Private Digital Libraries and Orphan Works

Randal C. Picker
Leffmann Professor of Commercial Law

The Law School
The University of Chicago
The New Private Libraries
Books in library fit in broader Google ecosystem
National Academy of Engineering
US Frontiers of Engineering Symposium
September 19–21, 2011
Mountain View, CA

Research at Google
Lightning Talks
September 20, 2011
Statistical Machine Translation

Approach: learn from (massive amounts of) data

Data sources: Web, books, ...

Astonishingly little use of (explicit) linguistic information
More data is better data

languages of well above
Introducing The Kindle Owners' Lending Library

*With an Amazon Prime membership, Kindle owners can now choose from thousands of books to borrow for free - including over 100 current and former New York Times Bestsellers - as frequently as a book a month, with no due dates*

*Books can be borrowed and read on all Kindle E Ink devices and Kindle Fire*

SEATTLE, Nov 02, 2011 (BUSINESS WIRE) --

Today, Amazon.com, Inc. (NASDAQ:AMZN) announced the launch of the Kindle Owners' Lending Library. With an Amazon Prime membership, Kindle owners can now choose from thousands of books to borrow for free - including over 100 current and former New York Times Bestsellers - as frequently as a book a month, with no due dates. No other e-reader or ebookstore offers such a service. With an annual Prime membership, the Kindle Owners’ Lending Library is included at no additional cost. Millions of Prime members enjoy free two-day shipping, unlimited streaming of nearly 13,000 movies and TV episodes, and access to Kindle Lending Library.

"Owning a Kindle just got better. Our Kindle Owners’ Lending Library is the first of its kind, providing an impressive choice of books at no extra cost. Once again, Amazon is leading the way in innovation and building a comprehensive ecosystem of devices and services to delight customers. I’m confident that this new service will be another great reason for customers to choose Amazon Prime membership,” said Amazon CEO Jeff Bezos.

Amazon Prime membership is available for $79 per year or $17.99 per month. Visit http://www.amazon.com/Prime for more information.

Another ecosystem play: linked to Amazon Prime and Kindle devices
News Release

Introducing "KDP Select" – A $6 Million Fund for Kindle Direct Publishing Authors and Publishers

KDP Select is a new option that gives independent authors and publishers access to a whole new source of royalties and readers

SEATTLE--(BUSINESS WIRE)--Dec. 8, 2011--(NASDAQ: AMZN)—Amazon.com, Inc. today announced KDP Select, a new option featuring a $6 million annual fund dedicated to independent authors and publishers. Here's how KDP Select works: if a KDP author or publisher chooses to enroll any of their books in the Kindle Owners' Lending Library, the book will be available for lending for 90 days. After that period, the book will no longer be available for lending. During the 90-day period, those books are eligible to earn a share of the $6 million fund. Authors and publishers can choose to join KDP Select at any time, and earn nothing in between. The monthly fund for December 2011 has been split among the top 50 KDP authors who have already enrolled 129 titles. Titles include Last Stop Bannerman Road by Rhonda Conklin, The Beekeeper of London by Eliza Wiklund, The Islamic Party by Michael Van Zanten, Konrath, B.V. Larson, C.J. Lyons, Scott Nicholson, Just Blaze, and others.

The monthly royalty payment for each KDP Select book is based on that book's share of the total number of borrows of all participating KDP books in the Kindle Owners' Lending Library. For example, if total borrows of all participating KDP Select books are 100,000 in December and an author's book was borrowed 1,500 times, they will earn $150 in additional royalties from KDP Select in December. Amazon expects the fund to be at least $6 million annually.
Financial Information for the Year Ended December 31, 2010

**REVENUES**

<table>
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<tr>
<th>Source</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>City of Chicago</td>
<td>$94,895,466</td>
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<tr>
<td>State of Illinois</td>
<td>$7,113,507</td>
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<td>Federal</td>
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<td>Chicago Public Library Foundation</td>
<td>$3,820,983</td>
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<tr>
<td>Fines and Fees</td>
<td>$2,764,712</td>
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<tr>
<td>Capital Income From Bonds **</td>
<td>$19,893,801</td>
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<tr>
<td><strong>TOTAL REVENUES</strong></td>
<td><strong>$129,532,614</strong></td>
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**EXPENDITURES**

<table>
<thead>
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<th>Category</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personnel</td>
<td>$60,841,571</td>
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<tr>
<td>Library Books and Materials*</td>
<td>$17,800,000</td>
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<tr>
<td>Capital Income From Bonds **</td>
<td>$19,893,801</td>
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<tr>
<td>Other Operating Expenses</td>
<td>$30,997,242</td>
</tr>
<tr>
<td><strong>TOTAL EXPENDITURES</strong></td>
<td><strong>$129,532,614</strong></td>
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</tbody>
</table>

Library Books and Materials: $17,800,000
Press Releases

Kindle Owners’ Lending Library Now Offers Readers Over 100,000 Books to Borrow For Free – As Frequently As Once a Month, With No Due Dates

A third of the Top 20 Kindle Best Sellers in February are available in the lending library

Over 1 million KDP Select books borrowed since program began in December

SEATTLE--(BUSINESS WIRE)--Feb. 29, 2012-- The Kindle Owners’ Lending Library continues to grow rapidly, now offering more than 100,000 books that Amazon Prime members with Kindles can borrow for free—including over 100 New York Times Best Sellers like The Hunger Games trilogy—as frequently as a book a month, with no due dates.

