

# **Copyright in Scotland: Is the Scottish Publishing Industry Capitalising on its Intellectual Property?**

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A thesis submitted in partial fulfilment  
of the requirements of Edinburgh  
Napier University, for the award of  
Doctor of Philosophy

May 2012

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## Acknowledgements

I would like to take this opportunity to thank the very kind people - only some of whom it is possible to give particular mention here - that have helped and supported me during this doctoral research.

Firstly an enormous thanks to my two supervisors Professor Alistair McCleery, for his sage advice and his exhaustive knowledge of the book trade, and Dr Caroline Copeland, for encouraging me to apply for PhD studentship and her subsequent support. I am grateful to have had two supervisors who have been an invaluable help on both an academic and a personal level.

I extend this warm thanks to the staff within the School of Creative Industries, particularly the members of the Scottish Centre for the Book and those based at Craighouse Campus, and to the postgraduate students of room 204 who provided constant support, shared the PhD delirium, and created a stimulating research environment.

This thesis would not have been possible without the contribution of those who participated in the empirical research and I thank all the contributors for being so generous with their time.

The assistance received from the staff at the National Library of Scotland and the library at Craighouse Campus, Edinburgh Napier University, during the course of this work is greatly appreciated.

I am indebted to the patience and support of my new colleagues in the Department of Information Science at Loughborough University and look forward to continuing this exciting research there.

On a personal note, I would like to give a heartfelt thanks to my family and friends for their support and encouragement with special thanks to my wonderful parents, who have always supported me unfailingly.

Above all, I owe my deepest gratitude to my late husband Alan Bold, without whom none of this would be possible. I cannot find words to express my thankfulness for all your love and support.

## **Declaration**

This thesis is presented in accordance with the regulations for the degree of Doctor of Philosophy. It has been composed by myself and has not been submitted in any previous application for any degree. It contains no material published elsewhere or extracted in whole or in part from a thesis by which I have qualified for or been awarded another degree or diploma.

Signed:

Date: 13/05/2012

## Abbreviations and Acronyms

ALCS	Author's Licensing and Collecting Society
ASLA	Association of Scottish Literary Agents
CLA	Copyright Licensing Agency
CDPA	Copyright, Designs and Patents Act (UK)
CTA	Copyright Transfer Agreements
DEA	Digital Economy Act (UK)
DMCA	Digital Millennium Copyright Act (USA)
DRM	Digital Rights Management
EU	European Union
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GBS	Google Book Search
GDP	Gross Domestic Product
GVA	Gross Value Added
IPR	Intellectual Property Rights
MTA	Minimum Term Agreement
OPA	Online Publishers Association
PLS	Publishers Licensing Society
SAC	Scottish Arts Council
SOA	Society of Authors
SOAiS	Society of Authors in Scotland
TRIPS	Trade-Related Aspects on Intellectual Property Rights
UNESCO	United Nations Scientific and Cultural Organisation
UK	United Kingdom
USA	United States of America
USD	United States Dollars
VAT	Value Added Tax
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organisation
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organisation



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## Abstract

The aim of this study is to understand the operational practices of copyright exploitation and protection from the perspective of the Scottish publishing industry. The study begins with a historical overview of the development of copyright legislation in the United Kingdom, which helps to build a theoretical framework to understand copyright. The study then explores the contemporary publishing environment and details the progression of rights exploitation within the publishing industry. It analyses how the historical development of copyright informs contemporary practices, particularly the role of globalisation, new technologies, 'piracy', and the Romantic notion of authorship in shaping copyright legislation. Furthermore, this research charts the professionalisation of authorship, which helps to build a case of contemporary Scottish authors. These issues are elucidated with a multi-method analysis of the Scottish publishing industry, and its approach to copyright exploitation and protection. As the focus of the empirical research is the Scottish publishing industry it has been contextualised within national and international copyright development and discourse.

The key issues from the review of literature are explored in the context of the Scottish publishing industry through interviews and questionnaires with key players. Consequently, this thesis argues that copyright exists to promote and protect the interests of the triadic relationship between the author, the publisher and the public and, as such, the interests of each party should be considered equally. The empirical research found that the majority of Scottish publishers, authors and literary agents are not fostering intellectual property rights effectively across international markets and new media: The failure to do this means that the operational practices of the Scottish publishing industry are not in harmony with the burgeoning digital publishing environment. If Scottish publishers and literary agents continue with current practices it will become increasingly difficult for them to compete in the national and international publishing environment. Digital publishing has been considered as a panacea to bridge the gaps between different sized publishing companies: allowing small, independent companies to compete on an equal footing with cross-media conglomerates. However, this study has found that Scottish publishers and literary agents are not capitalising on new technology and new platforms for dissemination: this is detrimental to the authors they represent. This study found that Scottish authors' earnings were insufficient so fostering their rights more effectively could help supplement their income. This study concludes that only by better training, education and knowledge exchange, in matters of rights exploitation and digital publishing, can Scottish publishing compete in the international arena and contribute to, and benefit financially from, the knowledge economy.

