

April 12-13, 2012

BCLT Orphan Works & Mass Digitization

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

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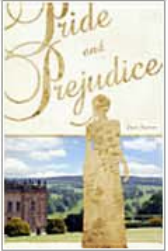


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Statistical Machine Translation

Approach: learn from (massive amounts of) data

Data sources: Web, books, ...

Astonishingly little use of (explicit) linguistic information

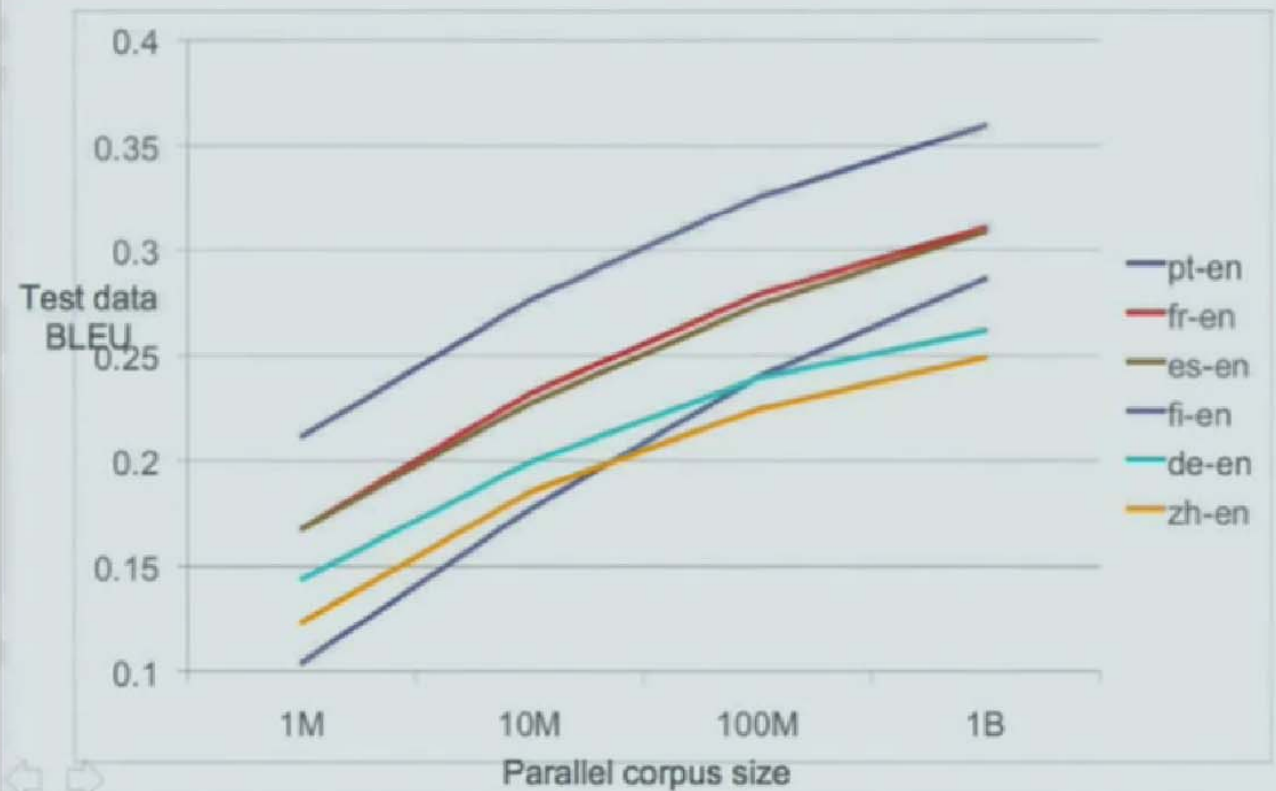


Google docs Slide 6 of 17 - consolation

View together



More data is better data



Google docs languages of well above))

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Press Releases

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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

"Owning a Kindle just
Owners' Lending Libra
huge libra

Another ecosystem play: linked to Amazon Prime and Kindle devices

11/2/11



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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 of a book in the Kindle Store for at least 90 days, those books are eligible to earn a share of the \$6 million fund. Authors and publishers can choose anything in between. The monthly fund for December is \$500,000. The top 50 KDP authors have already enrolled 129 titles. Authors include: Konrath, B.V. Larson, C.J. Lyons, Scott Nicholson, Ju

**Amazon KDP Select
Library Books Costs: >
\$6,000,000**

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 receive \$750 in additional royalties from KDP Select in December. Amazon expects the fund to be at least \$6 million

