

EDITED BY JANIS JEFFERIES AND SARAH KEMBER



Whose Book is it Anyway?



A View from Elsewhere on Publishing,
Copyright and Creativity

WHOSE BOOK IS IT
ANYWAY?

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*Edited by Janis Jefferies
and Sarah Kember*





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Contents

Notes on Contributors	ix
Introduction: Whose Book is it Anyway? A View from Elsewhere on Publishing, Copyright and Creativity <i>Janis Jefferies and Sarah Kember</i>	1
PART I: Opening out the Copyright Debate: Open Access, Ethics and Creativity	19
1. A Statement by <i>The Readers Project</i> Concerning Contemporary Literary Practice, Digital Mediation, Intellectual Property, and Associated Moral Rights <i>John Cayley and Daniel C. Howe</i>	21
2. London-Havana Diary: Art Publishing, Sustainability, Free Speech and Free Papers <i>Louise O'Hare</i>	33
3. The Ethics of Emergent Creativity: Can We Move Beyond Writing as Human Enterprise, Commodity and Innovation? <i>Janneke Adema</i>	65
4. Are Publishers Worth It? Filtering, Amplification and the Value of Publishing <i>Michael Bhaskar</i>	91

- | | | |
|-----------------------------|--|------------|
| 5. | Who Takes Legal Responsibility for Published Work?
Why Both an Understanding and Lived Experience of
Copyright Are Becoming Increasingly Important to
Writers
<i>Alison Baverstock</i> | 105 |
| 6. | Telling Stories or Selling Stories: Writing for Pleasure,
Writing for Art or Writing to Get Paid?
<i>Sophie Rochester</i> | 129 |
| 7. | Copyright in the Everyday Practice of Writers
<i>Smita Kheria</i> | 141 |
| 8. | Comics, Copyright and Academic Publishing: The Deluxe
Edition
<i>Ronan Deazley and Jason Mathis</i> | 181 |
| PART II: | | 227 |
| Views from Elsewhere | | |
| 9. | Diversity or die: How the Face of Book Publishing Needs
to Change if it is to Have a Future
<i>Danuta Kean</i> | 229 |
| 10. | Writing on the Cusp of Becoming Something Else
<i>J. R. Carpenter</i> | 243 |
| 11. | Confronting Authorship, Constructing Practices
(How Copyright is Destroying Collective Practice)
<i>Eva Weinmayr</i> | 267 |
| 12. | Ethical Scholarly Publishing Practices, Copyright and
Open Access: A View from Ethnomusicology and
Anthropology
<i>Muriel Swijghuisen Reigersberg</i> | 309 |

13. Show me the Copy! How Digital Media (Re)Assert Relational Creativity, Complicating Existing Intellectual Property and Publishing Paradigms <i>Joseph F. Turcotte</i>	347
14. Redefining Reader and Writer, Remixing Copyright: Experimental Publishing at if:book Australia <i>Simon Groth</i>	379
APPENDIX: CREATE Position Papers	403
1. Publishing Industry <i>Janis Jefferies</i>	405
2. Is the Current Copyright Framework fit for Purpose in Relation to Writing, Reading and Publishing in the Digital Age? <i>Laurence Kaye</i>	415
3. Is the Current Copyright Framework fit for Purpose in Relation to Writing, Reading, and Publishing in the Digital Age? <i>Richard Mollet</i>	417
4. History of Copyright Changes 1710–2013 <i>Rachel Calder</i>	423
5. Is the Current Copyright Framework fit for Purpose in Relation to Writing, Reading, and Publishing in the Digital Age? <i>Max Whitby</i>	427
List of Illustrations	429
Index	431

5. Who Takes Legal Responsibility for Published Work? Why Both an Understanding and Lived Experience of Copyright Are Becoming Increasingly Important to Writers

Alison Baverstock

Three years on the Board of Management of the Society of Authors (2012–2015) offered me opportunities to appreciate what writers worry about, issues of which they ought to be aware — and their comprehension levels for both. Copyright hovered between, and we discussed whether we should campaign to have its basic principles added to the primary school curriculum. The principle that an author should possess the rights for work they have created is neither hard to explain nor, once broadly understood, hard to deny — and a classroom demonstration is easy to organise. After the weekly story or news-writing session, take the written contribution of one child and announce you are going to photocopy and sell it at the school gate, with the entire proceeds going to the person making the copies. The resulting outrage will likely be long remembered — and have lasting implications for everyone’s future willingness to credit a creator. While the principle of copyright is relatively easy to grasp, authors often struggle to understand how it functions in contracts, and routinely find that getting published can mean being asked to sign their copyright over to the publisher for minimal returns. Encouraging authors to understand copyright, and

other legalities arising from writers' desire to share their work, raises many issues from individual responsibilities and organisational ethics to business and financial interests. The UK Publishers Association's Code of Practice on Contracts lays early emphasis on the importance of publishers ensuring their authors are clear about their legal responsibilities and future commitments:

(4) The publisher should be willing and take any opportunity to explain the terms of the contract and the reasons for each provision, particularly to an author who is not professionally represented.¹

In 2016, Clé, their Irish counterparts, for the first time organised a seminar for Irish authors on how to understand contracts.² The literary agent Carole Blake was a strong believer in authors understanding what they were committing to when they decided to publish their work, and her bestselling book offered a substantial chapter — sixty-five pages with a supporting bibliography — on contracts and how to interpret the seemingly archaic wording of what was being proposed or agreed.³

Until relatively recent times, copyright has been just one of many aspects of publishing little understood by authors. Writers were similarly ignorant about how to influence their cover designs — frustrated to find themselves collectively cover-badged within genres to which they did not feel they belonged in order for the publisher to make a consistent and visible appearance within a specific market — and their marketing, but while they routinely grumbled at Society of Authors meetings they largely left it to the publishing professionals to do what they thought best. If they spotted trends within the industry, and tried to produce something similar for a publisher, they were generally late and jostling within a very crowded market — hence the much over-announced 'next Harry Potter'. Publishing rights consultant Lynette Owen confirmed her belief that 'I do think there is still a lack of understanding by some published authors — and I have often been surprised by authors who

1 The Publishers Association, *PA Code of Practice on Author Contracts*, 2010, <https://www.publishers.org.uk/resources/rights-and-contracts/>

2 Lynette Owen, 'Author-Publisher Contracts: A Workshop for Authors', Dublin, Ireland, 10 March 2016.

3 Carole Blake, *From Pitch to Publication* (London: Macmillan, 1999). A second edition was long-promised but remained undelivered when Blake died in 2017.

make assumptions without going back to check the terms of their contract.⁴

Traditional publishers however routinely filled the gap on their behalf. Although officially the contracts given out by traditional publishers require authors to indemnify them against associated legal risk, in practice publishers employed lawyers to check content received, and the industry has a long-standing track record of choosing to support authors. Examples include Penguin's extremely expensive and sustained backing for Salman Rushdie after publication of *Satanic Verses* and, as I experienced during my first job in the industry, Heinemann Educational Books assuming temporary responsibility in 1983 for housing and maintaining Ngugi wa Thiong'o, when he was forced to live in exile from his native Kenya. Those who have a literary agent benefit from additional handholding. Literary agent Lizzy Kremer of David Higham Associates commented:

Our ability to offer contractual guidance based on the law and on industry precedent and on our insight into the commercial realities of the Industry today features high on the list of reasons why authors appoint agents, although it is our negotiating power and experience as much as our legal insight that enables us to be as effective as we are in these matters.⁵

Literary agent Gordon Wise of Curtis Brown, also the immediate past President of the Association of Authors' Agents (AAA)⁶ commented along similar lines:

I wouldn't say that clients come to us seeking formal legal advice in isolation, but they certainly come expecting a package that includes experienced advice and negotiating power in relation to contracts, and assistance and someone to help lead the charge when things go wrong. Few agents are formally legally trained and would not claim to be, but good and established and reputable agents are experienced in the vast array of customs and practices under which publishing agreements operate and why they are drafted in the way they are, and look to see how to evolve them intelligently as technology and market practices change — without the Author losing ground. Some large agencies, like

4 Interview by the author with Lynette Owen, 2017.

5 Interview with author.

6 <http://agentsassoc.co.uk/>

ours, have access to in-house legal counsel but that is not a resource that can be offered in a bespoke hands-on way to every client as the lawyers are working across the needs of the company as a whole, but they are available for troubleshooting and advice, for strategic work on major deals, and for general overseeing of contracts processes and monitoring publisher requests for changes to boilerplate. Should a major legal situation arise we would discuss with the client what need there might be for third party advice. But we have a team of contracts managers who vet every contract and are in regular contact with the publishers' contracts teams.⁷

Other agents I spoke to took a similar line; Heather Holden-Brown of the HHB Agency commented that authors regularly need to have explained the difference between licensing publishing rights as opposed to copyright, and the meaning of specific clauses such as 'reversion of rights'.⁸ Several agents said they recommended that authors who want specific legal advice should join the Society of Authors: although a range of services are offered by the Society, the benefit of legal guidance over contracts that comes with a subscription remains the most common reason for joining, as well as the most frequent source of member enquiries. The Society vets over 1,000 contracts a year, and staff who undertake this work make up about a quarter of the workforce. The Society also lobbies collectively on behalf of members (e.g. with the BBC and the Publishers Association) and informs members about wider legal changes that are intended to protect authors such as the so-called 'transparency triangle' in the European Union digital single market proposals. Published sources (e.g. Society of Audiovisual Authors, 2016⁹) suggest that authors earn more when such safeguards exist — although the position will become more complicated after Brexit. They also collaborate with the Association of Authors' Agents, as Wise confirmed:

We do of course recommend to authors that they join the Society of Authors, which has excellent legal services for members and a body of specialist knowledge in relation to publishing IP, and the AAA often

7 Interview with author.

8 Ibid.

9 Society of Audiovisual Authors, 'Audiovisual Authors' Remuneration — From Remuneration to Transparency?', 12 September 2016, <http://www.saa-authors.eu/en/blog/150-audiovisual-authors-remuneration---from-remuneration-to-transparency>

works in tandem with The Society of Authors to ensure that authors' contracts are legally sound and respect authors' rights.¹⁰

Times are however changing, and authors are having to become more aware of their legal responsibilities themselves. For some, this increased awareness has come from their experience of making work freely available in order to build a market presence, being less concerned about piracy and more concerned about visibility. Based on his research at Kingston, Masters student Philip Dyson commented:

From the consumer point of view, readers and creative consumers in general sample, or 'stream' lots of creative content, either through cheap subscriptions like Netflix or Spotify, or do it for free. But when they find an artist that they do really like, they will go out of their way to pay for this content, e.g. by buying the CD, book, or whatever other format the artist works in) and in the case of some authors they will pay through the roof for related paraphernalia. The point being that consumers do not want to pay for content in general, but rather for specific content that they want. A good example is Justin Bieber, who is famous not because of a record label but because he could post his music videos on YouTube for free, which enabled him to build up his fan base. When looking at copyright issues with digital technology, the music industry has played a big part in my research, and it's interesting how publishers in this sector are adapting. For example, independent music publisher Kobalt¹¹ have completely streamlined their business model, while offering rigorously transparent information for their musicians — they even have a financial tracking app that enables artists to see how much money they are making, where they are making it and how much the publisher is making, all from their phone.¹²

How publishing companies manage the situation has also prompted authors to take more responsibility themselves. While large publishing companies continue maintain in house legal expertise, an industry-wide need to reduce costs and hence preserve margins has prompted a discernible shift in some companies away from employing in-house contracts staff, with the process increasingly managed through the issuing of standard contracts wherever possible, and these being passed on to authors by their commissioning editors. While this cuts down the

10 Ibid.

11 www.kobaltmusic.com

12 Interview with author.

number of people with whom the author has to deal, it arguably has the side effect of making it more difficult for authors to raise issues that concern them since to do so they would have to negotiate with the editor who agreed to publish their work, and to whom they might therefore feel indebted.