This study impacts all the key stakeholders in the Scottish publishing industry, and other regional publishing industries, by addressing gaps in the literature and highlighting the shortcomings of inefficient operational practices, and provides recommendations to improve these practices.

# **Chapter One: Introduction**

## **1.1. Research questions and aims**

The aim of this thesis is, firstly through a review of literature, to chart the changes in the copyright system over the years in response to new technology, globalisation, and copyright infringement and, secondly through empirical research, to evaluate the importance of copyright protection and exploitation in operational publishing practices. There has been much formative work on the advent and development of copyright laws and on the origins of the economy of authorship, focusing on the evolution and justification of copyright laws and their effect on the position of the author. Previous studies have examined copyright from a legal, economic, historic and philosophical perspective, investigating its emergence, continuation, limitations and scope, and evaluated the role of the patron, the industrialisation of writing and the professionalisation of authorship, and the advent of literary agents. This study builds on the models and concepts derived from these studies, and extends them into the last fifty years. It follows arguments for and against extending and lengthening copyright laws and studies the relationship between a country's copyright system and their economy. It outlines the changing nature of authorship over that time with particular reference to the different ways in which authors have derived income over the years, including from the 'new' technologies such as film and television and the 'newer' technologies such as web-based dissemination. It evaluates the appropriateness of existing models and concepts and, through surveys and interviews with contemporary authors, publishers and literary

agents, offers a perspective on the role of copyright in defining contemporary authorship and publishing operations, particularly in the contexts of digital media and of globalisation. Finally, this study offers an alternative perspective on copyright: the perspective of a small nation publishing industry, in this case the Scottish publishing industry.

## **1.2. What are Intellectual Property Rights?**

Intellectual Property (IP) is a hyponym for the specific legal rights a creator holds over types of personal property that do not have a physical presence<sup>1</sup>. These properties can include the collection of ideas and information, written and recorded media, names/characters, and inventions (Palmer, 1990, Hart, 2004, McQueen, 2008). IP laws are tailored to protect different forms of subject matter: Patents, Copyright, Database Rights, Performer's Rights, Trade Marks, Design, and Confidential Information. Intellectual Property Rights (IPR) are preventative rights; they allow the owner of the property to prevent third parties from exploiting them without permission. Essentially this means the owner of the IP has exclusivity over the rights and a monopoly over the property, so can control how the property is used and exploited (Hart, 2004, McQueen, 2008). Additionally, the owner of the rights can licence them to more experienced third parties to use, who have the experience and resources to exploit them correctly and to the fullest; this is usually done through a formal agreement or contract, particularly when exclusive licences

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<sup>1</sup> Palmer (1990) describes Intellectual Property Rights as "rights in ideal objects, which are distinguished from the material substrata in which they are instantiated" (Palmer, 1990, p.818). This means that the author, or the owner of the copyright, has ownership over any physical manifestation of their work. For example, in the book publishing industry, while a consumer can buy and own a physical book they do not own the "work" itself and thus cannot copy the whole book. Only the author, copyright owner, or anyone that owns a licence to copy the work, can legally copy the work.

are granted (Haynes, 2005). This practice is especially prevalent in the publishing industry with authors assigning numerous rights to their publishers to exploit. The six primary restricted economic rights, which require a licence, are: copying (reproduction right); issuing copies of the work to the public (first sale or distribution right); renting or lending the work to the public (rental/lending right); performing, playing or showing the work in public (public performance right); communicating the work to the public (public communication right); and making an adaptation or arrangement of the work (adaptation right) (Copyright, Patents and Design Act (CPDA), 1988, s16(1)).