12/8/11



Financial Information for the Year Ended | December 31, 2010

Library Books and Materials: \$17,800,000

REVENUES

City of Chicago	\$94,895,466
State of Illinois	\$7,113,507
Federal	\$1,044,145
Chicago Public Library Foundation	\$3,820,983
Fines and Fees	\$2,764,712
Capital Income From Bonds **	\$19,893,801
TOTAL REVENUES	\$129,532,614

EXPENDITURES

Personnel	\$60,841,571
Library Books and Materials*	\$17,800,000
Capital Income From Bonds **	\$19,893,801
Other Operating Expenses	\$30,997,242
TOTAL EXPENDITURES	\$129,532,614



Press Releases

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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.

2/29/12

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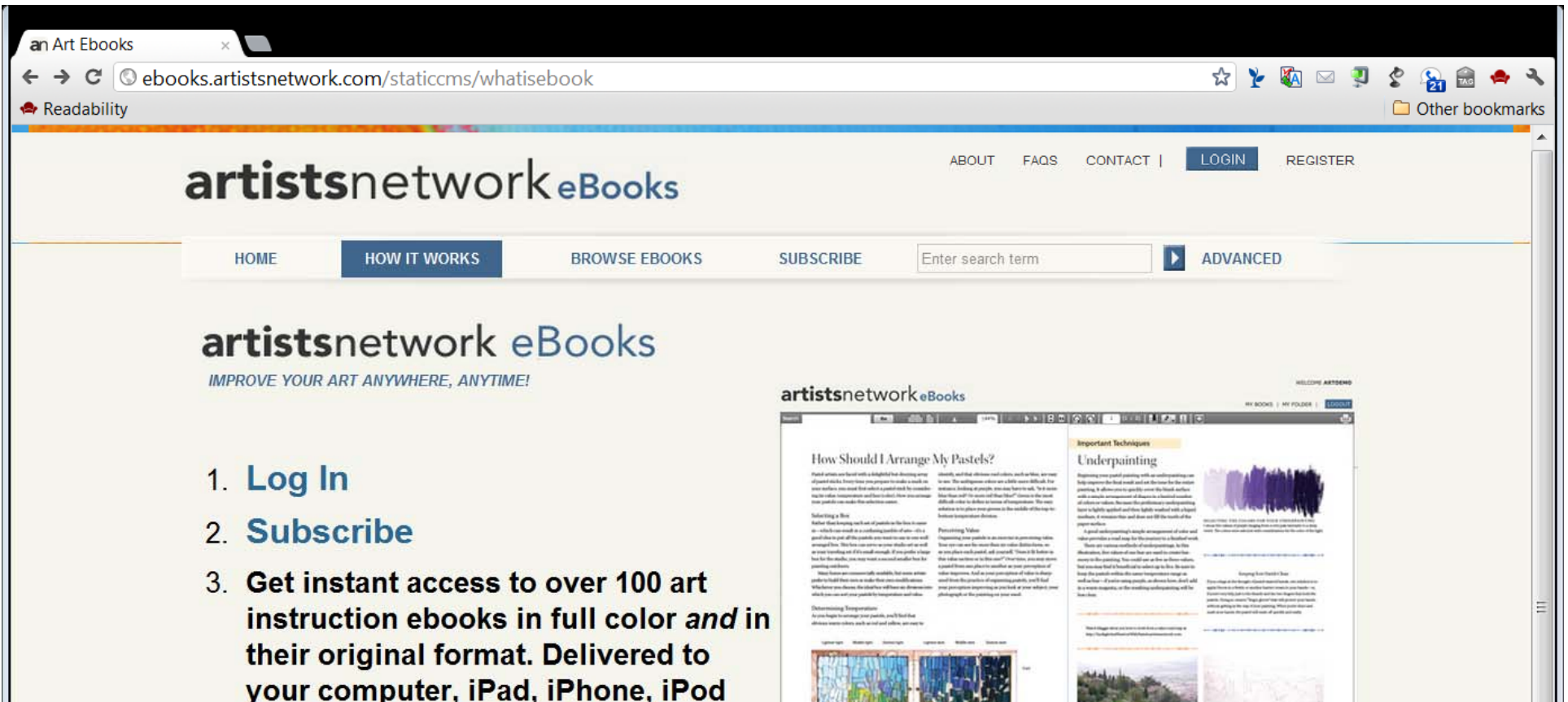
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Yale University Library
P.O. Box 208240
New Haven, CT 06520-8240
[203-432-1814](tel:203-432-1814)