Literary agents too are finding that the costs of offering legal support are rising all the time. Literary agent Andrew Lownie commented:

Authors do appreciate legal expertise. I've a little experience having gone to law school but I use experts. I'm finding my bills for legal and contractual advice are becoming very large — £600 today for just one author (whose commission earnings are not much more) to sort out incorrect royalties and sloppy contracts. We are cutting back on publishing controversial books in the agency's publishing imprint. This is because of the costs — even though we sometimes share them — and the time involved.¹³

This was confirmed by Heather Holden-Brown:

We do have one or two go-to legal advisers who sometimes we would use to advise an author. That said, sometimes we would put them in direct touch as we are not lawyers and it may be appropriate that the legal adviser works with the author and the author pays for their services.¹⁴

While trade authors are thus moving towards greater awareness of their contractual obligations, academic authors have had to take responsibility for their output for much longer. Academics imbued with the principle of 'publish or perish' and seeking publication in peer-reviewed journals are routinely offered a set of editorial instructions according to which their material must be organised before submission. Each journal has different requirements; many now offer pre-submission editorial intervention for which the author must pay (e.g. editorial support and copyediting). The growth of open access (OA) within journals publishing has arguably had the unexpected side-effect of making academic authors aware of the costs of reviewing submissions and editorial preparation for publication, reinforcing their personal responsibility for what they submit (e.g. being required to negotiate with their institution or funding council to pay for the OA that will enable immediate dissemination).

13 Ibid.

14 Ibid.

Once they have formatted it appropriately, and decided they are ready to offer their work for consideration, academics are required formally to assume responsibility for despatch; having pressed the 'Submit' button themselves, they now regularly receive an 'Are you sure?'. In the process they assume responsibility for what is despatched, including the (lead) author's responsibility for managing content on behalf of others. Prosecutions for misrepresentation of ownership or falsification of data fall upon the individual (not the institution), well publicised and generally career-ending.

The question of who takes responsibility for securing and managing the legal ownership of writing, as well as the wider issue of whether the content is appropriate, is particularly interesting in the context of self-publishing. This article is predicated on my growing understanding, fuelled by a programme of research into the processes and practice of self-publishing over the past eight years, that the decision to self-publish often sparks the author's interest in, and understanding of, the legal responsibilities and associated opportunities created by sharing content. Nowhere is this more evident than in the attitudes of the self-publishing community (a word not lightly used) towards copyright.

Background: An Assumption of Ignorance on the Part of the Self-Published

As self-publishing grew in the early twenty-first century, it was treated with disdain.¹⁵ At industry conferences (e.g. *Writing in a Digital Age*, a series of conferences organised by The Literary Consultancy, 2012–2014 at the Free Word Centre) there was an ongoing assumption that authors were either of the published or self-published variety, and the publisher's role was to distinguish between the two, rather like the child's fishing game in which players with magnetised rods tried to locate all the similarly equipped fish.

The range of those who dismissed self-publishing was broad: traditional publishers; the traditionally published; those aspiring to traditional publication; retailers; the literary press; academia — who in

15 Alison Baverstock, 'Big Audio-Visual Dynamite: The Publishing Revolution', *Msllexia* 38 (July/August/September 2008), 8–12.

my case considered a research interest in self-publishing a remarkably poor use of time.¹⁶ But their collective disdain ignored two significant associated human truths:

- Firstly, that finishing a piece of writing that has long burned inside you feels good, even if it goes no further. Writing prompts reflection, consideration, reordering and crafting — all of which tend to deliver a positive experience, even if the associated work remains unpublished.
- Secondly that in the process of self-publishing, authors learn about publishing in general; they gain feedback and metrics related to those who read their material (e.g. how long they read for, which points they linger over, where they stop) — and they are empowered by this information.

The resistance to self-publishing was not total, although arguably only because the literary mainstream failed to exclude self-published authors, rather than because they offered such authors opportunities for participation. While most literary prizes did not allow self-published submissions, the literary press declined to review self-published titles and the professional press (largely paid for by publishers' advertising) mostly avoided discussing the potential impact of these developments, more mainstream journalists (and particularly those working for local presses) found that stories of those who had successfully self-published appealed to their readers and gave them more stories to tell (author gets published; this is what they wrote about; here's who's reading it; plucky author beat the traditional system; these people said it was impossible/encouraged them; here's how they did it; now you can do it too — and here are ten top tips).¹⁷ The first self-published book to win a major prize (Siobhan Curham's *Dear Dylan*, which won MIND Book of the Year in 2010) got much more publicity than previous winners for just these reasons: there was more story to tell. With technology and publishing services increasingly available to support the process,

16 Alison Baverstock, 'Why Self-Publishing Needs to be Taken Seriously', *Logos, Journal of the World Publishing Community* 23.4 (2013), 41–46.

17 See for example Rachel Abbott, '14 Hour Days, Marketing and Dealing with Snobbery: My Life as a Self-Published Bestseller', *The Guardian*, 30 March 2016, <https://www.theguardian.com/books/2016/mar/30/self-publish-and-be-damned-rachel-abbott-kindle>

publishing services companies started establishing themselves to serve the market (e.g. White Fox and Reedsy), and high profile self-published authors were in plentiful supply to interview.¹⁸

My investigation into self-publishing began in 2007. I began by looking at the trends in general¹⁹ and then progressed to qualitative interviews with fifty-seven self-published authors, mostly of print books although sometimes with an accompanying ebook; this was published by a traditional publisher as *The Naked Author*.²⁰ A quantitative survey of self-published authors followed, with options for additional comments.²¹ Three traditional assumptions were quickly challenged:

1. **Self-publishers are poorly educated, too untalented to get published and are mostly retired hobbyists.** Rather they emerged as educated, busy and affluent. My cohort was twice as likely to be in full-time employment as retired. They were also generally educated (76% had a degree; 44% of them at either Masters or PhD level) and from a professional background, hence with resources to spend on their projects.
2. **Self-publishing delivers no satisfaction.** My questionnaire checked for this repeatedly and found that whatever issue posed (What is your overall satisfaction level with self-publishing? Would you do it again? Would you recommend self-publishing?), the associated responses were very positive; supporting comments noted profound satisfaction levels whatever the final format achieved. Publishers have tended to sniff at poorly produced books and assume that only publication that matched their own professional standards would deliver satisfaction. What rather emerged was that the completion itself mattered, not wider production standards

18 Danuta Kean, 'Buying Houses in Cash and Selling Millions: Meet Self-Publishing's "Hidden" Authors', *The Guardian*, 8 June 2017, <https://www.theguardian.com/books/2017/jun/08/buying-houses-in-cash-and-selling-millions-meet-self-publishings-hidden-authors>

19 Baverstock, 'Big Audio-Visual Dynamite'.

20 Alison Baverstock, *The Naked Author: A Guide to Self-Publishing* (London: Bloomsbury, 2011).

21 A. Baverstock and J. Steinitz, 'Who Are the Self-Publishers?' *Learned Publishing* 26.3 (2013), 211–23; A. Baverstock and J. Steinitz, 'What Satisfactions Do Self-Publishing Authors Gain from the Process?' *Learned Publishing* 26.4 (2013), 272–82.

or significant dissemination; even stories of manuscripts lost or compromised in production were not accompanied by dissatisfaction with the associated process.

3. **Self-publishing means ‘going it alone’.** Assuming that vanity lay at the root of all self-publishing, its detractors were confident that self-aggrandisement would pre-empt legal awareness among those insufficiently talented to secure the support of a traditional investor; ‘going it alone’ would mean just that – and hence careful attention would not be paid to the legal obligations associated with publishing. Perhaps unsurprisingly, given that those involved were busy and affluent, they also tended to have the resources to complete what they had begun, and I found they regularly commissioned services from industry suppliers: editorial, marketing and increasingly legal advice (19% of my cohort had sought professional legal advice).

Meanwhile, new services were emerging to cater for the needs of those who wanted to develop their writing (with or without the goal of publication) and the digital economy offered many new ways of sharing and encouraging wider involvement in literary composition. Writing development agencies such as Rebecca Swift’s The Literary Agency²² (founded 1996) and Cornerstones Literary Agency²³ (founded 1998) provided support for writers with a story to tell and the freedom to develop their work without a prescribed goal. The market was extended through writing holidays, writing conferences, strands for writers within literary festivals (pioneered by Catherine Lockerbie, Director of the Edinburgh Book Festival), and even publishers and agents joined in, offering paid services to writers (e.g. The Faber Academy²⁴ and the writing courses run by some literary agencies such as Curtis Brown Creative).²⁵

Meanwhile independent editors have found they like working for self-publishing authors, particularly those who have done it before, and who tend to appreciate their services, pay their going rate punctually,

22 <https://literaryconsultancy.co.uk/>

23 <http://www.cornerstones.co.uk/>

24 <https://www.faberacademy.co.uk/>

25 <http://www.curtisbrowncreative.co.uk/>

and not try to negotiate 'fixed contracts' as is the increasingly common and much resented practice within the wider industry.²⁶ All these trends have significant long-term implications for the availability of the publishing services economy on which the traditional industry has long relied. Publishers may in future find that services on which they previously depended are being accessed and used by others (notably self-publishing authors), and are therefore no longer available to publishers as and when they need them. If, as has been widely understood, the difference between a published and a self-published title is the involvement of an editor, the irony may be that publishers have a reduced supply of editorial services available to them, and hence their ability to present effectively edited manuscripts as a unique identifier of their involvement is threatened.

The Growth of Contract Checking and Legal Services for Independent Authors

Taking responsibility for publishing your own work can present difficulties. Gordon Wise again:

At Curtis Brown, we probably see more authors come to us who have self-published via KDP rather than third parties having been involved, and we're familiar with the KDP terms (although famously, of course, these can change!). But it's certainly true in the world of self-publishing, where the 'vanity publishers' of old seem to have migrated, that there seem to be the most liberties taken with authors' rights in terms of contracts served on unwitting authors, and this area is worryingly unregulated. The Society of Authors sees a number of very unreliable contracts from this quarter. And from 'publishers' who are probably offering little more than an author could get for themselves through using KDP and a reputable freelance services bureau or other provider.²⁷

In this uncertain environment, there is a notable emergence of self-publishing agencies offering a supportive and expert service. For

26 A. Baverstock, R. Blackburn, and M. Iskandarova, 'Who Are the Independent Editors, How Did They Reach Their Role and What Are Their Associated Job Satisfaction?' *Learned Publishing* 28.1 (2015), 43–53; A. Baverstock, R. Blackburn, and M. Iskandarova, 'How Is the Role of the Independent Editor Changing in Relation to Traditional and Self-Publishing Models of Publication?' *Learned Publishing* 28.2 (2015), 123–31.

