

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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ISSN

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COMPARATIVE ANALYSIS OF COPYRIGHT PROTECTION IN THE PUBLISHING INDUSTRY OF INDIA AND USA

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Abstract:

This comparative study explores the copyright protection systems in the publishing sectors of India and the US, two significant countries. The foundation for preserving intellectual property rights and encouraging innovation in the publishing industry is copyright protection. Although copyright laws are strong in both nations, there are distinctions in their legal systems, backgrounds, and current issues. This study examines how copyright laws have changed over time in the US and India, emphasizing the distinctive forces that have influenced each country's legal systems. It closely examines international considerations, licensing procedures, the role of fair use, and adaptation to digital publishing. Understanding these differences in copyright protection is crucial for anyone involved in the worldwide publishing sector, especially as the digital age continues to change the publishing environment. This analysis opens the door for future worldwide harmonization and improvements while also providing insights into the complicated nature of copyright.

Keywords: Copyright in Publishing Industry, Fair Use and Fair Dealing, Licensing and Permissions, International Consideration

Introduction:

Intellectual Property is a legal right granted to the creator, inventor, or author of a new work created for a specific period. All types of intangible assets are considered to be protected under intellectual property rights. In the modernized world, as technology expands, every industry also expands its business. One such expansion is that every industry runs its business on the online

platform. The owner is responsible for protecting their assets from infringement in digital and non-digital platforms. In Intellectual property, one of the rights is copyright, which protects various kinds of rights such as literary work, artistic work, musical work, dramatic work, cinematograph films, and sound recordings¹. Literary work includes anything expressed in writing, including books, journals, novels, research articles, etc., provided it must be original. The owner of the literary work is considered the author of that creation. The author will be writing a novel or book, and they have the right to register for copyright, an exclusive right to protect his/her original work against infringement. Once the registration is completed, the author can publish the work physically and in the online form. Various issues arise relating to copyright in the field of the publishing industry because though the content of the books differs the title of the book sometimes seems similar, and those titles will be readily available on all platforms such as from large print to audiobooks and even to e-books. Nowadays, the copyright protection subsists over e-books. E-books are electronic books where the copy of books, novels, and articles will be published on the websites. The publication industry runs its business on the online platform along with selling and publishing the books physically.

Statement of the Problem:

The Publishing industry is undergoing a transformative shift in the digital age, and copyright protection plays an important role in shaping the rights and obligations of content creators, publishers, and consumers. The Study aims to address the key problems such as differing legal frameworks followed in India and the USA, International Considerations, Fair Use and Fair Dealing Interpretation, digital publishing and the copyright and licensing and permission of e-publication.

Research Questions:

1. How do the copyright protection systems in India and the USA differ in terms of legal frameworks, historical evolution, and digital publishing challenges?
2. How do the interpretations of fair use (in the USA) and fair dealing (in India) differ?
3. What are the international considerations and obligations that influence copyright protection in India and the USA?

¹ Section 2 of Copyright Act, 1957

Research Objectives:

1. To Analyze and Compare the legal frameworks governing copyright protection in the publishing industry of India and the USA.
2. To Critically examine the interpretation of Fair Use and Fair Dealing doctrines followed in the USA and in India in relation to copyright protection in the digital publishing industry.
3. To examine the international considerations and obligations influencing copyright protection in India and the USA.

Literature Review:

1. Copyright and Generic Entry in Book Publishing²

The Author discusses the importance of Intellectual Property Rights and states that IP rights will be granted to creative activities. It examines the impact of copyright on book publishing and its effects on the availability and price of books. The author focuses on the welfare of the 1998 Copyright Term Extension Act and identifies that the copyright limits the availability of works, leading to a decrease in consumer surplus. In the Book publishing industry, copyright issues prevail as book titles can be available in various forms, and recently, they have been published even on an online form called “E-Books”. The author dealt with the law of the United States as it initially set the length of copyright protection to 14 years. After many recommendations and suggestions, the term of protection extends to the author's life plus 50 years after the life of such author, and the law of copyright in the U.S. is known as the “British Statute of Anne (1710)”. The economic inefficiencies of extending copyright without modifying the incentives for producing new content are also covered in the paper. In general, the research reveals valuable perspectives on how copyright affects book publishing and how it affects readers.