**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]

by Volume (year) by
Name Morgan Intro

- Vol. 1: 1706-34
- Vol. 2: 1735-44
- Vol. 3: 1745-50
- Vol. 4: 1750-53
- Vol. 5: 1753-55
- Vol. 6: 1755-56
- Vol. 7: 1756-58
- Vol. 8: 1758-59
- Vol. 9: 1760-61
- Vol. 10: 1762-63
- Vol. 11: 1764
- Vol. 12: 1765
- Vol. 13: 1766
- Vol. 14: 1767
- Vol. 15: 1768
- Vol. 16: 1769
- Vol. 17: 1770
- Vol. 18: 1771
- Vol. 19: 1772
- Vol. 20: 1773

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

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Joseph Breintnall to Directors of Library Company

MS Minute Book: Library Company of Philadelphia

[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 Hopkinson
		Philip Syng Junr.
William Parsons,		Anthony
Thomas Godfrey		

11/8/1731

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BENJAMIN FRANKLIN,
William Parsons,
Thomas Godfrey,
Thomas Cadwalader,
Robert Grace and
Hopkinson
Philip
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Junr.
Anthony
Nicholas
John
Jones
Junr.
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.”

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11/8/1731

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A Short Account of the Library

Printed in *A Catalogue of Books belonging to the Library Company of Philadelphia*. Philadelphia:
Printed by B. Franklin, 1741. (Library Company of Philadelphia)

The Library
50 Persons,
and 10s. pe
Ten D
Vote, at a C
The N
be admitted
Meeting of
Share at the
Any M
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.

“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.”

7/13/1741

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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.

Every Member has an absolute Property in his Share; may devise it in his Will, or dispose of it when he pleases to any Person the Directors approve. And Shares so sold have always had the Value 10s. so that a Share which a Person has in the Library now worth 10s. is as cheap and easy to be had as of the Inhabitants of the City.

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 Librarian's Office is open from 9 o'Clock 'til 8.

Besides the usual Rules, the Librarian is favour'd with a large double Manuscript Room, Esq; A handsome Lot of Ground whereon to build a House for the Library, from the

7/13/1741

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The Library Company OF PHILADELPHIA Founded by Benjamin Franklin in 1731



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Capitalism by Gaslight



The Shadow Economies of 19th-Century America

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](#).



CONFERENCE
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Search
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ONLINE EXHIBITIONS



Orphan Works and Use Neutrality

TITLE 17 - COPYRIGHTS

CHAPTER 1 - SUBJECT MATTER AND SCOPE OF COPYRIGHT

§ 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;

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(ii) available not only to researchers affiliated with the library or archives or with the

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(3) the repr

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stating that

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(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

another library or archives of the type described by clause (2) of subsection (a), if—

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

UNITED STATES COPYRIGHT OFFICE

REPORT ON ORPHAN WORKS

C. Recommended Statutory Language

SECTION 514: LIMITATIONS ON REMEDIES: ORPHAN WORKS

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

(1) diligently searched for the owner of the work, and that owner cannot be identified;

(2) the remedies available under sections 502 through 505 are not applicable.

(b) LIMITATIONS ON REMEDIES:

(1) In a case where the infringer has prepared or commenced preparation of a derivative work that recasts, transforms or adapts the infringed work with a significant amount of the infringer's expression, any injunctive or equitable relief granted by the court shall be limited to an order requiring the infringer to pay reasonable compensation for the use of the infringed work;

(2) In a case where the infringer has prepared or commenced preparation of a derivative work that recasts, transforms or adapts the infringed work with a significant amount of the infringer's expression, any injunctive or equitable relief granted by the court shall be limited to an order requiring the infringer to pay reasonable compensation for the use of the infringed work;

(3) In a case where the infringer has prepared or commenced preparation of a derivative work that recasts, transforms or adapts the infringed work with a significant amount of the infringer's expression, any injunctive or equitable relief granted by the court shall be limited to an order requiring the infringer to pay reasonable compensation for the use of the infringed work;

(4) In a case where the infringer has prepared or commenced preparation of a derivative work that recasts, transforms or adapts the infringed work with a significant amount of the infringer's expression, any injunctive or equitable relief granted by the court shall be limited to an order requiring the infringer to pay reasonable compensation for the use of the infringed work;

