

## **The Publishing Industry, the Recording Industry and the Five Stages of Grief**

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Internet connectivity and digital technology are drastically changing the publishing industry. With the advent of new technology, the publishing industry finds itself faced with new problems, particularly in the realm of copyright law. The changes that are currently occurring in the publishing industry are very similar to the changes that occurred in the recording industry in the late 1990s and early 2000s. This study applies the Kübler-Ross model, also known as the five stages of grief, as a template to explain the changes that the recording and publishing industries are going through and analyze how copyright laws and technology contribute to the evolution of these industries at each stage. Changes in copyright law are needed to ensure the proper balance between the free exchange of ideas and intellectual property rights during this age of rapid technological development.

Over the past two decades, increased Internet connectivity and advancements in digital technology have dramatically changed the way people live, work and play. In the recording and publishing industries, technological advancements have provided consumers with increased access to material and made it easy for individuals to share multiple, perfect copies of books, songs, and other media. These developments have presented lawmakers, judges and corporations with new challenges, particularly in the realm of copyright law (Ku 2002).

In the late 2000s, the publishing industry was forced to confront and respond to technological changes that led to declining sales for books and other forms of printed media. The birth of new products such as the Amazon Kindle, the Barnes & Noble Nook, and new media programs such as the Google Books project, signaled the death of traditional books, newspapers, and magazines. Between 2002 and 2010, e-Book sales increased from .05% of the publishing trade to over 9% (Association of American Publishers 2010).<sup>1</sup> Over the same period, sales figures for traditional books decreased substantially and large bookstore chains such as Barnes & Noble and small, independent bookstores experienced significant declines in both sales and profits.

Today, bookstores are facing increased competition from both online retailers and superstores, such as Wal-Mart and Target. As a result, many bookstores have shut their doors for good. Indeed, the 2011 liquidation of Borders – a company that had been one of the largest and most profitable booksellers in the country – demonstrated that no company was immune to the changes occurring in the industry. In this environment, it often appears that the traditional publishing industry is fading away as books, magazines, and newspapers are replaced by the glossy screens of Kindles and iPads, and bookstores and libraries are converted to online shops and book rental agencies.

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<sup>1</sup> This figure does not include higher education paperback and hardcover book sales.

The technological transformation of the publishing industry has led to increases in copyright infringement and piracy, contributing to further losses for bookstores and the publishing industry. A 2002 study, for example, found that illegal downloading decreased the intellectual property value of authors' work (Klein, Lerner, & Murphy 2002). In addition, it is estimated that nine million books were illegally downloaded via peer-to-peer file sharing sites in the latter half of 2009, representing nearly \$3 billion in lost revenues for the publishing industry (Attributor Corporation 2010).

The copyright issues now facing the publishing industry are very similar to those experienced previously by the recording industry. Moreover, both industries have reacted similarly in their attempts to cope with the changing landscape of technology. This paper details the stages of policy development for the music and publishing industries as they work to protect their copyrights and maximize revenues at a time of increasing consumer access to information and technology. The pattern observed here loosely follows the Kübler-Ross model of the five stages of grief, which is fitting given that recording companies and publishers are grappling with the demise of long-standing sales and profit models that are being undone by the technological transformation of their industries.

### **De Je Vu All Over Again: Technology, Copyright Law and the Publishing Industry**

Since the creation of copyright law in England in 1709, copyright law has been used to protect intellectual property rights on original pieces of work by granting the author of the work certain rights to protect and distribute their work. For the purposes of public interest, "...courts recognized that certain instances of unauthorized reproduction of copyrighted material, first described as... "fair use," would not infringe the author's rights" (Leval 1990). The creation of fair use doctrine allowed information to flow, while providing some measure of protection for the rights of authors and publishers.

Though copyright law initially protected only books, it was soon expanded to protect other forms of original pieces of work, including paintings, photographs, movies and music (Statute of Anne 1710). Although there have been some additions to copyright law – most notably the Digital Millennium Copyright Act, which put in place new regulations to cope with the changing technological environment – the basic framework of copyright law remained largely unchanged. Despite improvements in printing technology and production, the basic form of books changed very little. In order to publish a book, it was necessary for the author to send a manuscript to get approved by a publishing company. After the book went through the editing process, it was printed and shipped to bookstores and customers.