2. Managing Copyright in the Digital Age of Publishing and Advertising³

The Article “Managing Copyright in the Digital Age of Publishing and Advertising” by Fernanda

² Imke Reimers; Copyright and Generic Entry in Book Publishing, American Economic Journal: Microeconomics 2019

³ Fernanda Rocha, Managing Copyright in the Digital Age of Publishing and Advertising, International In-House Counsel Journal Vol 7, No 25, 2013

Rocha dealt with the challenges media companies face due to the lack of a well-planned copyright management solution in the digital environment. The study also examines how publishers and advertisers, who prioritized selling print media before the Internet was created, adjusted to the digital world. With the advent of numerous new media, like computers, e-books, tablets, and more, they have shifted their attention to digital platforms. Additionally, the study addresses how internet use has raised public awareness of the financial benefits of intellectual property to companies. A lot of businesses intend to establish a copyright management department. The article says that to guarantee that staff members handle copyright concerns diligently, it is required to alter the corporate culture and provide basic guidelines for compliance. The author further discusses the complex copyright issues in media. After highlighting the main problems that publishing and advertising organizations have with copyright management in the current digital environment, the paper deals with the management systems that will inevitably need to keep up with technological advancements.

3. Copyright, Plagiarism, and Emerging Norms in Digital Publishing⁴

The Article by J.D. Lipton dealt with how digital technology has made it easy, fast, and inexpensive to copy and distribute digital texts globally and how this has created significant concerns for the publishing industry. It also discusses how copyright law has evolved to meet the publishing industry's needs. The authors and publishers find it difficult to protect their online copyrights in the digital age. Compared to other digitized industries like the music, film, and video game industries, the publishing industry has had less success securing its online copyrights. It focuses on the legal difficulties publishers face, such as establishing infringement and the absence of precise legal guidelines for digital publishing. The paper's conclusion highlights publishers and authors' difficulties in defending their digital copyrights in the modern world and the importance of community norms in influencing copyright laws and industry best practices for digital publishing. It implies that to keep up with the demands of the digital publishing sector, copyright law must change and that newly emerging norms might influence this change.

⁴ J.D. Lipton, Copyright, plagiarism, and Emerging Norms in Digital Publishing, 16 VAND. J. ENT. & TECH. L. 585 (2014)

4. Copyright Issues in E-Publishing⁵

The Article “Copyright Issues in E-Publishing” by T.C. James explores the challenges and opportunities of digital technologies in the publishing industry. It starts by discussing the emergence and development of copyright law as a response to technological challenges to publishers’ control over their publications. The author then goes on to discuss the challenges that arise in the context of e-publishing, including contractual issues relating to assignment or licensing, technological and management issues, and issues of enforcement of rights in cyberspace. The article explains that the first category of issues can be divided into two groups: issues between the author/owner of rights and the publisher, and issues between the publisher and the user. The basic issue that arises between the author and the publisher is the scope of the license agreement or assignment. Then discusses the second category of issues, which are primarily technological and management issues. These include issues related to digital rights management (DRM), encryption, and watermarking. The role of international treaties in addressing copyright issues in e-publishing is also addressed by the author. Finally, the article discusses the role of industry and government in finding solutions to unresolved copyright issues in e-publishing. He made recommendations such as the development of new technologies, the establishment of new business models, and the creation of a new legal framework.

Copyright subsists in the online publication:

Publication means making a work available to the public by issuing copies or by communicating the work to the public⁶. The publishing of book and novels primarily depend on copyright law as it will protect the author's rights and provide an exemption to the publisher to publish the author's work in many copies for sale after getting consent from the original owner based on a mutual agreement. According to the agreement, the publishers are not obligated to do any act other than the work mentioned. It will be impossible for the publisher to trade if there arises no agreement relating to publication from the author. Usually, in India, the copyright protection tenure is the author's lifetime plus 60 years after death. After the expiration of the tenure, anyone can publish the work without paying the royalty to the author or his/her legal heirs.