(5) In a case where the infringer has prepared or commenced preparation of a derivative work that recasts, transforms or adapts the infringed work with a significant amount of the infringer's expression, any injunctive or equitable relief granted by the court shall be limited to an order requiring the infringer to pay reasonable compensation for the use of the infringed work;

(A) in the case where the infringer has prepared or commenced preparation of a derivative work that recasts, transforms or adapts the infringed work with a significant amount of the infringer's expression, any injunctive or equitable relief granted by the court shall be limited to an order requiring the infringer to pay 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;”

UNITED STATES COPYRIGHT OFFICE

REPORT ON ORPHAN WORKS

C. Recommended Statutory Language

SECTION 514: LIMITATIONS ON REMEDIES: ORPHAN WORKS

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

- (1) prior to the commencement of the infringement, performed a good faith, reasonably diligent search to locate the owner of the infringed copyright and the infringer did not locate that owner, and
- (2) throughout the course of the infringement, provided attribution to the author and copyright owner of the work, if possible and as appropriate under the circumstances,

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(b) LIMITA

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(2)

derivative work that recasts, transforms or adapts the infringed work with a significant amount of the infringer's expression, any injunctive or equitable relief granted by the

“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.”



EUROPEAN COMMISSION

Brussels, 24.5.2011
COM(2011) 289 final
2011/0136 (COD)

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}

EU Draft Directive on Orphan Works, 5-24-2011

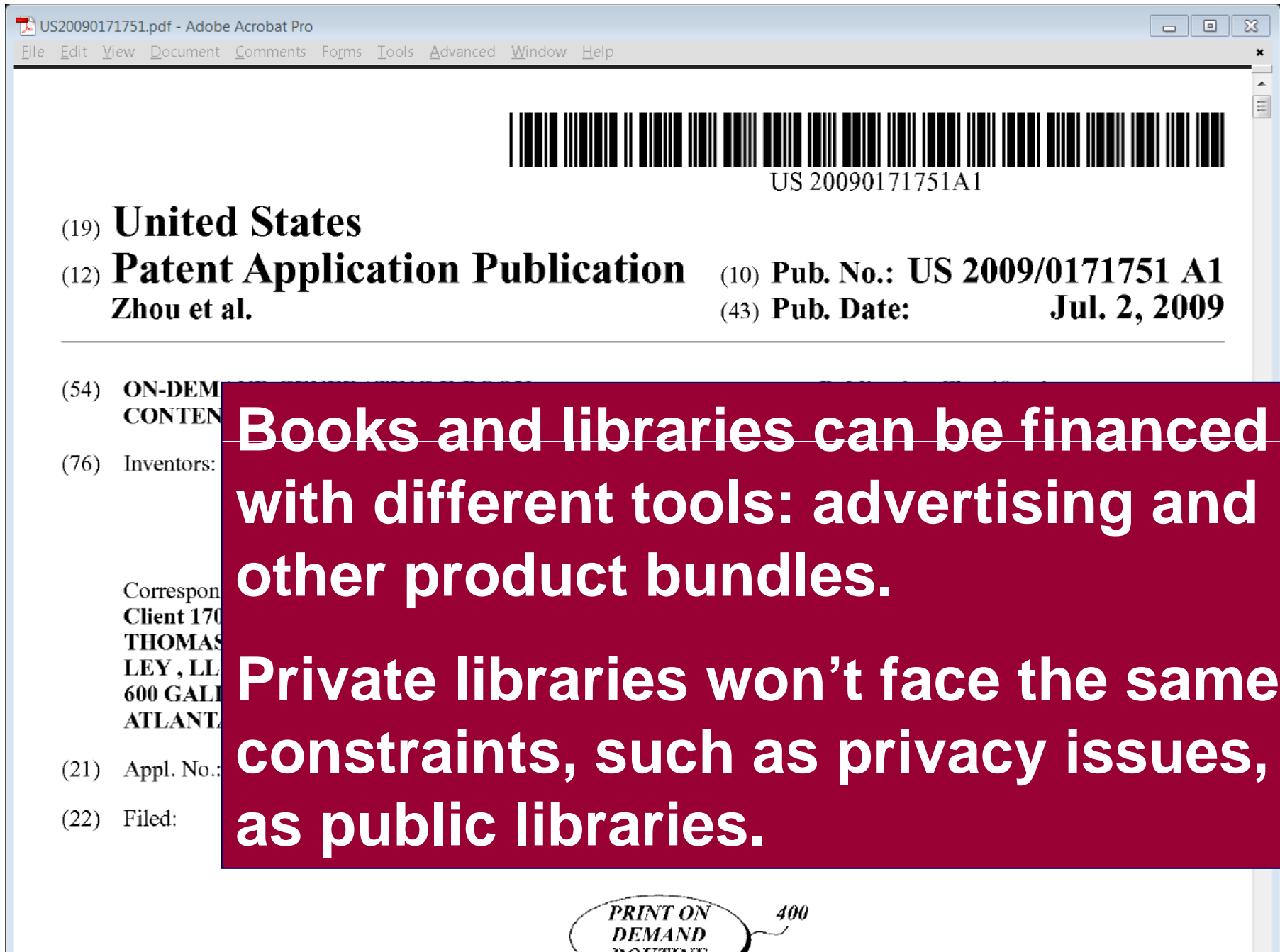
Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not exceed what is necessary to achieve those objectives.