“Kindle Owners’ Lending Library continues to grow rapidly – with over 100,000 titles, customers can choose to borrow a variety of breakout, best-selling titles for free, including ‘Nobody’ by Creston Mapes, ‘The Walk’ by Lee Goldberg and ‘Abducted’ by Theresa Ragan, as well as Kindle Singles from best-selling authors Andy Borowitz, Karin Slaughter and Mishka Shubaly,” said Russ Grandinetti, Vice President of Kindle Content. “It’s also become a meaningful way to grow royalties for authors like Patricia Hester, who sold less than 200 books in 2011 prior to joining KDP Select and has now earned over $36,000 from KDP Select in one month as readers have discovered her books through this service.”

Recent milestones for the Kindle Owners’ Lending Library include:

• Since launching the Kindle Owners’ Lending Library in November 2011, selection has grown by over 20 times.
• More than a third of the Top 20 Kindle Best Sellers in February are enrolled in the library and available to borrow for free.
Artists Network eBooks

Artist’s Network eBooks Art Book Club
A library of art instruction by top artists at your fingertips!

Learn about working in all mediums: from colored pencil and drawing, to acrylic, watercolor & more...

Artists Network eBooks: Art Book Club
I earn how to draw, paint with watercolor, acrylics, oils and more with access to over 100 art instruction books from the publishers of North Light Books. Put a whole library of books on how to paint & how to draw at your fingertips with just one subscription.

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“When your subscription expires, you’ll no longer have access to the ebook library.”

Key here is ability to turn on/off access
The Old Private Libraries
Vol 1: Covers 1/1/1706 to 12/31/1734 (released 1959)

... Vol 40: Covers 5/16/1783 to 9/15/1783 (released 2011)

[Franklin lived 1/17/1706 to 4/17/1790]
**Volume 1  January 6, 1706, through December 31, 1734**

- **Record of Birth**  Sun, Jan 6, 1706, p 003
- **Record of Baptism**  Sun, Jan 6, 1706, p 003
- **Verses from Benjamin Franklin (the Elder)**  Fri, Jul 7, 1710, p 003
- **Acrostic from Benjamin Franklin (the Elder)**  Sat, Jul 15, 1710, p 004
- **Verses from Benjamin Franklin (the Elder)**  1713, p 005
- **The Lighthouse Tragedy**  Mon, Nov 3, 1718, p 006
- **The Taking of Teach the Pirate**  March 1719, p 007
- **Silence Dogood, No. 1**  Mon, Apr 2, 1722, p 008
- **Silence Dogood, No. 2**  Mon, Apr 16, 1722, p 011
- **Silence Dogood, No. 3**  Mon, Apr 30, 1722, p 013
- **Silence Dogood, No. 4**  Mon, May 14, 1722, p 014
- **Silence Dogood, No. 5**  Mon, May 28, 1722, p 018
- **Silence Dogood, No. 6**  Mon, Jun 11, 1722, p 021
- **Silence Dogood, No. 7**  Mon, Jun 25, 1722, p 023
- **Silence Dogood, No. 8**  Mon, Jul 9, 1722, p 027
- **Silence Dogood, No. 9**  Mon, Jul 23, 1722, p 030
- **Silence Dogood, No. 10**  Mon, Aug 13, 1722, p 032
- **Silence Dogood, No. 11**  Mon, Aug 20, 1722, p 037
- **Silence Dogood, No. 12**  Mon, Sep 10, 1722, p 039
- **Silence Dogood, No. 13**  Mon, Sep 24, 1722, p 041
- **Silence Dogood, No. 14**  Mon, Oct 8, 1722, p 043
Joseph Breintnall to Directors of Library Company

[November 8, 1731]

The Minutes of me Joseph Breintnall Secretary to the Directors of the Library Company of Philadelphia, with such of the Minutes of the same Directors as they order me to make. Begun the 8th Day of November 1731. By Virtue of the Deed or Instrument of the said Company dated the first Day of July last.

The said Instrument being compleated by fifty Subscriptions I subscribed my Name to the following Summons or Notice, which Benjamin Franklin sent by a Messenger. Vizt.