⁵ T.C. James, Copyright Issues in E-Publishing, Journal of Intellectual Property Rights, Vol 8 July 2003

⁶ Section 3 of Copyright Act, 1957

History of Copyright Protection in the Publishing Industry in India:

India's Publishing sector has a rich and varied history with copyright protection that is a reflection of the nation's emergence with literature and different cultures. The history of copyright law in India dates back to the colonial era when it was under British Rule. During the British era, the Indian Copyright Act of 1847 was passed, becoming the country's first copyright law. This law provided copyright protection to works printed within British India. India created its own copyright laws in 1947 after independence in order to protect the rights of writers, artists, and publishers. The Copyright Act of 1957 was a significant milestone, shaping the legal framework for copyright protection in the country. It granted copyright owners exclusive rights to reproduce, distribute, and adapt their works, reflecting India's commitment to intellectual property rights.

Copyright protection has been important in fostering a diversified literary and creative landscape in the Indian publishing business. It gives writers, publishers, and artists the ability to manage their intellectual property and get compensation for their work. In recent years, as digital technology has transformed the industry, copyright protection has become even more important. The Notion of copyright has undergone continuous modifications in accordance with technical breakthroughs, particularly the advent of digital publishing. Copyright protection continues to be essential for authors and publishers in order to safeguard their intellectual property rights and financial interests in the face of emerging threats to the business, such as Internet piracy and open-access publishing.

History of Copyright Protection in the Publishing Industry in the USA:

The United States publishing sector has a lengthy history of copyright protection, protected by an established legal system that upholds the rights of artists, publishers, and authors. The US Constitution, which gives Congress the authority to adopt copyright laws, is the cornerstone of copyright protection in the US. The US Copyright Act of 1790 was the first federal copyright law and it is where the history of copyright protection in the country originated. The Copyright Protection was extended to "maps, charts, and books" for a period of 14 years, renewable for an additional 14 years provided, the author was still living. Since then, there have been several important changes to copyright law, including the Copyright Acts of 1909 and 1976, which

influenced the current legal system.

Copyright protection is essential for encouraging creativity and innovation in the publishing sector. It gives writers, publishers, and content producers more control over their intellectual property, giving them the option to allow or prohibit the copying, sharing, and modifying of their creations. In addition, financial compensation through contracts, royalties, and licensing is based on copyright. It has changed in the digital era to make use of new opportunities and problems. Digital content protection and the prevention of internet piracy were addressed by the Digital Millennium Copyright Act (DMCA) of 1998. Copyright holders are empowered to request the removal of content that violates their rights from internet platforms due to provisions in this law. The growth of electronic books, digital publishing, and online distribution channels has made the implementation of digital rights management (DRM) technologies important in safeguarding copyrighted works against unauthorized duplication and distribution. DRM is a common tool used by publishers to protect digital information, including e-books.

International Consideration:

International treaties are essential to the preservation of copyright. The United States abides by the WIPO Copyright Treaty in addition to the Berne Convention and TRIPS Agreement, which India has signed. The treatment of foreign works and the harmonization of copyright are impacted by these agreements. The following features of the increasingly worldwide digital publication environment draw attention to how important international copyright considerations are:

- **International Treaties and Agreements:** Many countries, such as the US and India, have ratified international treaties and accords pertaining to copyright protection. Among these, the most well-known is the Berne Convention for the Protection of Literary and Artistic Works, which creates a framework for the international protection of works protected by copyright in participating countries. Another important agreement that covers copyright protection in the digital age is the Copyright Treaty of the World Intellectual Property Organization (WIPO).
- **Harmonization of Copyright Laws:** International treaties and conventions seek to standardize copyright regulations so that authors have comparable protection across national borders. This idea, referred to as “national treatment,” guarantees that foreign works are granted the same level of copyright protection as domestic ones. The

international exchange of creative and literary works, including e-publications, is facilitated by harmonization.

- **Cross-Border Licensing:** Cross-border licensing and the transfer of intellectual content across nations are made possible by copyright agreements. When publishers in one nation want to distribute e-books or other digital content in another, this is pertinent to e-publishing. The terms and conditions for such international distribution might be outlined in licensing agreements.
- **Digital Rights Management (DRM) and International Distribution:** Geographical constraints are frequently incorporated into DRM systems used in e-publishing to regulate the accessibility and use of digital content. These limitations are shaped in part by international factors, which allow publishers to abide by local copyright laws and license contracts.
- **Emerging Challenges:** The digital era brings with it additional difficulties for copyright protection, including problems with user-generated material, global social media networks, and streaming services. International agreements must change to meet these issues and offer direction on how digital content should be handled internationally.