The introduction of audiobooks in the late 1960's had little impact on the publishing industry, as the high cost of producing audiobooks and consumer preferences for printed material limited the reach and competitiveness of the new format. Throughout the rest of the twentieth century, the publishing industry's processes and methods of providing readers with books remained the same. It was not until the mid-2000s that traditional publishing companies began to see a decline in traditional book sales (US Department of Commerce 2007). At that point, changes occurred rapidly and many printing houses and bookstores were unable to compete in the new environment. Technological changes in the printing industry and the increased availability of books and other written material on the Internet have created new challenges for copyright law. Authors and publishing companies have become increasingly concerned about copyright infringement and the illegal downloading of eBooks. Fair Use doctrine has also been challenged, as many people question whether the doctrine can be fairly implemented in the digital age.

From a scholarly perspective, we can learn a great deal about how industries cope with change by looking at past behavior. In many ways, the issues that the publishing industry is

facing today are similar to the issues that the music industry faced in the late 1990s and early 2000s. Examining the recording industry's response to technological changes and copyright challenges can help us better understand the challenges facing the publishing industry and may shed some light on where the publishing industry is headed over the next decade.

In both the recording and publishing industries, rapid changes in technology have made traditional models of production, sales and profit obsolete. For both industries, the transition to new ways of doing business has been difficult, and corporate executives and employees have been understandably reluctant to accept the death of the traditional business model as they have always known it. The recording and publishing industries have experienced a catastrophic loss – in this case, the loss of a predictable and profitable way of doing business. A careful examination of how the recording industry reacted to the technological changes affecting their industry suggests that actions taken by the industry parallel the five stages of grief identified by Elisabeth Kübler-Ross (1969). Observing the recording industry's reaction to changes in their industry may help explain how the publishing industry is reacting to similar technologically-driven challenges.

### **The Kübler-Ross Model and the Five Stages of Grief**

In 1969, psychiatrist Elisabeth Kübler-Ross, a specialist in the field of near death studies, published *On Death and Dying*. Kübler-Ross, who had worked with terminally ill patients during her residency, developed a series of seminars based on interviews with the terminally ill patients that dealt with the patient's reactions as they came to terms with death. After studying the interviews, Kübler-Ross found that those dealing with grief or tragedy responded in similar ways to death and tragedy; the pattern that she identified came to be known as the five stages of grief or the Kübler-Ross model.

The five stages of the Kübler-Ross model are denial, anger, bargaining, depression, and acceptance (Kübler-Ross 1969). Denial is characterized as either a conscious or unconscious refusal to accept the facts of the situation at hand. In this stage, people often mentally distance themselves from the situation and force themselves to believe that the changes that are occurring are not really happening to them (Kübler-Ross 1969). Anger is the second step in the Kübler-Ross model and is characterized by subjects lashing out at themselves or others (Kübler-Ross 1969). The third step in the Kübler-Ross model is bargaining, where subjects attempt to negotiate with the powers at hand in order to reach a compromise. Kübler-Ross notes that while a solution may appear at this stage, it is typically only a temporary fix for the larger problem (Kübler-Ross 1969). Depression is the fourth step in the Kübler-Ross model, and is viewed as a "dress rehearsal" for the aftermath of the situation (Kübler-Ross 1969). The final stage in the Kübler-Ross model is acceptance. In this stage, the person becomes emotionally detached from the situation and comes to accept reality (Kübler-Ross 1969). Kübler-Ross also observed that the steps did not always occur in the same order, that each person may not experience all the steps, and that patients could go back and forth between the steps (Kübler-Ross 1969).

Although the Kübler-Ross model was originally applied to people suffering from terminal illnesses, it was soon applied to other catastrophic losses, including: job loss, divorce, the diagnosis of a disability or disorder, or the death of a loved one (Parkes 1988). The Kübler-Ross model has also been applied to politics, most commonly to describe a politician's reaction to an unexpected political scandal. While most politicians do not go through all five stages of the Kübler-Ross model, they typically display the initial stage of denial and the final stage of acceptance (Goldsworthy 2005).