27 Interview with author.

example, SilverWood Books (founded 2007) highlighted the need for authors to be aware of the legal responsibilities that accompany publishing. Helen Hart, MD comments:

At SilverWood, we try to help authors recognise their responsibility to protect themselves. Ignoring legal issues, especially those related to seeking adequate copyright permission, can have expensive long-term consequences. We have always included a brief article about copyright on the SilverWood website (in our 'Learning Zone') and regularly draw attention to it by sharing the link on social media, and also during individual conversations with authors.

However, we're seeing an increasing number of manuscripts flagged by an editorial assistant or copy editor with comments about permissions and copyright, so last year we took more formal steps.

Now, whenever the SilverWood team identifies that an author has included quotations or images that they haven't generated themselves, we send the author a one-page factsheet containing general information and links to formal resources. We also send a copyright permissions form that the author must complete. This specifically focuses the author's attention on the issues surrounding copyright and the need to seek and record formal permission for the use of copyrighted material.

All authors who've received our form have completed it, and most have expressed gratitude for having their attention drawn to a matter they might otherwise have overlooked.

Although it is the self-publishing author's responsibility to ensure they have gained permission, many do not realise it is necessary. There is still a common misconception that if material is on the internet, it's fine to use it. Authors who choose to work with a company like SilverWood have the advantage of being able to access experts who can offer guidance, and help the author make informed decisions.²⁸

Particularly noteworthy has been the emergence of a market among authors for paid-for advice on legal issues, for example Kevin Stewart, until 2008 Director of Group Contracts at Hodder Headline, moved to an external contracts consultancy and now works for Contracts People.²⁹ Similarly, Clare Hodder, Rights Director of Macmillan, established her own consultancy practice in 2014 (Clare Hodder Consulting).³⁰ Contract checking has long been The Society of Authors' most accessed member service, and in 2012 the society formalised what they meant

28 Ibid.

29 www.contractspeople.co.uk

30 www.clarehodderconsulting.org.uk

by self-published authors (who are qualified to join if they have self-published and sold 300 or more copies of a single title in print form or 500 or more copies of a single title in ebook/digital form within a 12 month period; those who have sold fewer are able to apply for Associate membership). The Alliance of Independent Authors³¹ (founded in 2011) sees legal advice as one of the main services it provides. Its director, Orna Ross comments:

In the past, income for authors rested on the existence of strong copyright legislation and adherence. As we take digital reading into a future of Blockchain³² and Cryptocurrency,³³ it is likely to rest elsewhere. For now, it is undoubtedly true that the pressing problem for most authors, self-published or trade-published, is not piracy but obscurity.

We recommend our members not to choose DRM.³⁴ If a book is being pirated, the majority of those downloading it wouldn't have bought it anyway. And any self-respecting pirate can remove it and have a DRM-free version of your ebook file in no time. One thing we do recommend to those troubled by piracy is benefitting from the US Digital Millennium Copyright Act, which criminalises technology/services designed to get around Digital Rights Management (commonly known as DRM) controlling access to copyrighted works, for example, www.DMCA.com offers take-down notices when authors find that their sites are offering their books.³⁵

We publish a guide: 'How authors sell publishing rights',³⁶ to present our members with information and leave them to make up their own minds. *Each indie author is the expert in his or her own publishing life.*³⁷

31 <http://allianceindependentauthors.org/>

32 www.blockchain.com is a leading software platform for digital assets.

33 'A cryptocurrency is a digital or virtual currency that uses cryptography for security. A cryptocurrency is difficult to counterfeit because of this security feature. [...] A defining feature of a cryptocurrency, and arguably its biggest allure, is its organic nature; it is not issued by any central authority, rendering it theoretically immune to government interference or manipulation', Jake Frankenfield, 'Cryptocurrency', *Investopedia*, 10 December 2018, <https://www.investopedia.com/terms/c/cryptocurrency.asp>

34 Digital rights management (DRM) offers a variety of technologies that can be used to restrict access to, and hence usage of, proprietary hardware and work that is copyrighted. DRM seeks to control how such copyrighted work is used and modified, but therefore also restricts it being read, recommended and more widely disseminated.

35 A commercial service 'providing website owners with a secure system that protects their valuable content from theft or copyright infringement', <https://www.dmca.com/>

36 H. Sedwick and O. Ross, 'How Authors Sell Publishing Rights', 2016, <https://www.ornaross.com/my-book/how-authors-sell-publishing-rights/>

37 Interview with the author, 2017.

The last sentence is particularly significant. Self-publishing authors can become particularly well informed if they read all the information available on new possibilities for sharing material and building an audience. Ross comments further:

There are new players in the giveaway frame, such as BookFunnel³⁸ and Instafreebie³⁹ and they have added a new way of distributing free books, and a new purpose: to enable authors to build their database of followers by effectively trading email addresses for free books. While the jury's still out on the long-term benefits of the latter approach, as we discover how many of these subscribers will unsubscribe — as is their legal right — or not bother to read their freebies, we are airing a debate about the pros and cons of giving away work.

The response of their members has been varied. Alli member Jan Ruth sees sharing material as an opportunity:

I chose to promote my latest title in this way partly as an experiment, because this time I wanted to split the performance between my own efforts through Twitter and my Facebook Author Page, and Book Blast. I did it this way because I wanted to achieve something long-term; I wanted to attract readers who would hopefully stay engaged and add to my slowly growing audience, my personal readership.⁴⁰

Another Alli member, Michael Jason Brandt, however uses the same platform to make the case against making work available freely:

The vast (vast, vast) majority of free downloads never get read, so giveaways don't actually accomplish what they're intended to do: spread the word, get reviews. On top of that, many authors pay money to advertise these giveaways, and spring for shipping in the case of hard copies, so they're actually paying people to get a free copy and not read it.⁴¹

Of course author experimentation with formats and free samples is nothing new. In 2000 Stephen King experimented with publishing

38 <https://bookfunnel.com/>

39 <https://www.instafreebie.com/>

40 Jan Ruth, 'Opinion: The Value of Free Books', Self-Publishing Advice Blog, Alliance of Independent Authors, 10 March 2014, <http://selfpublishingadvice.org/opinion-the-value-of-free-books-by-jan-ruth/>

41 Michael Jason Brandt, 'Opinion: Why Indie Authors Shouldn't Give Away Free Books', Self-Publishing Advice Blog, Alliance of Independent Authors, 27 February 2017, <https://selfpublishingadvice.org/opinion-why-indie-authors-shouldnt-give-away-free-books/>

The Plant in online instalments, with the proviso that he would stop writing if the level of readers paying their \$1 per instalment fell below 75%.⁴² The trust element failed, and the finished version, if it indeed exists, remains uncirculated. Along similar lines, Alison Flood reported in *The Guardian* that best-selling author Paulo Coelho 'has long been a supporter of illegal downloads of his writing, ever since a pirated Russian edition of *The Alchemist* was posted online in 1999 and, far from damaging sales in the country, sent them soaring to a million copies by 2002 and more than twelve million today.' Flood quotes Coelho:

'The good old days, when each idea had an owner, are gone forever. First, because all anyone ever does is recycle the same four themes: a love story between two people, a love triangle, the struggle for power, and the story of a journey. Second, because all writers want what they write to be read, whether in a newspaper, blog, pamphlet, or on a wall,' he said. 'The more often we hear a song on the radio, the keener we are to buy the CD. It's the same with literature. The more people 'pirate' a book, the better. If they like the beginning, they'll buy the whole book the next day, because there's nothing more tiring than reading long screeds of text on a computer screen.'

In 2012 he announced he was launching a new programme on The Pirate Bay,⁴³ and 'exhorting readers to download all his work for free.'⁴⁴

But Coelho was *already* a best-selling traditionally published author when he began experimenting with flexing his rights. A much wider range of self-publishing authors are becoming much better informed in the process of experimentation in the publishing of their own work, and given that the self-publishing community habitually circulates information about routes to success, this increased awareness is surely likely to spread.

42 Knowledge@Wharton, 'Stephen King's Novel Idea: Will It Change the Publishing Industry?', 16 August 2000, <http://knowledge.wharton.upenn.edu/article/stephen-kings-novel-idea-will-it-change-the-publishing-industry/>

43 <http://www.thepiratebay.se.net/>

44 Alison Flood, 'Paulo Coelho Calls on Readers to Pirate Books', *The Guardian*, 1 February 2012, <https://www.theguardian.com/books/2012/feb/01/paulo-coelho-readers-pirate-books>

Academic Publishing

Within academic publishing the picture is more complex, but self-publishing can still create additional opportunities.

Some form of open access is now routinely demanded by most universities and funding bodies. But open access is not just one thing; providing unhindered access to content (which is what OA means) can come in many forms — which could include self-publishing. It therefore behoves academic authors to establish the official requirements of their organisation and funding body (most have developed their own specific institutional guidelines) and to consider what is in their best interests. Kate Pool, Deputy Chief Executive of the Society of Authors comments:

As part of their OA requirements, some funding bodies and universities now seem to favour a Creative Commons licence, although in The Society's view they are never a good option and a standard, limited, non-exclusive licence would generally be far more appropriate in every way. The Society's concerns about Creative Commons licences are summed up in a recent edition of *The Author*⁴⁵ but centre on the licence being granted to everyone worldwide, and CC being irrevocable and impossible to terminate, with further complications in that if a work includes quotations or images from other sources, it is very likely that the right holders of such items will not give consent for Creative Commons use.⁴⁶

Summarising, she stresses the need for authors to assess their intentions:

If they want high academic penetration and/or access to REF or other funding, or are using material generated during the course of their academic work, as students or teachers, they will need to be mindful of existing institutional restraints/conditions and will in any case want to go with a highly regarded publisher in their field, if they are given assurances about rigorous peer review, even when the publishing terms are (as they will be) dire. If a specialist author simply wants to get their work 'out there' and to keep as much control as possible over it into the bargain, then self-publishing may be the preferable option. If you self-publish you can of course choose how widely/narrowly you make the work available.⁴⁷

45 Society of Authors, 'Creative Commons Licences', *The Author*, 2016, 78–79.

46 Interview with the author.

47 Ibid.

Implications for the Wider Creative Economy

The increasing numbers of informed authors has significant implications for the wider creative economy.