Fair Use and Fair Dealing:

Legal doctrines such as "fair use" and "fair dealing" enable limited uses of content protected by copyright without requiring consent from or payment to the copyright owners. Despite having a similar goal, these ideas are applied and interpreted differently in various legal systems.

Fair Use:

Under the fair use concept of US copyright law, content protected by a copyright may be used for certain purposes, including teaching, research, commentary, news reporting, and criticism, without obtaining prior consent from the copyright holder. The U.S. Copyright Act's Section 107 codifies fair use. The effort put forth by Google to digitize millions of books and make them searchable and accessible online was at the center of this legal dispute. The Authors Guild filed a lawsuit, alleging that Google had violated copyright by scanning and displaying works that were protected by copyright. The digitization and presentation of portions of copyrighted works for the purpose of building a search engine were deemed transformative and to fall within fair use,

according to the court's decision in favor of Google⁷. A case-by-case investigation is required to determine if a certain use is eligible for fair use, and the following considerations are considered:

- **Purpose and Character of the Use:** When a usage is made for transformative, non-commercial goals, fair use is more likely to be applicable. Transformative applications, such as commentary, parody, or critique, give the original work a new significance or worth.
- **Nature of the Copyrighted Work:** The type of work being utilized is considered; factual or non-fiction works are more likely to fall under the purview of fair use than highly creative or fictitious works.
- **Effect on the Market:** The market for the original work shouldn't be adversely affected by fair usage. Usage is unlikely to be deemed fair use if it conflicts with the original work.

Fair Dealing:

The concept of fair dealing can be found in copyright laws across the Commonwealth nations of the United Kingdom, Canada, Australia, and India. Similar to fair use, fair dealing permits particular uses of copyrighted content without violating copyright. Fair dealing, however, is typically defined more precisely and narrowly than fair usage.

Though frequent purposes can include research, private study, criticism, review, news reporting, and education, the permissible reasons and the extent to which fair dealing can be used differ from country to jurisdiction. In contrast to fair use, fair dealing frequently imposes restrictions on the quantity of work that may be utilized and might not allow for as much creative use.

Role of Copyright in the Publishing Industry:

In the publishing sector copyright plays a crucial role because it provides writers, authors, publishers, and the creator of the work with the most comprehensive protection for their intellectual property. It grants legal protection which guarantees safeguards to the writer's creation and is subjected to fair compensation for their efforts. In order to promote innovation, creativity, and the continuous creation of higher-caliber material, protection is very important. By having protection for the publishing industry copyright confers the following advantages to

⁷ Authors Guild vs Google 804 F.3d 202

the publisher and the author.

- **Economic Rewards:**

Publishers and authors depend on copyright as it helps them to earn a living from their creative work. They are paid for the use and distribution of their works through royalties and licensing. To keep the publishing sector alive and stimulate the production of fresh content, financial incentives are vital.

- **Motivates the Creator:**

In addition to safeguarding artistic creation, copyright serves as a strong motivator for writers to produce unique, meaningful writing. Authors are encouraged to put in the time and effort necessary to produce high-caliber work because they know their inventions are protected by the law and can benefit financially and in terms of their reputation. This financial incentive is essential to the publishing industry's long-term viability since it encourages the creation of original and creative material.

- **Digital Challenges:**

The advent of the digital era has presented new difficulties for publishing copyrights. The ease of digital distribution and copying has increased the possibility of copyright violation. In order to adequately safeguard their content in the online environment, publishers and authors need to modify their approaches.

- **Publishing Industry Integrity:**

By serving as a barrier to pirated and counterfeit copies, copyright protects the integrity of the publishing sector. Ensuring that only approved versions of a work are released, stops deceptive behaviors that may destroy consumer confidence and threaten the financial stability of the sector.

