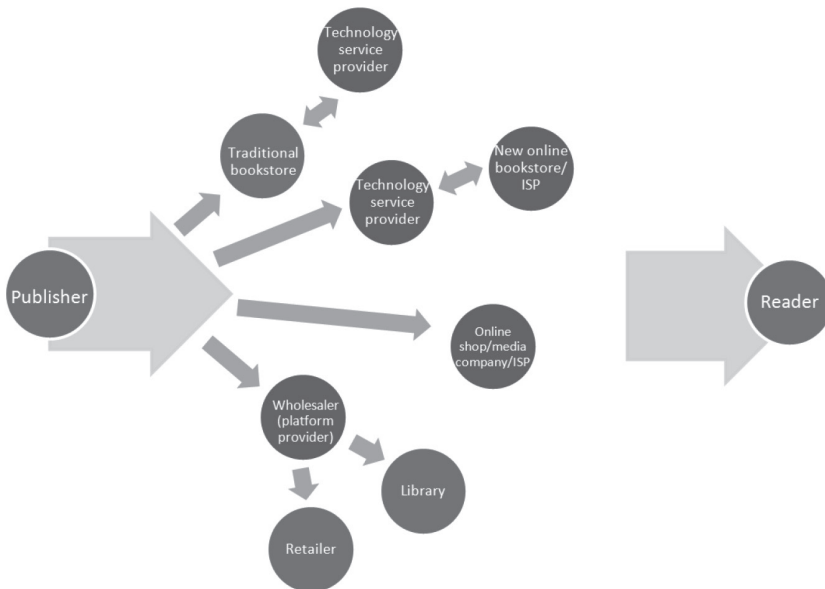
<sup>12</sup> Küng, L.: Strategic management in the media: Theory to practice. London, SAGE. Library Act (1998). Finnish library act. Retrieved October 18, 2012, from <http://www.libraries.fi/en-GB/libraryact/> p. 34.



**Figure 2.** Digital publishing alters the traditional publishing value chain.



New routes are emerging for the book to travel from writer to reader. Instead of traditional bookstores, online shops, wholesalers and libraries, new technological agents are introduced, providing alternative routes from publisher to reader, as shown in Figure 3 (and the example of CrimeTime discussed in Section 4.2).



**Figure 3.** Alternative routes for a book from publisher to reader.

#### 4.4 E-books and libraries

The supply of e-books in Finnish libraries is a topical and somewhat contradictory issue. The selection of Finnish fiction in electronic form in public libraries is quite limited and consists mostly of books from small publishing houses, the main reason being that the licensing models are yet to be resolved. Publishers are not willing to sell e-books to libraries on rather loose terms if the cash flow terms back to them and to writers are unclear.

In the current system, Ellibs, a Finnish platform provider and book wholesaler, and OverDrive, a global e-book distributor, play an important role in the chain from publisher to library. Ellibs provides e-books in both Finnish and English, whereas OverDrive's product line does not contain Finnish

books. The platforms and services provided by these companies are slightly different, and libraries can thus gather knowledge about different licensing models and consumer experiences.

The Federation of the Finnish Media Industry, Finnmedia, has coordinated an initiative called eReading Services, which focuses on electronic reading devices, new product and service concepts, and new business and licensing models. Within this initiative was a pilot project called Ebib that ran from October to December 2012, and brought more Finnish literature to libraries in electronic form.<sup>13</sup> The pilot's aim was to create test environments that provided libraries with new information about customer experiences.

The inchoate state of e-book services in libraries is underlined by the fact that, although the Library Act requires all citizens to have equal access to library services, OverDrive and the Ebib pilot still operate only within the libraries of the metropolitan area.<sup>14</sup>

## 5 COPYRIGHT RESTRICTIONS: FROM COPYRIGHT TO DRM

Another current concern is the protection of digital books, particularly from piracy. The current DRM system provides strong protection for the interests of publishers and authors; however, for users and readers it makes the “normal” (as with the traditional printed book) utilization of the work difficult or even impossible. Plans are afoot to design and apply a lighter system, the so-called “social DRM” (such as watermarking),<sup>15</sup> but to date Adobe Digital Editions remains the most popular DRM system.

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<sup>13</sup> Kirjasto tarjoaa kotimaista uutuuskirjallisuutta sähkökirjoina. Retrieved October 18, 2012, from [http://www.vkl.fi/ajankohtaista/tiedotteet/kirjasto\\_tarjoaa\\_kotimaista\\_uutuuskirjallisuutta\\_sahkokirjoina.4198.news](http://www.vkl.fi/ajankohtaista/tiedotteet/kirjasto_tarjoaa_kotimaista_uutuuskirjallisuutta_sahkokirjoina.4198.news).

<sup>14</sup> Finnish library act 1998. Retrieved October 18, 2012, from <http://www.libraries.fi/en-GB/libraryact/>.

<sup>15</sup> On watermarking, see, for example, *Rosoff, M.*: Watermarking to replace DRM? 2007. Retrieved October 18, 2012, from [http://news.cnet.com/8301-13526\\_3-9761049-27.html](http://news.cnet.com/8301-13526_3-9761049-27.html).

## 5.1 Basics of DRM

Most e-books sold in Finnish bookstores are in EPUB+DRM or PDF+DRM formats. Negotiations about which DRM system is used take place between the author and the publisher, but it is the publisher who has the final say. From the viewpoint of an individual user (sometimes called the “honest reader”), the social DRM would be easier to use than the current system. Even though the current DRM system may be strong, it is not effective in preventing illegal use, as it is relatively easy to break.