Copyright is a form of IP that prevents third parties from copying, or reproducing, an author's work without the copyright owner's permission (CPDA, 1988, Feather, 1994, Hart, 2004, Owen, 2006). If copyright laws did not exist, an author's work could be reproduced and distributed without the author receiving any financial reward<sup>2</sup>. So, essentially, copyright is a "legal guarantee" that the author will be rewarded for creating the work, and to ensure an incentive exists for potential creators (Vaidhyanathan, 2003, p. 21). However, copyright does not protect the actual idea; it protects the articulation of the idea (Hart, 2004). This is to allow a fine balance between protecting the author's work/creativity and ensuring potential authors have access to culturally important work, which will enable them to become future creators. This means that it is acceptable to consider and develop ideas that have been written but not acceptable to reproduce, without permission, the actual "physical manifestation" of words and sentences (Haynes, 2005, p. 14). All

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<sup>2</sup> An example of how copyright holders can profit from their work is the fees collected by The Copyright Licencing Agency (CLA) (Stevenson, 2010).

original pieces of work are automatically protected by copyright as soon as they are in a tangible form, such as being written down or typed on a computer<sup>3</sup> (Shay, 2005). However, there is often confusion because many creators believe they have to apply for copyright because this is the procedure for patents and trademarks<sup>4</sup> (Carey, 2003). Lessig (2002) argues that because copyright occurs automatically when the work is created, instead of the copyright owner having to register the work, that it is now much easier to own and secure copyright: something that shifts the balance of power towards the creator (Lessig, 2002).

Copyright is a way to protect investments in particular projects and also harness the work more broadly, and, as such, it is the foundation of the entertainment industry. Creativity is converted into tradable commodities and the rights for the work can be bought or traded in national and global markets (Carey, 2003). Publishing can be an expensive and risky business, so publishers need the economic incentive, provided by copyright, to ensure that their works are not copied illegally (Wall, 2000). IPR, including copyright, are increasing in economic importance as a result of conglomeration, content and

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<sup>3</sup> Although works must be 'original' to be eligible for copyright, the term 'original' is still largely undefined in UK law. However, what is clear is that the works must not be a copy of another person's work, in any way. This includes the collection of an author's written texts and their particular form of expression (Wall, 2000). Peterson (1916) describes this as, "The word 'original' does not in this connection mean that the work must be expression of original or inventive thought. Copyright Acts are not concerned with the originality of ideas, but with the expression of thought... The originality which is required relates to the expression of the thought. But the Act does not require that the expression must be in an original or novel form, but the work must not be copied from another work – that it should originate from the author" (Peterson, 1916). Copyright law does not require that the work is of a specific quality, just that it is not a replication of another creator's work.

<sup>4</sup> Although no registration is required for copyright protection publishers are required to send one print copy of all of their books to each of the six deposit libraries across the UK (Owen, 2010).

convergence (issues that will be discussed throughout this thesis)<sup>5</sup> (Hemmungs Wirten, 2004). Several key cross-media conglomerates currently dominate the entertainment industry, and the control of IPR (including copyright) encourages these companies to perpetuate this control and gives them competitive advantage<sup>6</sup> (Bettig, 1996). Therefore it is clear that IPR can be also be used as an important “strategic corporate asset”<sup>7</sup> (Bettig, 1996, p. 40). Lessig (2002) argues while rights are now becoming easier to purchase, the duration and scope of copyright is now lengthening and becoming stronger so those who control IPR have more power than ever before (Lessig, 2002). Until 1976, copyright in the US was an opt-in system. If the work was not registered, identified with a copyright symbol and deposited in the Library of Congress then it fell into the public domain<sup>8</sup>. This system was expensive and laborious so was changed to an easier opt-in system where the work was automatically protected. However, the old-time-consuming system was actually beneficial to authors, producers of culture, and consumers because it limited legal protection to work that actually needed protection, while leaving the other work freely available in the public domain (Lessig, 2008). As outlined above the term ‘original’ is undefined so all works that are not copied verbatim from another work, no matter how banal and mundane, can be protected by copyright. Copyright legislation is not interested in the quality of the work this

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<sup>5</sup> Controlling the copyright results in the control of actions such as translation, reproduction, public performance, broadcasting and adaptation of the work (MacQueen, 2008).

<sup>6</sup> The publishing industry has become increasingly conglomerated, as a result of mergers, acquisitions and takeovers, since the 1960s. The 1980s, in particular, saw the subsumption of many well-known publishing companies into larger media companies (De Bellaigue, 2004).

<sup>7</sup> Copyright is also becoming increasingly lucrative. It amounts to over five percent of European GDP and contributes to three percent of jobs (Seville, 2009).

<sup>8</sup> The public domain is an accumulation of resources that can be freely accessed by anybody (Lessig, 2002).



protects, something Lessig (2008) believes is detrimental to both creators and the public domain. Copyright, after all, is only profitable to the owners if other people want to exploit the work (MacQueen, 2008).