In this paper, I use the Kübler-Ross model, also known as the five stages of grief, as a template to explain the changes that the recording and publishing industries are going through

and to analyze how copyright laws and technology contribute to this pattern of politics in each of the stages. Since the recording industry has already gone through many of the steps, I summarize how the Kübler-Ross model applies to the recording industry and consider what this pattern means for the future of the publishing industry. Finally, I consider copyright law and analyze how copyright law must change in order to cope with the new technological changes within the industry.

### **The Five Stages of Grief in the Recording Industry**

Denial occurs when a person does not acknowledge or refuses to accept the reality of the situation at hand (Kübler-Ross 1969). During this stage, the person believes that these changes are not happening to them. The denial stage is an accurate description of the initial reaction to the recording industry when it faced rapid technological changes affecting their industry in the mid-1990s. During this period, MPEG Layer 3 files (which would later be known as MP3 files) emerged as a cheap and convenient method of compressing audio files and sharing them on the Internet. Though the MP3 file was not the only form of audio compression available, it was the most successful due to the invention of the WinAmp program, which allowed people to download music and play it on their personal computers (Levy 2006). MP3 Files were also preferred over other audio formats because their sound quality rivaled the sound quality provided by traditional CDs.

In 1997, Michael Robertson launched MP3.com, one of the first online music downloading sites. In order to avoid breaking copyright laws, Robinson posted songs he obtained on a nonexclusive basis from bands that were not signed with record labels (Bergmann 2002). While bands did not receive payment for the songs that were posted on the website, they benefited from the promotion provided by the site. The CD-like audio quality, small file space, and free price of the downloads made downloading MP3 files of songs extremely appealing, especially to college students who had access to high speed Internet networks that allowed them to “rip” music onto their personal computers by saving the files as MP3s and uploading the songs to the Internet (Mooney, Samanta & Zadeh 2002).

The record companies were aware of the existence of MP3.com; however, they largely ignored the website and the growing network of other peer-to-peer file sharing networks. At the time, the technology was still limited by the fact that users could only play MP3 files on their computer. One reason that the industry did not react to the emergence of file sharing technology is that industry profits were at an all-time high; this gave the recording industry a false sense of confidence and a distorted sense of their control over the marketplace (RIAA 2009). The industry’s failure to appreciate the potential impact that emerging technological changes would have on their business model corresponds to the denial stage in the Kübler-Ross model.

The industry’s approach to technology changed dramatically in 1998 following the invention of the Rio PMP300, a portable music player that could play an hours’ worth of MP3 files, and the growing affordability of CD burners that could copy MP3 files onto recordable CDs (Levy 2006). Once people began to access MP3 files in places other than their personal computers, the recording industry began to understand the potential impact that this technology would have on their profits. At this point, the recording industry entered the anger stage and began to take out its anger on other people. In order to combat peer-to-peer file sharing networks, artists and industry executives lashed out at the peer-to-peer file sharing networks and the growing number of consumers that used these programs. One of the industry’s most notable actions against peer-to-peer file sharing networks was the case of Napster, an online peer-to-peer file-sharing site that allowed users to share MP3 files with one another. The creation of Napster in 1999 revolutionized the exchange of MP3 files because it provided users with a central meeting point to access millions of songs from a single website and created

a central server where users could search for an artist while staying in the same program. Napster also allowed users to store MP3 files on their computers instead of a central server; this allowed for faster downloads and allowed users to use less bandwidth in comparison to traditional file sharing websites (Bergmann 2002). Napster made it easy for people to obtain music from their favorite artists for free. As the year went on, the number of users began to increase rapidly, and the service had over 80 million registered users at the height of its popularity (Bergmann 2002).

Many bands and artists (most notably the band Metallica and rapper Dr. Dre) reacted with anger when they found their music available for free online. The artists, upset about the loss of royalty payments and the loss of artistic control over their material, argued that their intellectual property rights were being violated (Green 2002). Record companies also experienced a sharp decline in sales, which they attributed to the popularity of Napster.

In 2000, A&M Records and a number of other record companies filed a primary injunction against Napster in the District Court of Northern California alleging that Napster was guilty of "contributory and vicarious copyright infringement" (A&M Records, Inc. v. Napster, Inc.). Napster responded that the users of the website were protected under fair use doctrine and that stopping the service would suppress users' First Amendment right to freedom of speech (A&M Records, Inc. v. Napster, Inc.). However, after the district court considered the fair use standards against Napster, Judge Marilyn Hall Patel found that the record companies presented valid information that the illegal file sharing negatively affected the recording industry and found Napster liable for infringement (A&M Records, Inc. v. Napster, Inc.). Judge Hall Patel required Napster to present a written plan detailing how it would keep copyright infringing files out of the Napster system and pay songwriters and record companies for lost royalties (A&M Records, Inc. v. Napster, Inc.).

