

A black book cover with a silver padlock on the right edge. The title 'Writers of THE WORLD, un-clench' is printed in white serif font. Below the title is a paragraph of text and the author's name.

Writers *of* THE WORLD, un- clench

Digital technology is making it impossible to control the spread of intellectual property. So, how are artists supposed to make a living from their work? Give it away.

BY DARREN WERSHLER-HENRY

Preramble

Every line we succeed in publishing today—no matter how uncertain the future to which we entrust it—is a victory wrenched from the powers of darkness. —WALTER BENJAMIN

For about five years now, I've been obsessed with the search for practical answers to various aspects of one overarching question: Given the Dismal State of Canadian Book Distribution and Retailing, the Scanty Amount of Government Funding Available to both Writers and Presses, the Growing Governmental Emphasis on the Creation of Cultural Industry over the Creation of Culture, the Increasing Avariciousness of Multinational Conglomerates Bent on Maximizing Profit from their Copyrights and Patents by Putting the Squeeze on Independent Artists and Arts Publishers, the Resultant Paranoia and Reactionary Behaviour Among the Few Remaining Independents and, Most Pressingly (or De-Pressingly), the Still-Being-Determined Effect of the Internet On All Of the Aforementioned, How Do We Get to Keep Being Writers and Publishers?

Bloody hell. Mapping the human genome in my spare time would have been less frustrating.

Yes, the GNU/Linux movement has successfully challenged the Microsoft monopoly, and has also made us rethink the entire process of licensing and copyrighting content. And yes, it's getting easier and cheaper to publish online. But on the other hand, as many writers, programmer-activists and watchdog groups work tirelessly to demonstrate, media conglomerates and industry associations, in collusion with increasingly conservative governments, are working equally tirelessly to do away forever with concepts such as the public domain and fair use. Meantime, publishers, especially small presses, are struggling to keep producing books for a market that seems to be supported only by an ever-decreasing trickle of government funding and bailouts. What's a poet to do?

I. Welcome to Amateur Hour

Make It Everywhere. —KENNETH GOLDSMITH

We live in a world in which almost every surface is covered with writing: billboards, advertisements, logos, graffiti, video marquees, free daily and weekly newspapers, the internet, T-shirts...the list is endless. Most of it begs—screams, even—to be read. For free.

The value of professional writing, that is, the stuff inside books and magazines that we pay to access, has always been arbitrary, linked more to the names of writers currently in vogue than to any intrinsic qualities of a given text. But internet technologies, especially recent advances in weblogging software, which allow anyone to cheaply, quickly and easily publish reams of text and imagery to the web with little technical know-how, present a radical challenge to the economy of professional writing and publishing, threatening to tip everything in the direction of freedom and plenitude for the foreseeable future.

Weblogs surpass predecessors such as zines and garden-variety web pages by combining the cost-effectiveness of zines with the global reach of the web. Not only are the most popular weblogging software and services free, weblogs remove many of the technical barriers associated with online publishing by automating the process. It's no longer necessary to mess with HTML, FTP, CGI scripts or any of the other arcane acronyms that guard the gates of the internet; just log in to a web page, cut and paste some text out of your word processor, click a button and presto, you're published (in the original sense of "to make public," at least).

Blogs came of age during the 2003 Iraq War, demonstrating that the sheer volume of reportage they produced—warts and all—was more than a match for the shortcomings of the major news networks and their embedded reporters, who did little more than parrot back the official White House message of the day.

Unlike traditional publishing—which adds value to writing by filtering the raw material (editing) and investing in the material production of an object (book, article, photograph, film), weblogs serve up great gushing streams of unmediated digital content to anyone who cares to search and browse it. Technopundit Clay Shirky claims that "weblogs mark a radical break. They are such an efficient tool for distributing the written word that they make publishing a financially worthless activity." As a result, writing is once again becoming the province of amateurs in the original sense of the term—people who write for the love of doing so rather than for remuneration. Weblogging won't create a new army of professional writers, because, as Shirky observes, "mass professionalization is an oxymoron; a professional class implies a minority of members." Which means, of course, that almost no one gets paid cash for pure digital publishing.