There is currently a fixed term stipulated for the length of time copyright exists. Copyright in the UK, for written works, lasts for the author's life plus a further seventy years from the end of the calendar year after the author's death (CPDA, 1988). This time-period is under the Copyrights, Design and Patents Act (CPDA) 1988 and its revision the Copyrights and Rights in Performance regulation in 1995 (Haynes, 2005). The revised Copyrights and Rights in Performance regulation Act (1995) made the copyright situation throughout Europe more consistent, this will be discussed further in pages 26-29 (Shay, 2005). The seventy-year period after the author's death allows the estate of the author, or the copyright assignees, the time to profit commercially from the works (Haynes, 2005). Copyright legislation over the last three hundred years has shown copyright protection to be increasing rather than decreasing. The laws are strengthening and lengthening, and show no inclination of reversal (Litman, 2001). At this juncture it is important to add that copyright is not a property right: a physical book can be passed from person to person; however only the owner of the copyright can make a copy of that book (Lessig, 2006a). However, trends in the revision of copyright legislation show that IPR protection might become longer in the future and the danger is that the term might even become permanent, like property rights<sup>9</sup>. Lessig asserts that copyrights are now thought of "not as rights that get

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<sup>9</sup> Property rights are described as "a system of rules governing access to and control of material resources" (Waldron, 1988, p.31). These same rules apply to IPR.



defined or balanced against other state interests, but as rights that are, like natural property rights, permanent and absolute” (Lessig, 2001). The discussion, in pages 9-22, will reveal the implications of perpetual copyright. The distinction between intellectual property and physical property was the subject of much legal and philosophical debate during the formation and shaping of early copyright legislation (discussed in depth on pages 9-22). Since then, IP scholars have extensively debated whether IP should be referred to as a ‘property’ or ‘privilege’ (Drahos, 1996, Hesse, 1996, Deazley, 2006, Ochoa, 2007, Zemer, 2007, Patry, 2009, Deazley et al., 2010). Patry (2009) asserts that there are two reasons for copyright holders to call their rights “property”: so it can be used “as a political strategy, intended to advance copyright owners’ political objectives (i.e. expanding the length of term) and because of natural authorial reward created by the labour theory (Patry, 2009, p. 124).

Although many authors, particularly academics, are willing to write for no financial reward it is unlikely that the majority of commercial writers would have the incentive to write professionally without copyright (Owen, 2006). If copyright did not exist literary work could be manipulated and exploited without permission or authorial acknowledgement. Infringement of copyright can be resolved under both civil and criminal law, dependent on the nature of the infringement and the country’s copyright laws. For literary works, the first copyright owner is usually the author; however, if the writing is part of the author’s standard duties of employment, e.g. staff writer for a magazine, then the company will retain the copyright. Authors who own the copyright usually

negotiate rights with their publishers when they enter into a publishing contract. In trade publishing authors usually award their publishers with exclusive licences to publish and exploit their work, but keep possession of the copyright<sup>10</sup>. These licences can also specify the length of time, geographical markets and type of media the publishers can exploit the work through. The author might also grant the publishers other subsidiary rights to exploit such a paperback rights, broadcasting rights etc. (Subsidiary rights will be explored further in pages 107-125) Maximum exploitation of the works benefits both author and publisher because it allows the book to reach a much wider audience and achieve increased exposure (Owen, 2006). As stated above, academic and educational writers frequently grant their publishers ownership of the copyright. Although they do receive payment through royalties, academic writers tend to publish for status, to communicate their research, and to further their academic careers. Unlike many commercial authors, academic and educational authors do not rely solely on writing for their income, however publishing articles does play an important role in determining the success of an academic career (Owen, 2006).

Fair dealing legislation exists for circumstances where issues of impartiality and cost occur (Gowers, 2006) The concept of 'fair dealing' was included in the 1911 Copyright Act, and was further expounded in the Copyright Act of 1956 (Owen, 2006). Fair dealing creates a scope in which infringing copyright is not illegal, where use of the copyright for public interest outweighs the rights

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<sup>10</sup> A licence is essentially a contract between the copyright owner and the party who seeks to exploit the copyright. This licence allows the party to undertake acts that would be restricted under copyright law, such as copying the work and issuing copies of the work to the public (Wall, 2000).