Copyright Subsists in the E-Books:

The rise of the digital era has brought about drastic changes in the production, distribution, and consumption of Books. Electronic Books or E-Books are becoming more and more common

because they give users easy access to traditional printed books. However, the increasing use of e-books has also raised a number of copyright concerns and difficulties that writers and readers should take into account. Similar to printed books, e-books are covered by copyright laws. From the moment their work is created, whether they are self-published or represented by publishing houses, the work owns the copyright. This indicates that the e-books have copyright protection and it is illegal to distribute, reproduce, or copy these works without permission. It is entirely up to the authors to decide whether to charge for their e-books or whether to sell, license, or give them away for free. Digital Rights Management (DRM) technology is a major factor in copyright protection in the field of e-books. Publishers and authors use DRM to prevent illegal distribution or copying of e-books. The DRM restrictions that restrict how an e-book can be shared are frequently encountered by readers when they buy or borrow the e-book. International copyright problems are also introduced by the worldwide nature of e-books and the internet. Different countries have different copyright rules in order to protect and distribute their e-books globally. The writers and the publishers need to understand the difficulties of international copyright agreements.

Copyright Ownership in Publishing:

Copyright Ownership is a fundamental concept in the publishing industry, as it determines who has the legal rights to control, use, and profit from creative works. For writers, publishers, and other publishing industry participants, it is essential to comprehend the complex nature of copyright possession. In the publishing industry, the author usually has the first claim to copyright. An author automatically acquires the initial copyright ownership when they produce an original work, such as a book, article, or other literary piece. This indicates that they are the only ones with the authority to copy, distribute, and modify their creations. With the use of these rights, authors can decide how their work is used and can even make money through royalties and licensing. In the publishing industry, it is usual for authors to assign publishers all or part of their copyright ownership. Advances and royalties are frequently given to authors in exchange for this transfer. After that, publishers acquire ownership of the published work's copyright, enabling them to distribute, promote, and safeguard it. Copyright ownership in publications faces significant issues in the digital age. Stronger enforcement and protection of copyright ownership are required due to the increased prevalence of concerns like digital piracy and unauthorized copying brought about by the ease of digital reproduction and distribution.

Digital Publishing and Copyright:

The creation, distribution, and protection of material in the digital sphere are significantly shaped by the interplay between digital publishing and copyright in the modern era. Authors and artists are granted exclusive rights over a wide range of digital creations, including software, e-books, online articles, and multimedia. This is where copyright law comes into play. Intellectual property rights are governed by the fundamental principle of copyright protection, which forms the basis of the digital publication landscape. Copyright law gives content creators exclusive rights over their works in order to protect their interests. The Madras High Court observed in the case regarding trademark and copyright infringement in the digital promotion of products. Though the focus is on trademarks, it reiterated the importance of protecting intellectual property rights in the digital marketing and e-publication of brands and products⁸. These rights encompass the authority over duplication, distribution, modification, and the capacity to obtain monetary gains via licensing and royalties.

Copyright protection is an essential factor in maintaining the integrity of work and is not limited to the traditional publishing sector. It is also applicable in the digital sphere. Digital Rights Management (DRM) technology is frequently used to protect digital content by limiting unapproved duplication and distribution. In the digital sphere, the idea of fair use is still applicable, allowing for the restricted use of copyrighted content for things like criticism and commentary. Permissions and licensing, which specify the conditions for sharing and modifying digital works, are crucial elements. The persistent issue of online piracy requires strict copyright enforcement. Traditional copyright norms are challenged by emerging technologies such as artificial intelligence (AI) and international copyright considerations, while user-generated content and open-access models add even more complexity. Digital publishers must manage data gathering and usage within the parameters of copyright protection, which raises additional privacy and data rights issues.

Licensing and Permission of E-Publication:

In the realm of e-publication, licensing, and permissions are essential because they provide a legal framework that establishes the permitted uses, making, and distribution of digital content.

⁸ ITC Ltd vs Nestle India Ltd C.S. No. 231 of 2013

Content creators, authors, and e-publishers must grasp the complexities of licensing and permissions in the digital age because there are many ways of using their work. The following are the aspects of licensing and permission usage in e-publication.