Some people, Shirky included, revel in this situation, celebrating it as the levelling of the free-speech playing field: "We want a world where global publishing is effortless. We want a world where you don't have to ask for help or permission to write out loud." Other people—predominantly those who control the existing entertainment and publishing conglomerates—are scared silly, and are doing their best to maintain their dominance through the application of what I'm going to call, for lack of a better term, common-sense logic. All we need to do, they reason, is import the logic of exchange in the physical world—a logic based on creating demand through artificial scarcity—into the digital world.

2. Common Senselessness

Economy, n. Purchasing the barrel of whiskey that you do not need for the price of the cow that you cannot afford.

—AMBROSE BIERCE

Common sense is all about maintaining the status quo. Common sense says, privatize everything, even the stuff that seems too cheap to meter, and let the market decide its value. Common sense says, If we can sell a paper book, we should be able to sell an e-book.

In the world of Canadian letters, common sense, in the

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guise of a burgeoning anxiety about the importance of intellectual property and the sanctity of authors' rights (concepts that allow us to assume an equivalence between physical commodities, digital commodities and ideas) has instilled an odd conservatism in the most unlikely of constituencies—writers.

Of all people, writers should be cognizant of the capriciousness of the value of what they produce; depending on the reader, your work is either a crock of shit or pure gold. If you're a writer and you haven't figured this out yet, go read Georges Bataille and Kathy Acker for starters, then get back to me. You could die stinking rich or penniless and alone; it's a crapshoot. Either way, what you do lies outside of the normal processes of exchange and value-making.

But many of the writers I know, particularly very young fiction writers who haven't placed their first books and senior writers with several out-of-print titles, are becoming increasingly obsessed with monetizing their creative output. The young fictioneers are all about The Big Score—securing an agent and landing a whopping huge advance and accompanying international publishing deal. The older writers, long since disabused of such folly by many years of difficult, thankless, low-paying work, and facing retirement without pension, benefits or substantial savings, are scheming to wring a few more coins out of their handful of forgotten, out-of-print books.

Writers in both of these situations are susceptible to what Dr. David P. Reed calls the "Intellectual Property Meme." Reed is best-known as one of the inventors of the software protocols that make the internet run—protocols that he and his associates released openly, without any licensing structure, which helped ensure their success, and the success of the internet itself. What concerns Reed is that many people have begun to bandy about the term "intellectual property" uncritically, without considering how it affects the way that we deal with ideas—or what the alternatives might be.

Unlike the vague and all-encompassing "intellectual property," Reed argues that patents, copyrights and trademarks are all reasonably well-defined terms that serve a reasonable social good by granting limited monopolies to creators on concepts that came in part from the public domain, and will eventually return there. With the concept of intellectual property gaining a foothold, on the other hand, we are starting to assume that control should be the norm rather than the exception. Suddenly, anyone who champions the free and open exchange of ideas and creative works is bludgeoned with demands to explain why they've advocated "stealing" the value that the "owner" would be able to extract if they were able to license the "intellectual property" in perpetuity.

As the concept of intellectual property takes hold, the public domain continues to atrophy. The U.S. Supreme Court recently rejected Eric Eldred's challenge to the 1998 Sonny Bono Copyright Term Extension Act, implying that further extensions to the duration of copyright terms will also be possible. Mexico is considering extending its copyright terms from the life-of-the-author plus 70 years to life-plus-100 years, and worse, allowing the government to charge royalties for works once they pass into the public domain. Everywhere, government and big business (those who really profit from the notion of intellectual property) are building deeper and deeper storage silos for creative work, with the intention of metering and charging for every grain of intellectual property that finds its way into public hands.

The impact on the creative process is substantial. At the opening of *The Future of Ideas*, Lawrence Lessig quotes Davis Guggenheim, director of the TV series *24*, as saying, "I would say to an 18-year-old artist, you're totally free to do whatever you want. But—and then I would give him a long list of all the things he couldn't include in his movie because they would not be cleared, legally cleared...You're totally free to make a movie in an empty room, with your two friends."

3. No Silos

Give it away, give it away, give it away, now.

—RED HOT CHILI PEPPERS

Common sense dictates that selling a commodity in one form and simultaneously giving it away in another is a Bad Idea.