of the copyright owner. For example translating a work into Braille would be illegal without fair dealing as would writing book reviews, for the media, which would ordinarily require costly and time-consuming rights clearance (Gowers, 2006). Consequently, fair dealing includes: copying and dissemination for education; copying for preservation; copying for non-commercial private research, usually with library privileges; copying for blind users; and news reporting and commentary (Gowers, 2006). However, small Academic publishers could be “especially vulnerable to expansive interpretations of ‘fair use’” because academic publishers publish small editions at large costs, so have to put a high selling price on their products to compensate (Thatcher, 2006, p. 215). Unfortunately the target readership of such books (academics, researchers, students) often cannot afford to buy them, so need to copy the information under fair dealing (Thatcher, 2006). Jessica Litman suggested a solution where copyright is no longer defined as a reproductive right but instead re-characterised as the right to exploit the works commercially, showing the strong difference between commercial and non-commercial use (Litman, 2001). Since Litman’s suggestion, a number of open-access models, with licences based on both commercial and non-commercial use, have evolved: these will be discussed section pages 78-82.

### **1.3. Historical Development of IP and Copyright**

Before investigating contemporary copyright practices it is important to examine the past to discover if there are any parallels and thus see if any lessons can be learned. Before the existence of copyright, the Monarchy granted exclusive printing privileges to The Stationers’ Company in order to

monitor the output of printed works; however, these Royal grants quickly expanded into the exclusive right to print specific works and control the work perpetually<sup>11</sup> (Feather, 1994). According to Rose (2002), copyright was not a “transcendent moral idea” but a fairly modern concept developed as a result of the creation of the printing presses, the evolution of the author as the creator of works and the growth in the marketplace (Rose, 2002b, p. 142). This contradicts Prager’s (1950) view that copyright was an “ancient and external idea” (Prager, 1950, p.106). Booksellers in the mid-sixteenth century created a more commercial marketplace, which was a result of the rise in literacy and a change in the religious and political climate<sup>12</sup> (Feather, 2006). However, Lowenstein argues that the British legal system of IP and copyright did not start to change until authors began to see themselves as the producers and owners of their own work (Lowenstein, 2002). Before that the printers and booksellers of London had complete control over the production and distribution of an author’s work. Although the original legislation was created as a form of book trade regulation, it resulted in the recognition of the creator’s intellectual effort (Lowenstein, 2002). So although the conflict over copyright was primarily related to enlightened values of property and freedom, it also greatly concerned the societal function of the author<sup>13</sup> (Rose, 1988).

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<sup>11</sup> These licences were granted to The Stationers’ Company in 1557 by Queen Mary (Patterson, 1968, Rose, 1993). By the seventeenth century only members of The Stationers’ Company could own these exclusive licences (Feather, 1994).

<sup>12</sup> The term ‘publisher’, as we know it now, was not used until the eighteenth century, and even in the eighteenth century it was used to describe someone who arranged and financed the project. During this period, the term ‘bookseller’ was more commonly used because ‘publishing’ was seen as an additional activity for members of the book trade (Sher, 2006). The advent of copyright legislation engendered the advent of “publishers” because it reduced the importance of both bookbinders and printers, which enabled the publisher – or the bookseller as they were known then – to become the dominant figure in the book trade (Patterson, 1968).

<sup>13</sup> See Chapter Three for more information.

Rose goes on to add, over a decade later, that the copyright conflict was also a competition between England and Scotland, with Scottish booksellers challenging a deep-rooted English industry (Rose, 2002).

The Licencing Act of 1662 offered protection to works registered with the Stationers' Company. This Act meant that that a licence was required to publish anything, and only members of the Stationers' Company could obtain one of these licences<sup>14</sup>. Consequently, this gave more power to the stationers and strengthened their monopoly of the British book trade (Patterson, 1968, Bettig, 1996, Rose, 2002b, Feather, 2006, Owen, 2006, Johns, 2009). During this period it is clear that copyright was a bookseller's right and not an author's right, because only Stationers' Company members could control copyrights<sup>15</sup> (Patterson, 1968, Rose, 1988, Feather, 2006). Authors were put in a more subordinate role because only Stationers' Company members could legally reproduce publications, especially when negotiating the terms of their works being published<sup>16</sup> (Bettig, 1996, Rose, 2002b, Feather 200). For that reason, the publishers, printers and booksellers enjoyed the majority of the financial reward, which was engendered by the commodification of the author's work (Feather, 2006). This exclusive control of the book trade resulted in exorbitantly priced books, which only the wealthy could afford.