To

Benjamin Franklin, Thomas
William Parsons, Hopkinson
Thomas Godfrey, Philip

[11/8/1731]

11/8/1731
Benjamin Franklin,

William Parsons,

Thomas Godfrey,

Thomas Cadwalader,

Robert Grace and

Hopkinson
Philip
Syng
Jnr.
Anthony
Nicholas
John
Jones
Jnr.
Isaac
Penington

“Gentlemen,

“The Subscription to the Library being compleated You the Directors appointed in the Instrument are desired to meet this Evening at 5 o’Clock, at the House of Nicholas Scull to take Bond of the Treasurer for the faithfull Performance of his Trust, and to consider of, and appoint a proper Time for the Payment of the Money subscribed, and other Matters relating to the said Library.

Philada. 8 Novr. 1731
Joseph Breintnall, Secy.”
“Any member may borrow a Book for 2, 3, or 4 weeks, leaving his Note for double Value, and paying a small Penalty if ’tis not return’d at the Time agreed; which Penalties are applied to defraying Charges, or purchasing more Books.”
Those who are not Subscribers may notwithstanding borrow Books, leaving in the Hands of the Librarian, as a Pledge, a Sum of Money proportion’d to the Value of the Book borrow’d, and paying a small Acknowledgment for the Reading, which is apply’d to the Use of the Library.
The Library Company of Philadelphia

The Library Company of Philadelphia is an independent research library specializing in American history and culture from the 17th through the 19th centuries. Open to the public free of charge, the Library Company houses an extensive collection of rare books, manuscripts, broadsides, ephemera, prints, photographs, and works of art. Founded in 1731 by Benjamin Franklin, the Library Company is America’s oldest cultural institution and served as the Library of Congress from the Revolutionary War to 1800. The Library Company was the largest public library in America until the Civil War.

The mission of the Library Company is to preserve, interpret, make available, and augment the valuable materials in our care. We serve a diverse constituency throughout Philadelphia and internationally, offering comprehensive reader services, an internationally renowned fellowship program, online catalogs, and regular exhibitions and public programs.
Orphan Works and Use Neutrality
§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if—

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are

   (i) open to the public, or

   (ii) available not only to researchers affiliated with the library or archives or with the institution in which the library or archives is located, but also to individuals not affiliated with the institution, and not charged more than a normal cost for duplication of materials;

(b) The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for purposes of another library or archives of the type described by clause (2) of subsection (a), if—
C. Recommended Statutory Language

SECTION 514: LIMITATIONS ON REMEDIES: ORPHAN WORKS

(a) Notwithstanding sections 502 through 505, where the infringer:

(1) was not aware, and in the circumstances could not reasonably have been aware, of the infringement;

(2) acted in good faith;

(b) LIMITATIONS

(1) the Court may cease and desist from the infringer’s use of the infringed work;

(2) the Court may grant an order directing the infringer to either:

(A) not to use the infringed work; or

(B) cease and desist from using the infringed work;

(C) pay the plaintiff reasonable compensation for the use of the infringed work;

“no award for monetary damages (including actual damages, statutory damages, costs or attorney’s fees) shall be made other than an order requiring the infringer to pay reasonable compensation for the use of the infringed work;”
“provided, however, that where the infringement is performed without any purpose of direct or indirect commercial advantage ... no award of monetary relief shall be made.”

U.S. Copyright Office, Report on Orphan Works, Jan 2006
Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on certain permitted uses of orphan works

(Text with EEA relevance)

{SEC(2011) 615 final}
{SEC(2011) 616 final}
This Directive concerns certain uses of orphan works undertaken by publicly accessible libraries, educational establishments or museums as well as by archives, film heritage institutions and public service broadcasting organizations.
Books and libraries can be financed with different tools: advertising and other product bundles.

Private libraries won’t face the same constraints, such as privacy issues, as public libraries.
The Orphan Works Licensing Regime (OWLR) Question: Should we think that the orphan works rules induce the creation of works?
Salience, Optimism Bias and Selection Effects

- Book Author
  - Expect to be ignored
    - Professors
  - Expect to be famous
    - Normal People

- Forgotten/Lost
- Remembered

OWLR Irrelevant: No (Ex Ante) Orphans Problem
Salience, Optimism Bias and Selection Effects

Forgotten/Lost

Unknown Use

Found

Unknown Use

Never Found

Known Use

Salience: OWLR (Ex Ante) Irrelevant

OWLR Irrelevant

(Ex Ante)
Takeaways on Orphan Works Licensing Regime

1. OWLR unlikely to induce much original work: too many nodes out to be salient + authors will be optimistic

2. Orphan Works Selection Effect: Actual orphans are likely to be books that weren’t economically important => shouldn’t pay licensing fees as if they were
Takeaways on Orphan Works Licensing Regime

3. Use neutrality important to facilitate many paths to digital libraries. Any licensing fee difference is subsidy question: whether and who pays?

4. We need to make sure that we have good discovery incentives for abandoned works. Losing ventures will remain orphaned, but successes will lead to many claiming parents. Hatch-Waxman for orphan works?
Thank You