As self-publishing grew in the early twenty-first century, those involved became increasingly confident; much less constrained by publishing traditions, they could write what they liked rather than what they were asked to provide – and were regularly sustained by direct, unmediated feedback from their readers with whom they felt a real connection. Given the acknowledged difficulty in establishing a new author’s profile within an already overcrowded market, advice from traditional investors has often been for authors to stick to a single genre – often to the frustration of those who felt they had more than one kind of material within them. Now self-publishing authors increasingly experiment across platforms and new genres have begun to emerge, such as the generic, and often redemptive, memoir tacking an area of interest to many but without a celebrity author (e.g. Lisa Genova’s *Still Alice*) or characters developed from established titles (e.g. E. L. James’s *Fifty Shades of Grey*, which was first self-published online before its success led to its being re-released by Vintage Books in 2012). What is more, the desire of these authors for self-determination mirrored developments within other creative areas, as this quote by pop star Ed Sheeran demonstrates:

I think the moment you start trying to please a fan base is when you start going downhill. I’m going to always, always write about what I want, even if it doesn’t necessarily cater to most of them.⁴⁸

48 Elizabeth Perle, ‘Ed Sheeran on Writing His New Album in “A Couple Of Weeks” And Why No One Cares About His Personal Life’, *Huffpost UK*, 21 May 2013, https://www.huffingtonpost.co.uk/entry/ed-sheeran-i-genuinely-do_n_3304554. Although Sheeran’s principles are clearly stated, his options are arguably much more open as a highly successful pop star. It is also fairly clear that he actually has a sharp eye on commercial concerns e.g. from this 2017 GQ profile: ‘It is the perfect demonstration of how his mind works: he admitted that Irish folk music “isn’t the coolest thing”, as his label feared, but told them it that it was going to be “f***ing massive” because there are 400 million people in the world who will say they are Irish even if they aren’t. For Sheeran, there is no conflict between the demands of creativity and commerce.’ (George Chesterton, ‘How Ed Sheeran Became the Biggest Male Popstar on the Planet’, *GQ*, 2 February 2017, <https://www.gq-magazine.co.uk/article/ed-sheeran-new-album-divide>) That song was also released on St Patrick’s Day – in various ways it was very carefully tailored to a certain fan base.

The self-published did not necessarily always seek to market their work, either conventionally or at all. I found self-publishing authors might decide to finalise their work without immediate dissemination; to hold their story in a format that, while far from traditionally perfect, offered the chance for subsequent revisiting. Some authors wrote live (e.g. publishing daily instalments on a blog or live within a chat room), seeking immediate feedback; new methods of sharing emerged (countable downloads, charity-based projects, collective funding through seeking external investors, auctioning opportunities for a named individual to have their name or organisation incorporated within a work). The marketing and dissemination could come later, if the author so desired; the important thing for the short term was ensuring that the work existed. This prompted my definition of self-publishing⁴⁹ as ‘the process of assuming personal responsibility for the finalisation and production of content’.⁵⁰

The existence of better informed and more confident self-publishing authors will likely have consequences for the creative economy.

1. Informed Authors

Authors who have self-published are changed; they are more aware of the processes and details involved in producing something special and more aware of the risks and opportunities of making work available. In the process they gain metrics about their market and information on how adjusting prices and changing jackets can impact on a customer’s sensitivity to ‘pricing points’ and willingness to pay; they become aware that slight tweaks can cause a disproportionate response. So if, as now regularly happens, they subsequently find that publishing is vastly more complicated than they had previously realised, and that they would rather devote their energies to writing and so take up an offer of professional representation from a traditional agent or publisher — they still approach the negotiation empowered. Armed with statistics and a confidence that comes from understanding why their market appreciates their work, they are likely to be more effective and less grateful negotiators.

49 Alison Baverstock, ‘Self-Publishing’s Vices and Virtues’, *The Guardian*, 20 November 2014, <https://www.theguardian.com/books/booksblog/2014/nov/20/self-publishing-vices-virtues-alison-baverstock>

50 Baverstock, *The Naked Author*, p. 32.

What is more, a confidence in their connections with readers may overtake their awareness of their legal responsibilities. The Group Contracts Director of a major publishing house commented that while she would hope authors with self-publishing experience would be more knowledgeable, rather than less, about the book publication process, in fact ‘the only anecdotal evidence I can give was an author who self-published in the US but we took her on for ebook and print publication in the UK. We struggled to convince her about the importance of the editorial process (she wanted to release her book in the US without any editorial filter, even a copy-edit, as she “Didn’t want to keep her fans waiting”) and she didn’t understand the necessity of having territorial restrictions in place so wasn’t prepared to stop US copies getting into territories she had granted exclusively to us.’⁵¹

2. Competition for Reader Attention

Publishers and authors are now competing for reader loyalty. Selling through specialist retailers (bookshops) in the past distanced both publishers and authors from eyeball to eyeball contact with their customers; publishers have only recently been able to establish a direct relationship with their readers and purchasers, because of their new ability to get involved in online distribution.

But their access is not unique. Readers can also now approach authors directly, through their websites, social media presence and literary festivals, which have grown hugely in recent years. Against the background of a less deferential society, readers now regularly feel empowered to speak to, if not challenge, their favourite author — rather than write a respectful letter to their publishing house and hope it gets passed on. In the process the writers understand how their work is appreciated and what their readers want. A commonly quoted reason for self-publishing is a desire to provide the kind of books the author had themselves wanted, and equally common are expressions of responsibility towards both the craft of the writer and the preferences of their previously underserved readership.

51 Personal conversation with the author.

3. Self-Publishing Authors Display the Characteristics Needed by Publishers Today

This blend of proactivity and personal responsibility is precisely what publishers now need from their authors. The diversification of the media has led to an exponential expansion in the information and entertainment options available to the market, and a consequent lack of predictability about how people spend their leisure time. Amazon has disrupted the standard selling model and authors who not only understand their market, but know how to reach them, are extremely useful. Publishers have always appreciated the 'marketable author'; now the self-determination and resilience that enables writers to self-publish effectively are being sought by traditional investors. Publishers are actively seeking *author entrepreneurs*, who can not only write but are sufficiently proactive and motivated to work in partnership with their investors. As agent Heather Holden-Brown commented: 'Self-published authors are probably better at knowing opportunities and the commercially-minded ones learn how to take them. It's interesting that some authors, having discovered self-publishing, prefer it as they have control, potentially make more money and are not competing against other authors on a publisher's list.'

In conclusion, within the publishing industry, rights have emerged as *the* key area for future development; knowledge of rights is crucial if an author or publisher is to take proposed content and cross-sell it from one market to another, traversing boundaries and reaching out to new markets — and in the process establishing a wider and hence more sustainable platform for future delivery from which other content and associated products can be sold.

Self-publishing is having a significant impact on the traditional publishing industry; it's now routine for the weekly bestseller lists in US and UK to feature authors who began by self-publishing. Professional publishers are noting areas in which self-publishers have been successful — often previously overlooked or significantly underestimated — and signing up those authors who, through a process of trial and error, have a measurable connection with their readers, possess significant business and legal understanding, and demonstrate resilience — and hence require less hand-holding. These are exactly

the kind of invested partners the traditional industry needs in order to plan for the future, when to survive customers must be found beyond the comfortable cultural homelands of regular book-buyers that have been relied upon in the past. Those offering publishing services⁵² are finding that self-publishing offers a much wider, and significantly more profitable, market for their professional capabilities than the traditional industry alone.

In short, rather than delegating responsibility to others, today it behoves all authors to understand their markets and know their legal responsibilities and their rights. Those who look after these things for you will probably look after themselves first. Or as Bertolt Brecht has Polly Peachum say in *The Threepenny Opera*: 'The law was made for one thing alone, for the exploitation of those who don't understand it.'⁵³

52 Alison Baverstock, 'Ten Ways Self-Publishing Has Changed the Books World', *The Guardian*, 8 April 2013, <https://www.theguardian.com/books/booksblog/2013/apr/08/self-publishing-changed-books-world>

53 Bertolt Brecht, *The Beggar's Opera*, Act 3, scene 1, <http://ota.ox.ac.uk/text/3257.html>

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Society of Authors (2016) 'Creative Commons Licences', *The Author*, 78–79.

List of Illustrations

Chapter 1

- 1.1 *How It Is In Common Tongues*. Image provided by the authors, 25
CC BY 4.0.
- 1.2 *How It Is In Common Tongues*. Image provided by the authors, 26
CC BY 4.0.

Chapter 8

- 8.1 Millar and McCrea, *Crisis* #31 (1989), pp. 17/5–6. 187
- 8.2 Brown, *Yummy Fur* #21 (1990), p. 18/6. 194
- 8.3 Brown, *Yummy Fur* #20 (1990), pp. 5/1–4. 195
- 8.4 Sim, *Church & State Vol. 1* (Windsor, Ontario: Aardvark-Vanaheim, 1989), p. 421. 197
- 8.5 McCloud, *Understanding Comics (Understanding Comics: The Invisible Art*, Northampton, MA: Kitchen Sink Press, 1993), p. 25/6. 200

Chapter 10

- 10.1 Screenshot of J. R. Carpenter, *Mythologies of Landforms and Little Girls* (1996), <http://luckysoap.com/mythologies> 249
- 10.2 Screenshot of J. R. Carpenter (1998–present), <http://luckysoap.com> 251
- 10.3 Screenshot of J. R. Carpenter, *Fishes & Flying Things* (1995), <http://luckysoap.com/butterflies/parasite.html> 253
- 10.4 Screenshot of Judy Malloy, *Uncle Roger* (1986), <http://collection.eliterature.org/3/works/uncle-roger/> 255
- 10.5 Screenshot of J. R. Carpenter, *CityFish* (2010), <http://luckysoap.com/cityfish> 257

Chapter 14

- 14.1 Proof copy of *Hunted Down and Other Tales* (ISBN: 9780994471925) alongside an original copy of Clarke's 1871 title *Holiday Peak and Other Tales*. 380
- 14.2 The 'drunk' text from *Hunted Down and Other Tales* mirrors the narrative as its characters become increasingly intoxicated. 381
- 14.3 The authors meet to discuss progress during the 24-Hour Book (left), Bronwen Blaney of On Demand Books presents the first copy of *Willow Pattern* (ISBN: 9780987251435) from an Espresso Book Machine. 385
- 14.4 Writer Kate Pullinger and participants recording memories at the first *Memory Makes Us* event in Brisbane, 2013. 386
- 14.5 Home page of book database willowpatterns.net, and a still from *I Will Say This Only Once*, a database remix by Pascalle Burton. 389
- 14.6 Pages from *Lost in Track Changes* (ISBN: 9780992373733) showing wide margins, 'track changes' layout, and remixed story layout. 390
- 14.7 Sample page from A [[Non]] *Guardian Age*, by Mez Breeze. 391
- 14.8 Tweet from @HenrySavery during the 2015 Brisbane Writers Festival. 392
- 14.9 Progression of 'advertisements' through *Hunted Down and Other Tales*, from original nineteenth-century copy to contemporary buyer recommendations and customer reviews. 393