Napster appealed the case to the United States Court of Appeals for the Ninth Circuit. In the appeal, Napster identified three ways that their service was used which were protected by the fair use doctrine. Napster enabled users to sample music before they bought it, allowed for the downloading of digital recordings already owned by users in hard copy format (space-shifting), and provided a means for permissive distribution of music that performers agreed to put on the Napster system (A&M Records, Inc. v. Napster, Inc.). Although the Court of Appeals found the criteria for permissive distribution acceptable, the court determined that Napster users were not covered by fair-use doctrine based on the Digital Millennium Copyright Act and affirmed the lower court's decision (A&M Records, Inc. v. Napster, Inc.)

The fair use criteria that played the largest part in the ruling related to the effect of the users on market criteria. In the ruling, the appeals court found that Napster produced a negative effect on the market because it, "... reduced audio CD sales among college students and it raised barriers to plaintiffs' [A&M Records] entry into the market for the digital downloading of music" (A&M Records, Inc. v. Napster, Inc.). Since Napster negatively affected the recording industry by reducing the industry's profit margin, the argument that Napster was protected under fair use doctrine was invalid. The ruling allowed the recording industry to go after individuals who illegally downloaded music from the Internet. Since 2003, the industry opened legal proceedings targeting 35,000 people (Wall Street Journal 2008). By taking legal action against individual users, the recording industry hoped to deter others from illegally downloading copyrighted material.

After the decision was handed down from the courts, many people expressed their displeasure over the decision. In reaction to the case, Professor Jessica Litman and eighteen copyright law professors authored a Brief Amicus Curiae supporting the reversal of the district court ruling. Litman found that the courts treatment of the case and the claims of the recording industry against Napster abused copyright law and that by outlawing a useful technology

merely because many people use it as a tool for infringement will rarely “. . . promote the progress of science and the useful arts” (Litman 2000). The professors’ argued that Napster was “merely a tool” and “does not violate copyright law because it does not attempt to reproduce, adapt, distribute to the public, publicly perform or publicly display works” (Litman 2000). The professors also argued that the court system applied a very narrow definition of fair use doctrine in the case and that the stubbornness of the recording industry to adapt to the changing landscape was not an excuse to go after peer-to-peer file sharing networks.

Although the court’s ruling led to the downfall of Napster,<sup>2</sup> the recording industry’s victory was a temporary one. Within months, new peer-to-peer file sharing networks such as Kazza, Limewire, and Morpheus, and big torrent sites that allowed for the transport of larger files emerged (Reese 2002). Record companies attempted to go after these new file-sharing networks, but soon realized the new file sharing sites were harder to control and infiltrate due to developments in technology. As the recording industry continued to go after these companies, the number of new peer-to-peer file sharing networks increased.

In the mid-2000s, as traditional record sales continued to decline at a steady rate of about two percent per year, the recording industry reluctantly entered the bargaining stage. (RIAA 2009). To increase record sales and prevent the illegal downloading of copyrighted material, the recording industry sought to create its own online MP3 platform to compete with existing peer-to-peer file sharing networks.

The creation of the iPod music player and the iTunes store by Apple provided a huge boost to the recording industry. The iTunes program, created by Steve Jobs in 2002, made it possible to easily, affordably and legally download music to a personal computer or MP3 player. The iTunes store provided users the ability to download files but also placed restrictions within the encoding of the file that prevented the audio track from being shared and copied too many times, which helped protect the copyrighted work (Levy 2006). Jobs also created an iPod portable music player that played songs purchased from the iTunes store as well as other audio files ripped from CDs. The record companies decided to go along with Jobs’ plan and agreed to provide the iTunes store with music. Apple’s successful marketing campaign for the iPod music player coupled with the ease of the program made the program a success. Within four years, the iPod secured 75% of the MP3 player market and iTunes sold over one billion songs (Levy 2006).