DRM controls access to and reproduction of digital material, whereas digital watermarking and fingerprinting are techniques enabling the identification of digital works.<sup>16</sup> The current DRM system applied in Finland is relatively strong, not only because of its technical qualities, but also because of the fear caused by the music and movie industries' aggressive tactics in pursuing potential piracy.<sup>17</sup>

For the consumer, the system could be easier. The current system enables the consumer to make a few copies of the e-book he or she has purchased, as long as the copies are made on a device registered to the same user ID. A lighter form of DRM – social DRM or watermarking – would allow the consumer to share the e-book with as many friends as he or she wished, but if the e-book were illegally uploaded to the Internet, it could be traced back to the original consumer.

## 5.2 Applying the copyright limitations in the use of e-books

As stated earlier, certain copyright limitations have been imposed to serve the public interest. In Finland, copyright limitations are specified in the second chapter of the Copyright Act,<sup>18</sup> which provides that a copy of work “made by virtue of a limitation copyright [...] may, for the purpose determined in

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<sup>16</sup> *Van Tassel, J.*: Digital rights management: Protecting and monetizing content. Focal Press, Burlington 2006, pp. 79–80.

<sup>17</sup> See, for example *Effi: Verkkosensuuri ei ole vastaus*. Electronic frontier Finland. Retrieved October 18, 2012, from <http://www.ffi.org/julkaisut/tiedotteet/120110-ffi-verkkosensuuri-ei-ole.html>

<sup>18</sup> Copyright Act 1961. Unofficial English translation. Retrieved October 18, 2012, from <http://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf> (Original in Finnish: <http://www.finlex.fi/fi/laki/ajantasa/1961/19610404>).

the limitation, be distributed to the public”.<sup>19</sup> This section examines how certain limitations can be applied in the e-book environment controlled by DRM technologies.

The Copyright Act permits a copyrighted work to be reproduced for private use.<sup>20</sup> Anyone can make single copies for private use of a work that has been made public, as long as they are not used for other purposes. This stipulation is easily fulfilled in the case of a traditional book, but DRM systems cause problems in relation to an e-book. The fact that an e-book may not be copied arises in other sections as well, such as Section 14, “The use of works for educational activities and scientific research,” which states that a work made public may be reproduced for use in educational activities or in scientific research. DRM may change practices in public institutions, such as libraries and museums, as well. According to Section 16, “Reproduction in archives, libraries and museums,” such institutions may make copies for their own collections, for example, in order to preserve material.

Section 17, which deals with making works available to persons with disabilities, states that copies of a published literary work may be made for people with “visual impairments and others who, owing to a disability or illness, cannot use the works in the ordinary manner.”<sup>21</sup> Even though technology exists to make e-books available for the visually impaired (text-to-speech synthesizers), e-book technology providers have enabled the option to turn the setting off, as rights to e-books and rights to audiobooks are not always agreed upon in the same contract.<sup>22</sup>

The distribution of copies of a published work is subject to a special limitation, which is that a copy may be further distributed – by selling or lending – when it has been sold or otherwise transferred with the consent of the author within the European Economic Area. The law does not allow hiring, and emphasizes that the author should have remuneration for the lending of copies. When the traditional book proceeds from the printing house to a retailer, the tangible item may be bought and resold. This does not apply to e-books. Hence, agreements between the publisher and the

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<sup>19</sup> Copyright Act 1961, Chapter 2, Section 11.

<sup>20</sup> Copyright Act 1961, Chapter 2, Section 12.

<sup>21</sup> Copyright Act 1961, Chapter 2, Section 17.

<sup>22</sup> See *Akester, P.*: Technological accommodation of conflicts between freedom of expression and DRM: The first empirical assessment. 2009. Retrieved October 18, 2012, from <http://ssrn.com/abstract=1469412> or <http://dx.doi.org/10.2139/ssrn.1469412>.

writer, as well as the situation of the consumer, are altered. If the customer cannot sell his or her e-book in a secondhand bookshop or give it to a friend after he or she has read it, should he have to pay the same price for it as for a traditional book?

The examples presented show that the current DRM trend raises many issues: the e-book cannot be printed or copied, it cannot be lent to a friend, and it cannot be resold.

## 6 CONCLUSIONS: FROM USER RIGHTS TO USER WRONGS?

The basic assumption in this paper is that, in the new digitalized environment, the traditional balance between the creator, the publisher, and the reader/user has been tilted in favor of the publisher. As a result, the public interest – represented by cultural and societal values – in copyright regulation has been undermined.

The Berne Convention, originating as far back as 1886, struck a fine balance between the actors in this field, based on recognition of the ownership of the original creator on the one hand, and, on the other, wider societal interests (democratic, cultural, educational, and social needs), which were served by establishing certain limitations and exceptions to the creator's exclusive rights.

In the digital age, there are problems in reconciling the creator's legitimate right to reproduce his or her work with wider societal interests. This paper discussed the central issues in more depth. Although the advent of e-books on a large scale is still ahead of us, at least in countries like Finland, it raises severe issues. First, there is the question of readers'/users' rights of ownership of a legally purchased copy, including the right to make copies for private use, to store a copy, or to loan, borrow, resell, and inherit the copy. In this respect, the DRM models planned and used seem to violate the principles confirmed and agreed in several international treaties (Berne, Geneva, and Rome).

Second, the new e-book publishing models do not take into account the needs of libraries. In order to facilitate the cultural, social, and educational functions of a library, there needs to be a standardized and simple model for lending books and monitoring their use. It cannot be the task of indi-

vidual libraries or even regional groups of libraries to negotiate solutions with publishers and intermediaries; obviously, this is a wider issue of state cultural policy.

It seems obvious that there is an urgent need to negotiate a new balance between the actors, safeguarding especially the public interest-based rights in relation to democratic, cultural, social, and educational considerations. Copyright issues have not traditionally been high (if anywhere at all) on the agenda of media and communication scholars. It is high time to correct this.