Index

- aaarg.org 35, 42–44, 53–54
- academic 1, 3–5, 7–8, 10–13, 44, 47, 54, 65, 76–77, 92–93, 101, 110–111, 120, 146–147, 150, 158, 182–185, 188, 190–192, 196, 204, 206–210, 214–217, 243–244, 246, 249, 262, 270, 273, 284, 309–315, 317–324, 327–333, 337, 339, 349, 352–353, 361, 365–367, 369–371, 408
- academic publishing 3, 8, 77, 93, 120, 182, 184–185, 216, 312–314, 337, 349, 371
- Actor Network Theory (ANT) 81–82
- Adema, Janneke 1, 13–14, 65
- Aesop 258, 261
- aesthetic 7, 24, 27–28, 274, 277
- Africa, African 235–237, 322, 334
- Afterall 36, 40, 59
- Ahmed, Sara 300
- Alliance of Independent Authors 117
- Amazon 84, 91, 102, 124, 130, 167, 406–410
- amplification 14, 91, 96, 100–101, 103
- anthropology 309–311, 315–316, 323, 325
- appropriation 8, 13–14, 67, 81–83, 110–111, 120, 192, 243, 245, 248, 250, 260–263, 272–273, 275–278, 316, 328, 330–332, 334–336, 338–340, 348, 351–353, 355–357, 359, 363, 367, 370, 372, 395, 399
- Artecubano* 47–48
- article processing charges (APCs) 10–11, 93, 185
- Artificial Intelligence (AI) 13, 21–22, 29
- artists 1, 3–6, 9, 12, 14, 24, 27, 33–38, 44, 47–49, 51–52, 55–58, 99, 109, 141, 146, 153, 164, 170–171, 181–182, 191, 195–196, 243, 246, 248, 252–253, 259, 267, 271–274, 276–282, 284, 291, 293, 296–297, 332, 334, 348, 362–363, 384–385, 387, 399–400, 411–414, 427
- arts 1, 34, 36, 38, 40, 47, 52, 55, 61, 142, 154–155, 204, 216, 236, 251–252, 258–260, 268, 284, 310, 312, 317, 319–321, 325, 327–328, 338–339
- Arts Council England (ACE) 39–40, 136, 230
- arXiv 93, 101
- Asia, Asian 136, 229–230, 233, 235–237, 239
- Association of Authors' Agents (AAA) 107–108
- Atkinson, Owen 66–68
- Australia, Australian 133, 235, 257, 324–325, 327, 334, 336, 379, 381–382, 385–386, 389, 391–398, 401
- author 4, 7–8, 10, 13–15, 21–22, 24–27, 50, 65–81, 85, 93–96, 99, 103, 105–125, 129–131, 133, 137, 141–144, 146–147, 149–152, 158, 160, 163–166, 168–169, 172–173, 175, 181–182, 184, 188, 190, 194, 204, 215–216, 229, 231, 235–237, 240, 243–244, 247–248, 250, 252, 254, 256, 259–260, 262, 268, 271, 273–274, 279, 282, 284, 288–289, 292, 295, 298–299, 301, 314, 320–324, 326–328, 330, 337–339, 349–351, 354–359, 362, 365–366, 369, 371, 381–382, 385–394, 396–397, 405–408, 410, 416, 424, 427–428
- Authorea 326–328

- authorship 13–14, 21, 28, 52, 69–75,
 77–80, 82, 85, 244, 263, 267–268,
 271, 273–275, 279–282, 287–290,
 293–294, 297–298, 300, 310, 312,
 315–316, 318–327, 329–332, 334,
 338–339, 351, 353, 355, 358,
 364–365
- Authors' Licensing & Collecting
 Society (ALCS) 65–72, 80–81, 85,
 94, 149–151, 406
- Bailey, Louisa 48, 50, 412
- BAME 136, 229–239
- Banff Centre, The 252–253, 258
- Barnes, Julian 133
- Barnes & Noble 272, 409
- barriers 9, 39, 92, 206, 232, 365
 barriers to access 9, 206
 price barriers 9, 92
- Barthes, Roland 351–352
- BBC 46, 108, 203
- Beckett, Samuel 13, 24, 27–28
 How It Is 13, 24–28
- Belfast 182, 192
- Benjamin, Walter 295
 'The Author as Producer' 295
- Benkler, Yochai 94, 103
- Bergvall, Caroline 246–247
- Berlin Declaration on Open Access
 to Knowledge in the Sciences and
 Humanities (2003) 332, 365–366
- Berne Convention (1886) 424
- Bethesda Statement on Open Access
 Publishing (2003) 333, 365–366
- Bhaskar, Michael 1, 14, 91
 The Content Machine 96
- Black 136, 229–230, 233, 235–237, 239
- Blackman, Malorie 231
- Blake, Carole 106
- borrowing 14, 248, 383, 391, 418
- Brazil 240, 295, 336
- Brisbane 381, 385–386, 392
- Bristol 35, 247
- British Library 2, 208
- Brown, Chester 193–195
- Brown, Wendy 69, 182, 232
- Bruguera, Tania 37–38, 50–52, 54,
 58–59
- Budapest Open Access Initiative
 365–366
- Burrell, Robert 206, 208
- Butler, Judith 293, 313
- Cambridge 232, 237
- Canada, Canadian 8, 35, 39, 133, 249,
 252, 257–258, 348–349, 368–372
- Canelo 1, 94
- career 3, 93, 95–96, 111, 133, 156, 158,
 160, 163, 165, 168, 172, 175, 234,
 236, 238, 314
- Cariou, Patrick 276, 278–279
 Canal Zone 276, 278
- Carpenter, J. R. 1, 14, 243, 249–251,
 253, 257
 'CityFish' 257–258, 261–262
 Fishes and Flying Things 253–254
 *Mythologies of Landforms and Little
 Girls* 249, 258
- Carr, Nicholas 94
- Castro, Fidel 36–37
- Cayley, John 1, 13–14, 21
- censorship 33, 37, 41, 284, 287, 293
- Centre for Copyright and New
 Business Models in the Creative
 Economy 54, 181
- Chapman, Neil 291
- China, Chinese 134–135, 239
- citation 3, 217, 243, 248, 331
- Clarke, Cat 171–172
- Clarke, Marcus 379, 392–393
 Hunted Down and Other Tales
 379–381, 392–393, 398, 400
- class 3, 233, 237, 239, 278, 405, 420
- Coelho, Paolo 119
 The Alchemist 119
- Coleman, Allison 206, 208
- Coleman, Gabriella 299
- collaboration 44, 74, 78
- collective 13, 104, 112, 122, 146,
 261, 267–268, 270–271, 291, 294,
 296–297, 299–300, 332

- College Art Association (CAA) 4, 283
 Collins, Wilkie 193
 comics 4, 164–165, 181–183, 185, 188,
 191–193, 195–196, 198–201, 209,
 215, 237
Comics Grid, The 182–183, 192, 208,
 210
 CommentPress 328
 commodification 72, 81, 85, 349, 367
 commodity 80, 262, 280, 309, 337
 commons 13, 23–24, 27, 313–314
 communication 9, 12, 74, 206, 217,
 245, 286, 325, 327, 347, 351,
 361–362, 365, 416
 community 7, 35, 42–43, 46, 54, 75,
 92, 111, 119, 135, 137, 183–184, 237,
 256, 294, 328, 332–334, 336–338,
 359–361, 366, 385, 414, 428
 competition 6, 11, 92, 100, 103–104,
 202, 214, 233, 239, 270, 300, 413
 Coney Island 258, 262
 control 29, 33, 41, 77, 91, 97, 99, 117,
 120, 124, 130, 164–166, 170, 173,
 241, 260, 274, 280, 284, 291, 325,
 336, 354, 357–358, 363, 365–366,
 418, 421, 423, 427–428
 Coombe, Rosemary J. 72–74
 ‘copyfight’ 2–3, 8–9
 copying 3, 6, 23, 82, 169, 192, 193, 198,
 199, 200, 201, 205, 206, 208, 210,
 287, 356, 369, 370, 371, 383, 384,
 397, 398, 400, 418, 419, 423, 427,
 428. *See also* plagiarism
 copyright 1–9, 12–15, 19, 22–23, 29,
 43, 45, 54–55, 66–68, 72–75, 80–81,
 83–85, 93, 97–98, 105–106, 108–109,
 111, 116–117, 141–150, 152–156,
 158–165, 167–175, 181–185, 188,
 190–193, 196, 198, 200–204, 206,
 208–210, 214–216, 259, 267–269,
 275–276, 278–279, 282, 284, 290,
 294, 309–310, 312–321, 325–327,
 330–340, 348–352, 355–356,
 358–359, 365–372, 379, 381–385,
 394–400, 406, 415–425, 427–428
 Copyright Designs and Patents Act
 1988 (CDPA) 192, 198, 201, 203,
 209
 Cornell, Joseph 250
 cost 6, 10, 40, 49–50, 52–53, 77, 92–93,
 95, 99, 109–110, 185, 214, 232, 240,
 285, 322, 329, 339, 366, 383, 396,
 409, 411, 427
 Craig, Carys 72–74, 80–81, 83–85, 268,
 288
 CREATe 1, 5, 8, 142, 181–183, 403
 creation 29, 68, 71, 74, 78–79, 96–97,
 100, 170, 246, 260–261, 280, 283,
 291, 318, 324, 329–331, 335, 340,
 348, 350–351, 353–354, 358–359,
 362, 364, 369, 386, 389, 396, 408,
 411, 421
 Creative Commons licenses 10, 75,
 93, 120, 327, 337, 364, 395, 398
 creative practice 1, 7–9, 12–14, 35,
 141–142, 146–147, 149, 153–154,
 156, 158–159, 162, 172–173, 283,
 312, 316, 338, 340, 348–349, 361,
 365, 371
 creativity 1–3, 5–9, 12–14, 19, 23, 28,
 35, 43–44, 65, 68–74, 79–86, 104,
 109, 121–122, 132–134, 141–142,
 146–147, 149, 152–156, 158–160,
 162, 172–174, 194, 236, 238, 241,
 260, 262, 268, 275, 282–283, 287,
 296, 310–314, 316–318, 321, 324,
 326, 331, 334, 336–340, 347–372,
 385–388, 394, 396, 398, 400,
 405–406, 409–412, 415, 418, 424,
 427
 creator 6–7, 67, 69–70, 72–73, 81,
 105, 141–143, 146–148, 154–155,
 158, 174, 268, 319, 321, 328, 350,
 357–358, 360, 363, 369–370, 384,
 396, 398, 406, 411–412, 417–424
 Cuba, Cuban 13, 33–39, 41–42, 44–48,
 50–51, 54–55, 59–61
 Cuban-American 33, 59
 culture 3–5, 7, 14, 22–24, 27–30,
 60–61, 69–74, 80–81, 84–85, 91, 94,
 98, 101, 125, 136, 161, 171, 188,
 210, 233–237, 239, 243–244, 248,