The success of iTunes helped to bring about three new business formats: a-la-carte services, subscription services, and social networking websites (Bergmann 2002). A-la-carte services, such as iTunes and Amazon, allowed users to purchase single songs. Subscription based services, such as Real and Rhapsody, allowed users to pay a monthly subscription fee for the unlimited ability to download selected MP3s. Social networking websites, such as MySpace, YouTube, and Pandora also allowed for the free streaming of music on their websites in exchange for commercial advertising.

The advent of these new services provided a legal means for people to access music legally while providing royalty revenues to recording companies and performers. As the 2000s rolled on, digital media sales began to increase. By 2009, digital downloads of music made up to 41% of the industry’s total sales (RIAA 2009). Although record companies benefited from the boost in online sales, the new revenues did not come close to matching

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<sup>2</sup> It should be noted that a subscription based service under the Napster name was launched in 2003 by Roxio Inc. who acquired the Napster brand and logo after the bankruptcy of the peer-to-peer file sharing network in 2002.

those previously earned by the industry. Many of the most popular legal downloading programs were run by private corporations and not by the record companies themselves. Though record companies continued to cast blame on illegal downloading for declines in revenue, studies showed that illegal downloading was no longer a major factor in declining record sales (Oberholzer & Strumpf 2004).

The late-2000s brought other challenges for the recording industry. Specialty music stores, such as Tower Records, faced the most hardship during the recession, since the stores could not compete with superstores like Best Buy and Wal-Mart, or online stores such as iTunes (Gerome 2009). At the same time, prominent artists such as Madonna, Paul McCartney, and the Eagles, abandoned their contracts with music companies and found new ways to market themselves. Some performers signed deals with big box stores or promotion companies, while others created their own music labels. Generally, artists supported the new direction in the industry because it gave them greater creative control of their work. This new way of doing business also enabled emerging artists to pursue successful careers without a “big-name” recording contract.

The Internet also provided emerging artists with an easier way to connect to the public. Social networking sites, such as YouTube, became showcases where bands could post music and gain a following. These sites helped emerging artists to release EPs or full-length albums without the help of a record company or professional recording studios (Day 2010). As the 2000s progressed, record companies appeared to become an unnecessary middleman within their own industry. It was at this point that recording companies finally came to the realization that the changes that were occurring in the recording industry were permanent. In order to cope with these changes, the recording industry was forced to evaluate its goals and reposition itself in the marketplace.

One of the first items that the recording industry decided to look at was the area of digital downloads. Instead of going after individuals who engaged in illegal peer-to-peer file sharing, the recording industry focused on shutting down illegal peer-to-peer file sharing networks and using Internet service providers to target people who were illegally sharing files (McBride & Smith 2008). At the same time, recording companies also looked for new ways to partner with artists, including “360 deals” that required artists to share a percentage of the overall royalty streams, including merchandise, endorsement, and tour ticket sales, in return for greater capital investment on the part of the record company (Day 2010).

Another way that recording industries have tried to adapt to changing times is by looking to gain rights from other areas of the industry. The Performance Rights Act (PRA) was introduced in 2007 as an amendment to copyright law. The act would expand protection for public performances of an artist’s copyrighted work and would grant artists compensation for works used via traditional broadcasting (AM/FM Radio) and digital broadcasting (Performance Rights Act 2009). The bill has the support of artists and the recording industry, who argue that it provides fair compensation for the use of an artists’ work. Broadcasters strongly oppose the bill, however, and argue that paying compensation would negatively impact traditional broadcasting services and bankrupt many small, independent radio stations (Bush 2010). Though the future of the bill remains unclear, it is evident that the legislation would have a profound effect on the industry and on copyright law.

### **The Publishing Industry: Still Grieving?**

The Kübler-Ross Model that characterizes recent stages of development in the recording industry is also relevant to the publishing industry. Although the recording industry and the publishing industry are following similar paths, there are some notable differences between them. The technological developments affecting the publishing industry are still in

the early stages and, for this reason, the publishing industry has not yet moved through all five stages. In addition, the publishing industry appears to be moving through the stages in a different order, a possibility that was acknowledged in Kübler-Ross's original work.