But for many years now, the creators of GNU/Linux and other forms of Free Software have known something that writers and publishers are only beginning to discover: giving away a free digital version of a product can actually spur the sales of the version that's built out of atoms.

Examples? There are plenty. Take the Baen Free Library, for example...all of it.

Baen Books, a major U.S. science fiction imprint, has, for almost three years now, offered a large number of its titles, including work by major SF authors such as Mercedes Lackey, Keith Laumer, Jerry Pournelle and Larry Niven for download, absolutely free. Author Eric Flint, the "First Librarian" of the Baen site, began the project in order to demonstrate that there are options to the common sense approach to publishing online (which he characterizes as Gestapo tactics: "All out for the campaign against piracy! No quarter! Build more prisons!

Most working writers don't actually earn the majority of their income from their writing. A small royalty cheque is much less important than the benefits of reputation.

Harsher sentences! *Alles in Ordnung!*[™]). Flint summarizes his own opinion as follows:

1. Online piracy—while it is definitely illegal and immoral—is, as a practical problem, nothing more than (at most) a nuisance. We're talking brats stealing chewing gum here, not the Barbary Pirates.

2. Losses any author suffers from piracy are almost certainly offset by the additional publicity which, in practice, any kind of free copies of a book usually engenders. Whatever the moral difference, which certainly exists, the practical effect of online piracy is no different from that of any existing method by which readers may obtain books for free or at reduced cost: public libraries, friends borrowing and loaning each other books, used book stores, promotional copies, etc.

3. Any cure which relies on tighter regulation of the market—especially the kind of extreme measures being advocated by some people—is far worse than the disease. As a widespread phenomenon rather than a nuisance, piracy occurs when artificial restrictions in the market jack up prices beyond what people think are reasonable. The “regulation-enforcement-more regulation” strategy is a bottomless pit which continually recreates (on a larger scale) the problem it supposedly solves. And that commercial effect is often compounded by the more general damage done to social and political freedom.

Jim Baen, Flint's publisher, asked him to put his money where his mouth was,* so Flint volunteered his first novel, *Mother of Demons*, as a test case. Within a day, that gesture began to translate into positive feedback ... and eventually, to sales of paper books.

Thus, a short-term loss translates into a long-term gain in sales as your audience expands. Flint notes “any kind of book distribution which provides free copies to people has always, throughout the history of publishing, eventually rebounded to the benefit of the author.” Word-of-mouth provides the best kind of promotion because it's based on trust—someone you know telling you a book is worth reading is going to mean more than seeing the same claim on a billboard. The internet is all about word-of-mouth; some of its greatest successes (such as Hotmail and Amazon) work because they have integrated word-of-mouth referrals into their structure.

Another example, and one that's closer to home is Coach House Books, where I was an editor for five years. Coach House was Canada's first publisher to begin to put the full content of its entire front list online—always with the authors'

explicit permission in their contract, of course. The surge in publicity that resulted from the online publications (the massive Coach House clipping file is several inches thick and still growing) helped return the press to the level of national and international prominence that it currently enjoys.

Hang on—it gets better. Canadian media activist and SF writer Cory Doctorow has taken the success of a hybrid online/print approach to publishing and cranked it up to 11. His novel *Down and Out in the Magic Kingdom* was simultaneously published in hardcover by Tor Books and made available for free download from the author's website. Doctorow reports that the book received over 75,000 downloads in the first month. Many of those people will shell out for a print copy of either *Down and Out* or Doctorow's other titles, partly because reading off of a screen is an intensely annoying experience, partly because people crave the solidity of a book the same way that they fetishize any other object (yes, book readers, you are all perverts), partly because they want to show support for what they believe is a good idea. Doctorow has built a massive, appreciative audience based on goodwill. And what's the point of writing without an audience?

4. Resodding the Commons

Cooperation is more important than copyright.

—RICHARD M. STALLMAN

Down and Out in the Magic Kingdom is also the first book to be released under a Creative Commons license. This allows Doctorow to specify that anyone may copy, distribute, display and perform the novel, as long as they don't do so for commercial purposes, don't remove his author credit and don't alter the text. None of these conditions interferes with his copyright or with the rights of his print publisher.