- 255, 260, 263, 268, 271, 273, 281,
283–284, 286–287, 289, 296, 298,
309, 311–313, 315–317, 319, 321,
323, 325, 330–338, 340, 347–349,
352–355, 357–358, 361–363, 366–
368, 371, 382, 384–385, 391–392,
396, 398–399, 406, 411–412, 415
- Curham, Siobhan 112
Dear Dylan 112
- Currie, Christopher 391–392
The Tweets of @HenrySavery 392
- Curtis Brown 107, 114–115
- Dadaist 248, 387
- Deazley, Ronan 1, 4, 181, 185
- Deleuze, Gilles 291
Proust and Signs 291
- democracy 35, 55–56, 75, 247
- Department of Culture, Media and
Sport (DCMS) 5, 57, 283
- Derrida, Jacques 252
Paper Machine 252
- design 40, 47, 49, 339, 380–381, 388,
390
- Diamond, Beverley 324, 331–332
- Dickens, Charles 193, 393
Great Expectations 193
- digital 1–3, 6–7, 14, 21–22, 27–28, 35,
38, 41–42, 48–49, 53, 60, 67–68,
70–71, 78–80, 82–85, 92, 95, 102,
104, 108–109, 114, 117, 133–137,
143, 146, 154, 160–161, 165–166,
170, 183, 199, 206, 208, 215, 217,
233, 243–248, 250–254, 256,
258–263, 285, 288, 311, 313–315,
328–330, 337–339, 347–349, 358,
361–364, 367–368, 372, 380–385,
387–389, 392, 399–400, 406,
408–409, 411, 415–420, 422,
427–428
- digital literature 78
- digital publishing 67, 252, 256, 262
- Digital Rights Management (DRM)
117, 256
- digital technological protection
measures (TPM) 363–364, 371–372
- Dimita, Gaetano 65
- dissemination 29, 96, 110, 114,
122, 206, 208, 214, 216–217, 259,
287, 290, 295, 310, 318, 325, 331,
334–335, 338, 348, 350, 355, 364,
366, 372, 413–414
- diversity 12, 52, 101, 136, 160,
230–235, 238–241, 246, 259,
310–311, 317, 322, 333, 411
- Dockray, Sean 42–43, 53–54, 61, 290
- Doctorow, Cory 93, 384
- Drucker, Johanna 78–79, 245
- Dryden, John 98–100
- Ducasse, Isidore-Lucien (Le Comte de
Lautréamont) 247–248, 260
The Songs of Maldoror 248
- Duchamp, Marcel 196
Box in a Valise 196
- Duchampian 281
- earnings 7, 65, 66, 67, 94, 110, 142,
147, 148, 149, 150, 151, 152, 156,
157, 159, 160, 163, 167, 168, 172,
173, 174, 406. *See also* income
- ebooks 130, 157, 166, 170, 259,
408–410
- economic 2–3, 6–8, 10, 13, 22, 34, 50,
60, 68–70, 72, 81, 85, 92, 99–101,
137, 141–142, 146, 148, 152–154,
156–157, 161, 163–165, 167–169,
172–175, 184, 214, 217, 268, 274,
281, 313, 318, 320–322, 337, 340,
347–351, 353–354, 359–361, 368,
405–407, 417, 421
- ecosystem 96, 132, 137
- editing 4, 27, 36, 41, 82, 93, 123,
130–131, 217, 267, 288, 327, 385,
388–389, 411
- editors 40, 42, 48–49, 54, 76–77, 109,
114, 131, 134, 235, 285, 320, 328,
385, 388, 405, 410
- e-flux 38, 54
- embargo 34, 45, 51, 61, 185, 314
- Emerson, Lori 78–79, 254, 256
*Writing Interfaces: From the Digital to
the Bookbound* 254

- Enlightenment 74, 361
 entertainment 95, 104, 124, 259, 360
 Ernst, Max 251
 ethics 1, 3, 12–13, 70, 75–76, 80, 85–86,
 106, 310, 312–313, 316–317, 339,
 409
 of care 75–76, 80, 85–86
 ethnicity 229, 230, 231, 232, 234, 235,
 236, 237, 240, 311, 359. *See also* race
 ethnomusicology 309–321, 323–324,
 330–332, 334, 336–337
 ethos 55, 76, 364
European Comic Art 184, 188
 European Commission 10, 141
 European Information Society
 Directive 2001 203
 European Union (EU) 46, 108, 145,
 327, 371, 406
 Europe, European 10, 99, 108, 141,
 184, 188, 203, 247, 309, 311, 335,
 356, 371, 406, 408, 416
 Eve, Martin Paul 11, 318, 321–322
 exchange 33, 35, 45, 61, 71, 74, 81,
 278, 281, 349, 365, 421

 Facebook 45–46, 59, 61, 84, 94, 118,
 143, 155, 415
 fair dealing 8, 193, 196, 198, 202–205,
 208–210, 214, 349, 369–372, 396
 fair use 4, 22–23, 192, 276–277, 279,
 283–284, 396
 Feld, Steven 334
 feminist 1, 4, 12–14, 72, 74, 76, 86,
 288, 300, 323, 349
 Figshare 327–328
 filtering 96, 100, 123, 130
 Finch Report 2012 206
 Fitzpatrick, Kathleen 269, 271, 328
 Generous Thinking 269
 Flood, Alison 119, 407
 Foucault, Michel 72, 288, 310,
 320–321
 Foucauldian 80
 France, French 35, 98, 248
 Francke, Andrea 289
 Fraser, Helen 203, 231, 233

 freedom 11–12, 34, 50–51, 54, 114,
 185, 214, 395, 421
 free labour 3–4, 50, 84
 free speech 34, 421
Frieze 60, 413
 Fry, Stephen 410–411
 funding 9–11, 34–35, 38–40, 52–54,
 57–58, 60–61, 66, 92–93, 110, 120,
 122, 137, 142, 144, 158, 160–161,
 184, 205, 213, 231–232, 239, 250,
 259, 263, 293, 314, 318, 334,
 337–339, 401, 407, 412
 Fusco, Coco 33–34, 38, 54
 future 1, 5, 10, 13–14, 27, 105–106,
 115, 117, 124–125, 133, 145, 149,
 167, 173, 183, 217, 229, 239–241,
 259, 276, 278, 295, 320, 325, 336,
 340, 351, 360, 381, 385, 400, 406,
 412

 Gagosian, Larry 276, 278
 Gaiman, Neil 137
 gender 3, 298
 Genova, Lisa 121
 Still Alice 121
 Germany, German 66, 257–258, 295
 Gibson, Johanna 65, 81, 83–85
 Goldsmith, Kenneth 82–83, 272
 Google 5, 39, 84, 262, 415
 government 2, 5, 11, 38, 41–42, 45, 47,
 52, 56–58, 97–98, 144, 184–185, 208,
 213–215, 263, 283, 286, 293, 337,
 339, 350, 360, 367
 graphic 48, 184, 188, 192, 254
 Greece, Greek 261, 286, 354
 Green Party 143–147
 Groth, Simon 14–15, 379

 Haaften-Schick, Lauren van 277
 Hachette 238, 407–408
 Hagedorn, Katherine 324
 Hargreaves, Ian 5–6, 8–9, 15, 416
 Harnad, Stevan 321–322
 HarperCollins 231, 238–239, 241
 Harris, Thomas 237
 Harvard University 240, 382

- Havana 33–38, 41, 44, 46–50, 52, 56–60
 Havana Biennial 35, 38
Havana Times 47
 Havana University 36, 44
 Hayles, N. Katherine 22–23, 78, 245
 Hesiod 248, 260
 Hindley, Victoria 4
 Hocking, Amanda 131
 Hodder, Clare 116
 Holden-Brown, Heather 108, 110, 124
 Hood, Mantle 318–319
 Howe, Daniel C. 13–14, 21
 human 22, 24, 27–29, 69, 78–79, 82, 84, 112, 171, 261, 268, 311, 325, 349, 351–353, 359, 362, 366, 368
 humanist 70–71, 83–84, 269, 323
 humanities 1, 204, 215–216, 259, 310, 312, 317, 320–321, 327–329, 338–339
- ideology 4–6, 29, 75–76, 170, 172
 if:book Australia 379, 381–382, 385–389, 394–395, 398–399, 401
 income 14, 60, 65, 66, 68, 94, 95, 117, 142, 144, 148, 149, 150, 151, 152, 156, 158, 159, 160, 161, 162, 163, 164, 165, 166, 168, 172, 173, 175, 230, 334, 406, 408. *See also* earnings
 India, Indian 236–237, 239, 313
 Indigenous 312–313, 315, 324–325, 331–336, 338–340, 361
 individual 7, 15, 68–70, 72–74, 106, 111, 116, 122, 142, 150–152, 154, 157, 172, 181, 193, 195–196, 201, 207, 246, 267, 270, 274, 283, 288, 294, 297–298, 300, 313–314, 319, 327, 332, 336, 348, 350–351, 353, 355–357, 359, 384, 387, 399, 420, 424
 inequality 11, 150–152, 298
 information 34–35, 42, 54, 74, 82, 102, 104, 109, 112, 116–119, 122, 124, 183, 188, 192, 206, 255, 259–260, 314, 328, 330, 333–334, 337, 350, 352, 357, 361–364, 366–367, 369, 372, 383–384, 427
In Full Colour 230, 241
 innovation 2–3, 6, 9–10, 24, 81, 84–85, 254, 260, 326, 348, 351–352, 354, 360, 362–363, 365, 368, 371, 405, 410, 412, 415, 418, 428
 intellectual property 2, 6, 8–9, 13, 21–23, 28–29, 34, 43–45, 68–72, 74, 80–81, 83–84, 92–93, 95–96, 100–101, 108, 143, 147, 152–153, 164, 172, 174, 244, 268–269, 282–283, 285–286, 293, 312, 314, 320, 324–326, 330, 336–337, 339–340, 347–352, 354–361, 363–368, 370, 381–382, 384, 399, 417–418, 427
 intellectual property law 6, 13, 74, 84, 244, 348–352, 354–360, 363, 366–368, 418
 intellectual property rights 2, 68, 70, 74, 83, 147, 269, 325, 339–340, 360, 417
 Internet 3, 23–24, 27–28, 35, 38, 41–42, 44, 91–92, 94, 135, 190, 208, 252, 254–255, 263, 314–315, 328, 332, 354, 361–364, 366, 382–384, 388, 401, 411–412, 415, 418–419
 Internet Archive 208, 401
 invention 3, 256, 350–351, 355, 368
 iPad 256, 409
 iPhone 60, 256
 Ireland, Irish 106, 314, 407
 Italy, Italian 60, 257
- James, E. L. 121
Fifty Shades of Grey 103, 121
 Jancou, Marc 280–282
 Janke, Terri 334–335
 Jaszi, Peter 351
 Johnson, Philip 65
 JSTOR 44, 314
- Kean, Danuta 12, 229
 Keay, John 158
 Kelly, Susan 270–271, 296–297
 Kember, Sarah 1, 9, 12, 84