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Subject matter and scope

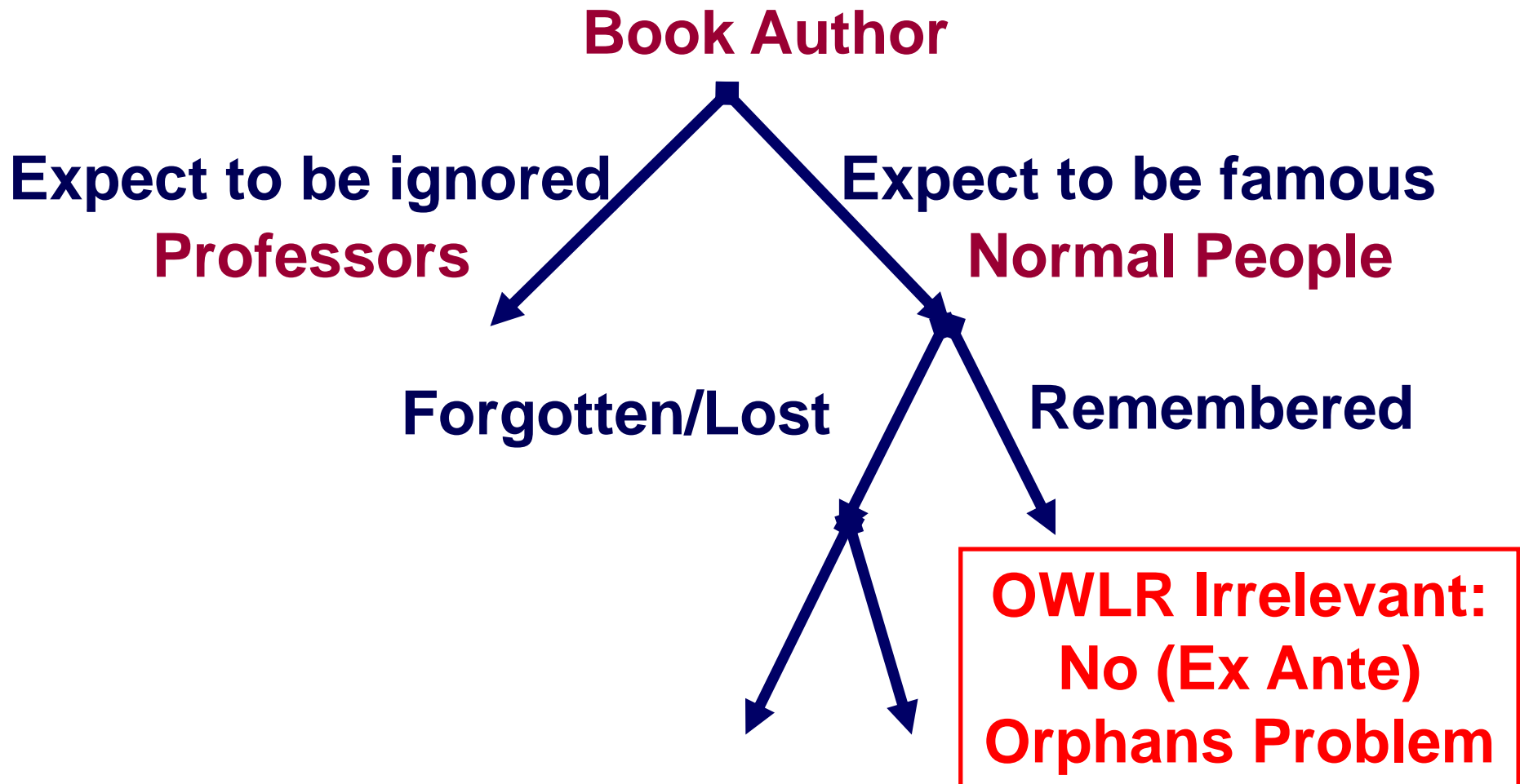
1. This Directive concerns certain uses of orphan works undertaken by publicly

“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.”