1. Licensing Models:

Different licensing models are frequently used by e-publications to specify the terms and restrictions for the usage of digital content. Bombay High Court held that statutory licensing does exist for online streaming services and interim injunction will be granted for the commission of infringement⁹. Typical models for licensing include:

- **All Rights Reserved:** Under the traditional copyright paradigm, the product's author has complete rights and anyone wishing to use it for anything other than fair use must have the express consent of the owner. The Hon'ble Supreme Court of India held that there is a need for proper licensing and royalties for copyrighted musical works in the digital realm, establishing important principles for e-content distribution¹⁰
- **Creative Commons:** Content creators can decide the extent to which their work can be shared, altered, and used with a variety of options provided by Creative Commons licenses. These licenses encourage a harmony between open access and copyright protection.
- **Public Domain:** Some material creators elect to waive all copyright rights by placing their creations in the public domain. This makes it possible for anybody to use, alter, and share the content without restrictions.

2. Permissions for Various Used Cases:

Depending on the particular use case, different licensing and permissions may apply. Authors and e-publishers need to specify the various contexts in which their work can be utilized. For example, different license conditions might apply to content intended for commercial use, educational usage, personal use, or modification into derivative works.

⁹ Tips Industries vs Wynk Music CS IP(L) NO: 113 OF 2018

¹⁰ Super Cassettes Industries Ltd vs Music Broadcast Pvt Ltd Civil Appeal Nos. 4196-4197 of 2012

3. Open Access Publishing:

Academic and creative works are freely accessible through open-access publication platforms. Authors of content have the option to license their creations under open access agreements, which have different restrictions on the uses, distribution, and modification of the work.

4. Permissions for Reproduction:

The conditions for reproducing digital information are frequently specified in licensing agreements. This covers the possibility of content duplication for readers' or users' personal or educational use.

5. Adaptation Rights:

Permissions and licensing might include the ability to make works that are derivative of the original content. Authors and e-publishers have the option to indicate whether or not adaptations like fan fiction, remixes, and translations are allowed.

6. Distribution and Sharing:

The sharing and distribution of content is governed by licensing agreements. E-publishers have the option of restricting content distribution channels, including social networking or file-sharing websites or allowing content to be shared freely.

Copyright Infringement in the Publishing Sector:

In the publishing sector, copyright infringement is a serious problem since it threatens the fundamental basis of intellectual property protection. It occurs when people or companies use copyrighted material, replicate it, or distribute it without getting the required permits or following the restrictions and exceptions set forth by copyright law. The Delhi High Court barred the defendants from copying, distributing, streaming, hosting any cinematographic work or show with internet thus protecting the plaintiff and copyright owner from being victims of copyright infringement¹¹. The violation of copyright in publishing can take many forms, such as the distribution of digital copies, the unapproved duplication of visual components, and the reproduction of written consent. Unauthorized copying of written works is a major concern when

¹¹ Disney Enterprise Inc and Ors vs Kim Cartoon and Ors CS(COMM) 275/2020

it comes to copyright infringement in the publishing industry. This often includes the distribution and duplication of books, essays, and other literary works without the consent of the owner. Publishing unlicensed and duplicated copies in the market not only threatens the financial interests of the publishers but also destroys the publishing ecosystem.

- **Legal Steps to be taken by the publishing Industry:**

In order to address copyright infringement within the publishing industry, it involves various strategies. The copyright owner and publishing houses can take legal action in a court of law against the infringing parties for causing damage to their copyrighted work by way of infringement.

Proactive Protection is another important method of preventing infringement. In order to protect the work, the authors and publishers need to take action. Some of these actions include copyright registration, labeling the materials with copyright notices, and getting Digital Rights Management (DRM) technology for digital publishing.

These precautionary measures serve as deterrent punishment to infringers and a source of legal documentation if legal action is required.

Conclusion:

The foundation of the publishing industry, copyright acts as the center to protect intellectual property rights and promote originality and creativity. Copyright protection is still essential to maintaining the integrity of the industry in a world where ideas, texts, and images are shared via a variety of media. The development of digital journals, e-books, open-access models, and worldwide distribution has completely changed the way that information and entertainment are shared. In the publishing industry, copyright is more than just a legal concept. It is the cornerstone that supports the sector's success. In addition to facilitating the spread of information and culture, it offers the guarantee that the voices of writers and other artists are acknowledged and heard. Publishers, authors, and readers must all understand copyright intricacies because they have a significant impact on the future of a sector that is always changing and adapting to new technology and increased worldwide connectivity. Maintaining the health of the publishing sector in the digital age and beyond requires striking a balance between these interests.