The current status of the publishing industry shows that the industry has gone through the denial stage and is currently in the bargaining stage of the Kübler-Ross Model. Analysis of the industry data shows that the publishing industry began to notice decreasing profits in the mid-2000s, specifically around 2004 (US Department of Commerce). However, while the industry did experience decreasing profits, traditional bookstores did not respond to the changes within the industry.

The denial stage hit the publishing industry in the mid-2000s. The publishing industry failed to adapt to changing technology, which contributed to the initial failure of the eBook industry. First introduced in 1999, eBooks were expected to overtake print publishing by 2001 (Gomez 2007). Despite these projections, the publishing industry initially limited the number of eBook titles available to readers. In the early 2000s, online eBook stores typically only had around 10,000 titles available, which paled in comparison to bookstores and online stores such as Amazon that had over a million titles available for sale (Gomez 2007). The limited selection and high cost of eBooks deterred many readers from adopting the new technology. The lack of a convenient way to read eBooks also contributed to the initial failure of the medium. While devices such as the Sony eReader were available, the company did not promote them (Gomez 2007). As the world turned to the Internet and other forms of technology for entertainment, publishing profits declined.

The anger stage affected the publishing industry in a very different way than the recording industry. Since the publishing industry did not have to deal with piracy the way the recording industry did, the lawsuits pursued by the publishing industry were mostly limited to instances when authors' written work appeared online. The number of lawsuits expanded dramatically in 2002 following the creation of the Google Library project, which made digital copies of books available for free to people online. With this project, Google and five libraries partnered with one another to index books, display "snippets" of the books among its search results, and provide partner libraries with digital copies of the print books in their collections (Manuel 2009).

After the announcement of the program, Google was immediately hit by various lawsuits from copyright holders and authors regarding copyright violations due to the appearance of their copyrighted material on their database through the Google partner program (Manuel 2009). In order to combat the lawsuits regarding its Partner program, Google launched an opt-in, opt-out policy that allows for copyright holders to control the amount of information that the general public is able to view (Band 2006). Since Google was able to protect authors' rights and stay within fair use doctrine and copyright law, the publishing industry could not do anything to stop the project. The publishing industry then began to look more seriously for ways to adapt to the technological changes that were affecting their industry. The publishing industry's quick settlement of lawsuits against online databases shows that it learned from the mistakes of the recording industry and realizes that it is essential to embrace technological changes rather than reject them.

The publishing industry is currently in the bargaining stage of the Kübler-Ross model. This is evident by the development and increased promotion of eReaders by traditional booksellers as well as the increasing sales of eBooks and decreasing sale of print books. The development and evolution of electronic devices such as cell phones, smart phones, and tablet computers changed the way people access information and interact with one another. As the Internet became an important place to get information, publishing companies and booksellers turned to eBooks as a potential source for new profits. In 2007, Amazon unveiled its Kindle eReader,



which is used to purchase eBooks off the Amazon website. The Kindle proved to be successful for Amazon, selling out rapidly (Sorman 2008). The success of the Kindle led other major booksellers such as Barnes & Noble, to develop and market their own eReader to compete with the Kindle. By 2010, booksellers that embraced eReaders were much more successful at retaining profits in comparison to those that did not. A good example of this is Borders, which did not successfully promote their eReader. This failure led to a decrease in profits and was a contributing factor in the company's 2011 demise (U.S. Department of Commerce 2007). Recently, small independent booksellers have begun to partner with Google and other retailers to sell eBooks at competitive prices to help keep independent bookstores afloat (Boyd 2010). With eBooks projected to cover 75% of the market by 2015, it will be essential for bookstores to embrace this new technology.

**Table 1: The Recording and Publishing Industries & the Five Stages of Grief**

	<b>Recording Industry</b>	<b>Publishing Industry</b>
<b>Denial</b>	Ignores the development of new forms of technology (MP3s, the expansion of the Internet, etc.)	Lack of response from the industry regarding the development and increasing popularity of eBooks and eReaders
<b>Anger</b>	A&M Records, Inc. v. Napster, Inc. Lawsuit; RIAA Lawsuits against individuals	Lawsuits against Google Partner Program over the Google Indexing and Google Libraries Project
<b>Bargaining</b>	Offers MP3s to attempt to meet customer demand for new technology	Development and heavy marketing of eReaders by major bookstores (Amazon, Barnes & Nobel)
<b>Depression</b>	Profits Continue to Drop; Bankruptcy of Traditional Record Stores (Tower Records, etc.); Merger between major record labels	Dropping profits within the industry; Bankruptcy of traditional booksellers; Merger amongst publishing houses/acquisition of smaller publishing houses by larger publishing houses.
<b>Acceptance</b>	Looks for new ways to gain profits in the industry outside of music sales (360 Deals; Performance Rights Act)	Look for new ways to use technology to gain profits outside traditional book sales.