- Kheria, Smita 1, 7
 Kindle 92, 130, 410
 King, Stephen 118
 Koons, Jeff 278
- labour 3–4, 12, 50, 68, 76–77, 84, 92,
 182, 208, 294, 322, 353, 357, 383,
 421
- Larsen, Mel 230, 235
 Lassiter, Luke E. 322–323
 Lecercle, Jean-Jacques 244
A Marxist Philosophy of Language
 244
- legal 1, 4, 14, 22, 29, 53, 61, 72, 74, 94,
 106–111, 114, 116–118, 123–125,
 145, 153–154, 168, 174, 196,
 208, 268, 274–276, 278, 280, 282,
 285–288, 321, 325–326, 335, 339,
 348–350, 353, 355–356, 358–359,
 361, 364–365, 367–371, 383–384,
 395–396, 417–418, 420–421,
 423–424, 428
- Lessig, Lawrence 73, 93, 362
 Letterists 248, 260
 Levine, Sherri 273–274
 library 11, 35, 43–44, 53, 191, 216, 270,
 290–294, 365, 371, 413–414
 Lissitzky, El 252
 literary 13, 21, 27–28, 65, 83, 85,
 97–99, 106–107, 111–112, 114,
 123, 130, 134, 137, 155, 193, 196,
 204, 229–231, 235–238, 243–244,
 247–248, 250–252, 258–260, 262,
 299, 351, 365, 379–380, 387–391,
 396–397, 399, 407, 415–416, 424
- Literary Agency, The 114. *See*
also Swift, Rebecca
 Literary Platform, The 1, 255
 literature 24, 36, 47, 78, 82–83, 98,
 119, 135–136, 148–149, 169, 174,
 215, 243, 246, 248, 250, 254, 256,
 258, 260, 272, 317, 351–352, 357,
 366, 381, 387–388, 397
- Little, Brown Book Group 238, 271
 Liu, Alan 259–260
*The Laws of Cool: Knowledge Work
 and the Culture of Information* 259
- Llópiz, Julio César 48, 50, 56
 London 2–3, 33–36, 38–39, 42, 44, 46,
 48–50, 52–56, 58–61, 65, 97, 232,
 234–235, 237, 250, 283, 291, 295,
 406, 410, 412–413, 415
 love 6, 46, 119, 162, 166, 182, 185, 248,
 254, 256, 259, 385, 407
- machines 21, 78–79, 82, 102, 208, 254,
 269, 288, 293, 384, 416, 418–419
 magazines 4, 8, 13, 34–35, 37, 41–43,
 47–50, 54–55, 58–60, 136, 243, 250,
 413
- Malkani, Gautam 237
Londonstani 237
 Malloy, Judy 254–255
Uncle Roger 254–255
 Mantel, Hilary 133
Wolf Hall 133
- marketing 60, 92–93, 96, 103, 106, 114,
 122, 131, 134, 137, 236, 367, 428
 Mars, Marcell 53, 290
 mass media 4, 92
 materiality 78–79, 244, 250, 291
 Mattering Press 4, 75–77
 McCloud, Scott 199–200
Understanding Comics 199–201
 McIntyre, Sarah 143–144, 147
 methodology 66, 154, 243–244,
 246–247, 318
 Milton, John 97–100
 Mollet, Richard 8–9
 money 6–7, 40, 92, 94, 100, 109, 118,
 124, 134, 144, 151, 159, 161–162,
 165–167, 231, 243, 259, 322, 332,
 383, 405, 407–408, 421, 427–428
 Montreal 253, 258
 moral 7, 14, 22–23, 57, 73, 209, 268,
 335, 350–351, 355–356, 398, 417,
 422
 moral rights 7, 14, 22–23, 335,
 355–356
 multimedia 41, 259, 327

- music 9, 14, 41, 45, 56, 59, 109, 142, 154, 160–161, 171, 204, 217, 244, 309–311, 313–315, 318–321, 323–324, 327–328, 330–332, 334–337, 339, 348, 356, 368, 387–388, 391, 400, 409, 411
- musicology 311, 313, 339
- narrative 9, 71–72, 82, 84, 86, 182, 196, 199, 249–250, 255, 324, 380–381, 389, 411
- Nesta 2, 406
- Nettl, Bruno 313, 339
- newspapers 4, 48, 102, 119, 134, 144, 196, 201, 237, 393, 406
- New York 34, 38, 59, 102, 240, 258, 271, 273, 280, 328, 348
- New Yorker Magazine* 285
- New York Times* 102, 240
- Noland, Cady 279–282, 294
Cowboys Milking 280
- Obama, Barack 50, 61
- object 24, 69–73, 76–77, 80–82, 84, 217, 245, 251, 258, 267, 270, 296, 338, 358
- O'Hare, Louise 13–14, 33, 412–413
- online 7, 9, 35–36, 40, 42, 47, 49, 53–54, 58, 61, 92, 102, 119, 121, 123, 131–136, 150, 155, 161, 166–167, 170–172, 181–182, 198–199, 207–208, 247, 254, 256–257, 262, 290–291, 298, 313, 328, 337, 363–365, 367, 385–386, 388, 393, 401, 411, 413–414, 416
- Open Access (OA) 1–4, 8–14, 70, 74–75, 85, 92–93, 101, 110, 120, 182, 184–185, 205, 309–310, 312–318, 320–322, 326, 329–335, 337–340, 349, 361–362, 364–367, 371–372
- Open Access movement 14, 74
- Open Book Publishers 207–208, 313
- Open Library of the Humanities 93, 101
- openness 3, 10–12, 75, 92, 315, 332, 337–338
- original 7, 13, 22, 24, 27, 70, 73, 79–81, 142, 154, 164, 173, 181, 183, 203, 214, 244, 268, 271, 273–274, 277, 292, 351–352, 380–381, 383, 388, 391, 393, 397–399, 413, 415, 424
- originality 24, 73, 82, 244, 268, 273, 275, 279, 351, 353
- Other, Otherness 81, 104, 108, 162, 229, 237–238, 290, 293, 313, 320, 322, 367
- Ovid 248, 260
- Owen, Lynette 66, 106
- ownership 5, 22–23, 29, 49, 53, 58–59, 70–74, 80, 98, 100, 111, 119, 147–148, 157, 164–165, 175, 191–192, 196, 198, 208, 210, 238, 262, 275, 282, 291, 309, 312–314, 316, 320, 325, 327, 330–336, 356, 361, 364, 370, 394, 416, 418, 420–421
- Oxbridge 229, 232, 235
- Paquete Semanal, El* 35, 41–42, 45, 60
- payment 94, 141, 164, 174, 215, 400
- peer review 3, 11, 93, 101, 120, 184, 328, 330–331
- Penguin Random House 94, 103, 107, 231, 233, 239, 241, 410–411
- permission 4, 10, 37, 47, 58–59, 92, 116, 161, 182, 184–185, 188–193, 198, 208, 210, 214–216, 262, 284–285, 287, 320, 326, 387, 396, 400, 416, 419
- photography 58, 193, 243, 248, 257–258, 262, 271, 273–274, 276, 278, 280, 311, 321, 356
- piracy 45–46, 73, 81, 93, 97, 117, 119, 271–272, 286–287, 289, 293, 367, 383
- Piracy Project 286–291, 293–294, 297
- plagiarism 247, 260, 271. *See also* copying
- platforms 34–35, 43, 48, 91–92, 94, 101, 118, 121, 124, 130, 132, 135, 137, 143, 217, 245, 252, 256, 263, 290–291, 311, 327, 329–330, 388, 411, 414–415

- poetry 1, 78, 82–83, 235, 387, 389, 391, 410
- policy 3, 5, 7, 10, 12, 14, 50, 61, 66, 81, 141, 143–147, 150, 154, 191–192, 205, 283, 291, 300, 311–312, 314, 318, 325, 337, 370–371, 414
- politics 3–4, 9, 12, 22, 35, 69, 75–77, 98, 170, 273, 275, 285, 293, 295–297, 321, 347, 351, 353–354, 361–362, 368, 415
- posthuman 70, 78–81, 83, 85–86
- postmodern 22, 323, 390
- power 22–23, 29–30, 33, 54, 103, 107, 119, 134–135, 233, 281, 285, 321, 323, 330, 352, 354, 362
- practice 1, 3, 7–9, 11–14, 21–23, 27–29, 35, 45, 49, 70, 76, 81, 85–86, 107, 111, 115–116, 141–142, 146–147, 149, 152–156, 158–164, 170, 172–174, 230, 238, 245–246, 248, 250, 262, 267–271, 283–284, 286, 288, 290, 292–300, 310–318, 320, 322, 326, 330–331, 333, 335–340, 347–349, 353, 355–356, 360–361, 365–368, 371, 398, 405, 411, 421, 424, 427
- price 9, 50, 92, 94–95, 130, 280–281, 337, 379, 407–408, 428
- price barriers 9, 92
- Prince, Richard 96, 271–279, 281–282, 287, 289, 294
- private 4, 9, 12, 41, 43, 45, 53, 61, 72, 204–206, 261, 268, 278, 280, 283, 327, 357–359, 361, 363–364, 366, 370, 394, 405
- professional 9, 57, 66, 91, 94, 96–97, 100–101, 112–114, 122, 125, 133, 146, 149–151, 154–155, 160, 162, 164, 166, 168–169, 175, 184, 232, 238, 270, 298, 353, 406, 411, 416
- profitability 239–240
- Project, The 23–24, 27–28
- public 4, 8–10, 12, 35, 38, 40–42, 45, 52–53, 57, 83, 92, 98, 100, 146, 160, 183, 205–207, 209, 214, 232–233, 235, 241, 253, 257, 259, 270, 276, 283–285, 291, 322, 326, 334–335, 350, 355, 357–359, 363–367, 370, 386, 389, 391, 394–395, 397–399, 405, 407, 413–414, 418, 420
- publication 42, 47, 49, 94, 99, 107, 110–111, 113–114, 123, 137, 144, 146, 157, 160, 167, 173, 182–185, 188, 202, 207, 215–217, 237, 240, 243, 249, 263, 270–271, 278, 314, 319–320, 326, 349, 366, 393, 397, 400, 410, 413, 423, 427
- Publication Studio 35, 49, 412–413
- Public Library of Science 93, 101
- publisher 1, 3–6, 8, 12, 14, 53, 91–94, 96–109, 111–115, 120, 122–124, 130–131, 133, 135–137, 148, 156–157, 165–171, 181, 183–185, 188–191, 196, 207–210, 216–217, 230–241, 244, 248, 252, 254, 256–257, 259–260, 262, 270–271, 276, 288, 292, 295, 298, 313, 317, 320, 324, 329, 331, 335, 337–339, 358, 366, 369, 396, 406–408, 410, 412–413, 416–417, 421, 423–424, 427–428
- Publishers Association (PA) 5, 8, 106, 108, 192, 202, 206, 209–210, 216, 230, 238
- publishing industry 2, 76, 97, 124, 130, 133–135, 168, 229, 244, 254, 262, 382, 405, 412
- Queen Mary, University of London 65, 406
- race 3, 229, 236, 237. *See also* ethnicity
- Ranciere, Jacques 292
- Ignorant Schoolmaster* 292
- readers 4, 13, 15, 21, 23, 28–29, 42, 76, 78, 103, 109, 112, 118–119, 121, 123–124, 130–132, 134–137, 144, 172, 188, 192–193, 195–196, 199, 208, 229–230, 236, 244, 249, 252–253, 255–256, 261, 263, 288–289, 292, 298, 313–314, 322, 330, 380–390, 394, 398–399, 405, 407–410, 412, 416
- Readers Project, The 13, 21, 23, 28–29