The Creative Commons was founded in 2001 by a group of cyber law and copyright experts including Stanford Law professor and author Lawrence Lessig. The group is dedicated to expanding the range of creative work available for others to build upon and share. Their goal is not simply to increase the amount of primary content that is available online, but also to make it easier and cheaper for an audience to access it.

Drawing their inspiration in part from the licensing systems developed by the GNU/Linux community, Creative Commons has developed a set of tools that help people who have

* For the finger-pointers and Pharisees in the audience, yes, I've done the same. My two books of poetry are both available in full online, as is a large chunk of *Commonspace*, and I'm in the process of preparing *FREE as in Speech and Beer* for the Web. I don't even own copyright on some of my early books, but when I have the right to do so, I put my work online.

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This article is itself licensed under a Creative Commons License. Why? Because I want as many people as possible to read this argument, and hopefully, to be swayed by it. Deep down in my black and seedy little heart, despite the hardships that the flagging Canadian print publishing industry has suffered, and despite the corporate greed that is threatening to snuff out everything that was liberating about the way that the internet was conceived, I still believe that we have an opportunity to leap through the horns of the print/digital dilemma without tearing too large a hole in our pants.

5. Coda

The future is unwritten. —THE CLASH

Imagine two kids, each with their own drink stands on a hot July day. One is selling distilled water in those tiny paper Dixie cups your dentist uses...for a buck a cup. That's print publication; it ensures quality, but leaves too much control in the hands of the publisher and limits audience growth. The other

kid will let you drink for free...full-blast from the nozzle of the firehose that she's hauled out the window of the school next door. That's unrestricted digital publication, which gives you more than you can possibly use, with no guarantee of quality and no obvious revenue stream.

For those committed to the idea of becoming—or remaining—a professional writer or publisher, the Creative Commons' hybrid approach to publishing is the best compromise between two equally untenable approaches to handling content. What writers and publishers need to realize is that the internet isn't a threat to or a substitute for print, but a complement to it. But in order to reap its rewards, everyone is going to have to unclench a little.

Professional authors know that reputation is everything. Most working writers don't actually earn the majority of their income from their writing. A small royalty cheque is much less important than the benefits of reputation—a large audience, residencies, readings, teaching gigs, consultancies and so on—which actually translate into moneymaking opportunities. Where online publishing is concerned, payment is frequently in the coin of reputation, which we should be receiving as good news. I won't deny that for some writers—those that, by choice or exclusion, publish solely online—reputation is going to have to be enough. But that's nothing new; print publication isn't a right.

However, it's important to remember that print publishers aren't the enemy. I can't stress this point enough: *print publishers aren't the enemy*. From my own editorial experience, I know that after paying the retailer, the wholesaler and the sales force, small Canadian publishers typically end up with about 25% of the cover price of the books they publish, which is rarely enough to cover printing and royalties, let alone prepress and editorial costs (for example, salaries...this is why the entire Canadian publishing industry would be dead in the water without government grants). But in the interest of selling more of those paper copies, those publishers without the resources to publish full content online will at least have to be willing to leave full digital rights in the hands of their authors so that they can place their work online themselves. Everyone is going to have to be a lot more flexible about the wording of contracts—and willing to fight for exciting new initiatives such as the Creative Commons licenses—as new paradigms and policies develop.

So: what do we stand to gain from a mixed approach to print and online publishing? We perpetuate the notion that an open approach to content—and its result, a rich corpus of circulating text and images—is crucial to the ongoing viability of the creative process. We have a chance to explore a vast, cheap new system of publicity generation that may well sell more paper books at a time when almost no one buys them. And everyone gains a larger readership.

Of course, you can choose to ignore all of the above. That would be the sensible thing to do. After all, the internet is the domain of frothing libertarians, pimply teenage music pirates, cutthroat techno-barons, spammers, clueless AOL users, pornographers and dot-com has-beens, right? Sure, but they also have a collective name: the audience. The Creative Commons and similar initiatives are making great strides to provide the few professional writers with new ways to connect to that audience, ways that suggest to them that their readership is meaningful and valuable. Let's not fuck it up. ■