**What about Copyright?**

Technological changes within the recording and publishing industries raise many questions with regard to copyright law. With increasing technological developments, the rights of the copyright holder have become difficult to control because of the free flow of information online. In addition, the increase in technology coupled with fair use doctrine has reduced the value of intellectual property due to the relative ease in obtaining copyrighted works (Klein, Learner, and Murphy 2002). In order to combat this problem, it is essential for policymakers to re-craft copyright law for the modern era. Specifically, copyright law must be broadened to promote greater public access to information, while still allowing the copyright holders to maintain their intellectual property rights.

One of the primary ways the publishing industry can broaden copyright law is by allowing for a more liberal interpretation of Fair Use doctrine. Fair Use Doctrine plays an

important role in copyright law in helping to protect the rights of the author as well as allowing the free flow of information. There are four criteria that establish whether a selection from a copyrighted work can be considered fair use: the “purpose and character of the use; the nature of the copyrighted work; the amount and substantiality of the portion taken; and the effect of the use upon the potential market for, or value of, the copyrighted work” (17 U.S.C. § 107 (2000)).

Fair Use Doctrine is particularly important to the Google Libraries project. The Google Indexing section of the Google Libraries project would benefit significantly from a more liberal interpretation of Fair Use doctrine because it would allow for a sample of the author’s work to be available online, which would provide greater exposure for authors and increased capital for the industry. At the same time, this change would protect the intellectual property of the author by limiting how much of the work was available online and allowing the author or publisher to choose the selection that best serves their promotional interests.

The use of particular technological tools, such as encoding files, helps to prevent piracy of eBooks. Retailers such Amazon and Barnes & Noble encode their eBook files to prevent them from being illegally distributed.

Although broadening copyright law would benefit the industry, there are still negative aspects that should be taken into account. Since there would be a greater amount of the author’s work available online, the authors’ control over their intellectual property would be diminished, affecting the creative value of the work and discouraging authors from putting time and effort into books (Klein, Learner, and Murphy 2002). While greater access to information online would lead to a decrease in control over intellectual property, it would lead to an increase of material available to the general public and, therefore, promote the free exchange of ideas amongst citizens, which would benefit the general population.

## **Conclusion**

Though the publishing industry is not dead, it is certainly dying in its traditional sense. Decreasing profits within the industry as well as the decreasing number of traditional bookstores shows how the traditional format of selling books no longer works in today’s technology based society. Some parts of the publishing industry are bound to die quicker than others, particularly in regards to reference books, which show some of the lowest profits amongst the publishing industry (U.S. Department of Commerce). With an increased number of academic journals, encyclopedias, and other reference materials, available online traditional printed reference materials are not being printed. Reference book publishers have realized that placing their material online allows for content to be more accessible to readers, more easily edited, and less expensive than printing.

The publishing industry may be dying, however, it will still exist in some capacity and will primarily be used to help market and sell books in the future. While authors can easily sell and distribute their work on the Internet in the current technological environment, the publishing industry will exist to help edit, market, and pay the author (Gomez 2007). The publishing industry will survive, but the industry will still continue to lose jobs, particularly within the printing and distribution sector.

Copyright law will need to change in order to adapt to the technological changes within the industry. In order for authors and publishing companies to make money it is critical for them to allow for a more liberal interpretation of Fair Use doctrine. A new interpretation of Fair Use would protect authors’ rights while allowing for the free flow of information.

Although new technologies are providing new sources of revenue for the publishing and the recording industries, both face the prospect of decreasing profits. The decreasing profits are the result of changes in society and the shift to new forms of entertainment made possible by the

development of new technologies. For the publishing industry to stay afloat, it must adapt to the changes in technology and realize that the publishing business is much more than putting words on paper, but conveying thoughts, ideas, and stories to people.

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