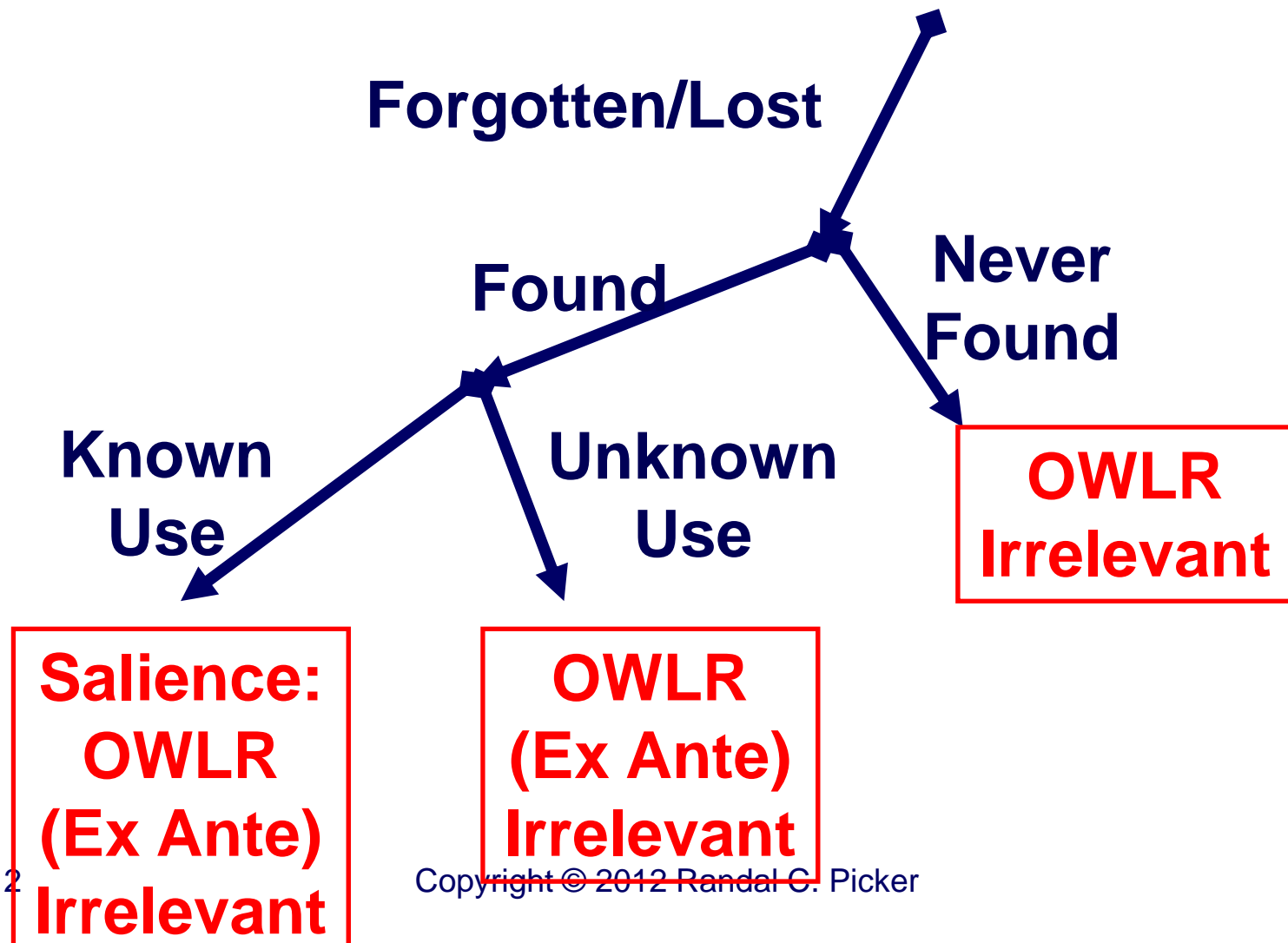


The Orphan Works Licensing Regime
(OWLR) Question:
Should we think that the orphan works
rules induce the creation of works?

Saliency, Optimism Bias and Selection Effects



Saliency, Optimism Bias and Selection Effects



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