- relationality 13–15, 70, 73–75, 80–81,
 83–86, 287, 348–349, 351–354, 357,
 359–362, 364–367, 369–370, 372
 relational creativity 348–349, 353,
 360, 364, 367, 369–370, 372
 remix 14–15, 73–74, 82–83, 260, 348,
 379–380, 387–391, 393, 395–400
 research 2, 4, 6, 8–12, 27, 35, 44,
 65–66, 69, 92–94, 109, 111–112, 142,
 147–148, 152–154, 156–157, 163,
 172–174, 182, 184–185, 188, 196,
 198, 202–206, 208, 210, 213–217,
 230, 237–241, 243, 245, 270, 276,
 284, 286–288, 298–299, 309–314,
 318–319, 321–326, 328–329, 331,
 334, 337–340, 349, 352, 354,
 366–367, 370, 372, 407
 responsibility 3–4, 67, 79, 85–86, 104,
 107, 109–111, 115–116, 122–125,
 188, 216, 241, 310, 312, 326, 333,
 336–337, 409
 reuse 10, 81–82, 92–93, 328, 395
 rights 2, 6–7, 9–10, 13–15, 22–23, 40,
 66–72, 74, 80, 83–84, 98, 105–106,
 108–109, 115, 117, 119, 124–125,
 135, 142, 147, 155–157, 159–162,
 164–175, 188, 190, 210, 215,
 268–269, 280–282, 284, 310, 312,
 317, 319, 325–326, 329, 331–332,
 335–337, 339–340, 349–350,
 355–360, 363–365, 368–372, 382,
 384–385, 394, 396, 398–400, 406,
 416–424
 Rochester, Sophie 1, 14, 129
 Romantic 288, 348–349, 351, 353–354,
 361
 Rose, Mark 72–73, 268, 356, 411, 425
 Ross, Orna 117–118
 Rowling, J. K. 144
 Royal Literary Fund 158
 Rushdie, Salman 107
 Satanic Verses 107
 Russia, Russian 119, 252
 Ruth, Jan 7, 118
 sales 40, 46, 95, 100, 103, 119, 130–
 131, 148, 157, 160–161, 165–166,
 171–172, 214, 217, 243, 259, 274,
 278, 280, 359, 410, 413, 424
 Salinger, J. D. 271–272, 281
 The Catcher in The Rye 271
 Sarmiento, Sergio Muñoz 277–278
 Savery, Henry 392
 Quintus Servinton 392, 397
 Scotland, Scots 8, 149, 166
 self-publishing 91, 93, 95, 101, 103,
 111–125, 130–133, 135–136, 247,
 259, 291
 Shakespeare, William 98–100, 248,
 260
 sharing 3, 10, 14, 35, 41–44, 53,
 61, 104, 106, 110–111, 114, 116,
 118, 122, 132, 147–148, 170–172,
 230, 240, 250, 283–284, 290–291,
 293, 310–314, 316–318, 320–321,
 327–339, 349, 362–364, 367, 369,
 384–385, 395, 399, 408, 413, 415
 Sicot, Catherine 35–38, 41, 47–48, 57,
 59, 61
 Sim, Dave 182, 193, 197
 Cerebus the Aardvark 193
 Church & State 193, 196–197
 social 2–4, 8, 14, 36, 72, 74, 77, 80,
 94, 102, 116, 123, 131–132, 144,
 146, 153, 155, 209, 229, 231, 241,
 243, 267–268, 270, 273, 278,
 286–287, 293, 296, 310–312, 317,
 326–327, 330, 338–339, 347–349,
 351, 353–355, 357, 359–361, 364,
 367–368, 386, 405, 412, 415, 421
 media 94, 102, 116, 123, 131–132,
 144, 146, 155, 241, 311, 386, 415
 Society for Ethnomusicology (SEM)
 312, 314
 Society of Authors (SoA) 105–106,
 108–109, 115–116, 120, 133,
 149–150, 407
 Society of Young Publishers 231–232
 Solomon, Nicola 52, 133, 407–408
 Sotheby's 280–281
 source 71, 108, 131, 144, 149–150,
 158–159, 165, 172, 232, 243, 246,
 252, 256, 258–259, 263, 329, 351,

- 364, 366, 380, 387–388, 390–391, 395–396, 398–399, 405
- Soviet Union 34
- Spain, Spanish 35
- Spinosa, Dani 78
- Spivak, Gayatri 300
- Spread the Word 136, 230, 238, 240
- Statute of Anne 1710 141, 355–356, 423
- Stewart, Kevin 116, 427
- Supreme Court of Canada (SCC) 349, 369–372
- sustainability 40, 48–50, 70, 86, 124, 313, 318, 320, 329–330, 340, 405, 412
- Swift, Rebecca 98, 114. *See also* Literary Agency, The
- Swijghuisen Reigersberg, Muriel 14, 309, 324
- Szilak, Illya 250–251
- Tate galleries 4, 28, 57, 59
- Taylor & Francis 189–190, 210
- technology 2–3, 5–6, 9, 67, 77–79, 84, 92, 101–102, 107, 109, 112, 117, 137, 268, 355–356, 362, 381, 383–385, 401, 409–412, 417–420, 422
- text 8, 13, 24, 27–28, 34, 36, 43–44, 61, 73–74, 76, 78–80, 82, 84, 91, 95–96, 98, 102, 119, 182–183, 189, 243–248, 250–251, 253, 256, 258, 261–263, 270–271, 284, 286–288, 290, 292, 295, 297–300, 313, 315, 318–319, 321–324, 328–330, 334, 338, 348, 351–353, 356, 362–364, 366–367, 369, 371, 379–381, 386–388, 390, 393–394, 397–398, 409, 412, 420
- theft 23, 172, 384
- theoretical 70, 273, 275, 295, 312, 318, 355
- theorists 78, 94, 295, 362
- theory 22, 43, 46, 48, 78, 81, 93, 96, 100, 154, 250, 268, 311, 315, 323, 350, 353, 357, 421
- Titon, Jeff Todd 312, 336
- Tonson, Jacob 96–101, 103–104
- Toronto 36, 38, 258
- University of Toronto 38
- Trade-Related Aspects of Intellectual Property (TRIPS) Agreement 357, 359–360, 363
- Turcotte, Joseph 13–14, 72–74, 347
- Twitter 118, 155, 256, 392, 405, 412, 415
- UK Research Integrity Office (UKRIO) 325–326
- UNESCO 37, 333, 406
- United Kingdom 2–6, 8, 10–12, 24, 35, 38–39, 48–49, 56–57, 59, 65–68, 70, 95, 97–99, 101, 104, 106, 123–124, 129–130, 133, 136, 141–143, 147–150, 152, 154, 159, 163–164, 169, 172, 184–185, 192, 206, 208, 210, 213, 216, 229–232, 234, 236, 238–241, 247, 257, 260, 283, 296, 325–327, 338, 355–356, 405–410, 416
- United States 4, 33–36, 45–46, 50–53, 55–56, 59–61, 95, 102, 104, 117, 123–124, 133, 167, 192, 236, 240, 257–258, 271–273, 279–280, 283, 322, 324, 332, 334, 356–357, 360, 386, 396–397, 400, 407, 410
- University of the Arts London (UAL) 39–40, 52–53, 283, 291
- value 5, 6, 7, 8, 11, 12, 23, 28, 68, 69, 70, 71, 72, 73, 74, 76, 79, 84, 85, 96, 100, 101, 102, 103, 136, 142, 147, 152, 161, 163, 165, 168, 170, 173, 174, 183, 184, 217, 234, 269, 276, 281, 282, 295, 314, 321, 326, 388, 416, 428. *See also* worth
- version 38, 42, 44–45, 59, 117, 119, 159, 166, 181–185, 207, 249, 258, 289, 292, 314, 387–388, 393, 399, 410
- Virgil 99, 260
- Ware, Chris 182, 196
- Building Stories* 196

- Wark, McKenzie 248, 260–261
The Beach Beneath the Street: The Everyday Life and Glorious Times of the Situationist International 248
- Waterstones 131, 409–410
- Wattpad 135
- wealth 23, 30, 68, 96, 98, 278, 283, 320, 333, 406
- Weinmayr, Eva 1, 14, 267, 412
- Williams, Raymond 2
 structure of feeling 2
- Wise, Gordon 107–108, 115
- Woodley, Caroline 39–40, 59
- Woodmansee, Martha 351
- works 7–9, 11, 13–15, 21–22, 24, 27–29, 35–36, 40, 43–46, 48–52, 55–56, 60, 67, 69–70, 72–77, 80–82, 92–93, 95, 97–100, 102, 105–106, 108–112, 114–120, 122–124, 131, 133–134, 141, 144, 148, 152, 155, 157–158, 160, 162, 164–168, 170–172, 174, 181–183, 185, 188, 190–196, 198, 200–204, 206–210, 213–217, 231–232, 235–238, 241, 243–244, 248–250, 253–261, 263, 267–272, 274–275, 277–285, 287–289, 291, 294–295, 297–299, 311, 313–314, 316–317, 320–329, 332–333, 336–337, 340, 348–350, 352–353, 355–360, 362–367, 371–372, 380–392, 394–400, 406, 411–412, 415–421, 423–424, 427–428
- World Trade Organization (WTO) 357, 359
- worth 13, 68–71, 80, 86, 91, 93, 95–96, 100–104, 144, 152, 169–170, 184, 202–203, 298, 339, 351, 383, 397, 399, 406–407
- writers 1, 5, 6, 7, 9, 14, 28, 29, 33, 35, 40, 44, 45, 47, 49, 65, 66, 67, 68, 69, 70, 78, 83, 91, 94, 95, 98, 99, 100, 105, 106, 114, 119, 123, 124, 130, 131, 132, 133, 134, 135, 136, 137, 141, 142, 143, 144, 146, 147, 148, 149, 150, 151, 152, 154, 155, 156, 157, 158, 159, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 188, 229, 230, 232, 233, 234, 235, 236, 237, 239, 240, 241, 243, 244, 245, 252, 254, 256, 259, 262, 263, 272, 291, 293, 298, 328, 352, 367, 381, 382, 385, 386, 387, 388, 389, 390, 394, 396, 398, 399, 405, 406, 407, 412, 423, 424, 425
- Writing the Future* 136, 230, 231, 232, 233, 234, 235, 237, 238, 239, 240, 241
- YouTube 109, 132, 135, 315
- Yummy Fur* 194, 195
- Zittrain, Jonathan 382, 384

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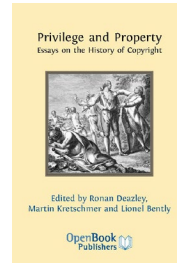
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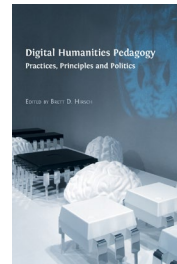
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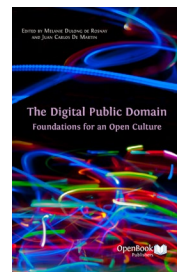
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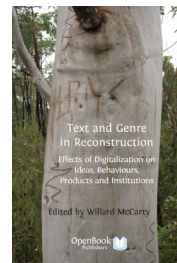
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