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<sup>14</sup> Members would record the details of the book they wanted to publish in the Stationers' register, which was kept in the Stationers' Hall. Although this system was initially created to ensure that each publication was authorised and correctly licenced, this registry subsequently acted as an assertion of control over the work so no other bookseller could publish it. It is this act of propriety that made this registration system so controversial (Johns, 2009).

<sup>15</sup> The Stationers' Company did not record the term "copy right" until 1701, and even then it was only recorded twice. During this period "copy right" meant the right to copy the physical book (Patterson, 1968).

<sup>16</sup> At this stage authorial rights did not exist and authors were tied to their work through propriety rather than property (Rose, 1993).

William St Clair (2004) describes it “as perfect a private monopoly as economic history can show” (St Clair, 2007, p.101). It is important to note that, at this point, copyright was not a statutory right (Feather, 1994).

The purpose of The Licensing Act was to prevent any blasphemous, non-conformist or subversive material being printed thereby acting as a censorship law as well as allowing a monopoly of the book trade. At this point copyright and censorship were closely entwined (Patterson, 1968, Rose, 1993, Bettig, 1996, Rose 2002b, Feather 2006). By allowing a printing monopoly, the Monarchy was able to control the negative and positive book production, and a printing licence was usually exchanged for the company monitoring, and controlling, its own members’ book production (Patterson, 1968, Bettig, 1996, Feather, 2006). During the period copyright protected the Stationers’ Company’s right to publish the work and not the actual work itself because at this point copyright was an exclusive distribution right for a physical product, i.e. the book, rather than the work itself<sup>17</sup> (Patterson, 1968, Rose, 1993, Rose 2002b). The Stationers’ Company held perpetual copyright of the works under The Licensing Act of 1662, so when it expired thirty-two years later in 1694, they lobbied for it to be reinstated<sup>18</sup>. Publishing during this period was expensive and risky for stationers so they wanted to retain perpetual

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<sup>17</sup> During this period the copyright was essentially a perpetual licence to publish (i.e. copy) the work: the licencees did not own the actual work itself (i.e. intellectual property as we know it today) (Patterson, 1968).

<sup>18</sup> An author who lobbied against the reinstatement of the Licensing Act was John Locke, whose theories on property have been used to promote the notion of authorship and the importance of copyright (more information in pages 32-38). Interestingly, Locke petitioned against the copyright monopoly (Zemer, 2006a). One of the reasons Locke protested against the monopoly was the high prices the Stationers’ Company charged for books of inadequate production quality (Bettig, 1996).

copyrights as recompense (Owen, 2006). Additionally, the booksellers enlisted the help of prolific author Daniel Defoe who wrote a paper defending the Stationers' Company and their rights, arguing that the rights the Stationers' Company petition for reflected the "undoubted exclusive right" of the author (Defoe, 1704). This early mention of authorial rights was not reflective of the authorial situation at the time, and was also not one the Stationers' Company wished to promote in fear of diminishing their authority<sup>19</sup> (Feather, 1994, Rose 2002b). It is also clear that the monopoly of the book trade had made The Stationers' Company extremely rich and important, a status they did not want to relinquish (Rose, 2003). However, their wishes were not completely granted by the first official Copyright Act, The Statute of Anne, enacted in 1709 and effective in 1710<sup>20</sup> (Patterson, 1968, Deazley, 2004, Owen, 2006). Although Deazley (2004) identifies that The Statute of Anne was not the ideal solution for the London booksellers, Feather (2008) argues that it did provide them with a provisional resolution, which allowed them to buy new, and trade in their existing, rights with renewed conviction (Deazley, 2004, Feather, 2008). It is interesting to note that statutory copyright, as defined by the Statute of Anne, was based on the copyright model used by The Stationers' Company (Patterson, 1968).

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<sup>19</sup> The role of the author in the copyright debate will be discussed further in Chapter Three.

<sup>20</sup> Deazley (2004) recounts that the Stationers' Company unsuccessfully attempted to renew the Licencing Act at least thirteen times before the Statute of Anne came into force (Deazley, 2004).

The Statute of Anne of 1709 was the first copyright statute<sup>21</sup>. It determined that copyright was a personal property right and set a limited term of protection. The terms of protection were twenty-one years from publication, for works already published, and fourteen years from publication for books still to be published. A further fourteen years could be added by renewal if the author was alive at the end of the first period (Patterson, 1968, Owen, 2006). Additionally, the enactment of The Statute meant that printers/booksellers who were not members of The Stationers' Company could control the right to copy (Patterson, 1968). In complete contrast to the Licencing Act, The Statute did not regulate what was being printed, so took some of the power away from the State (Rose, 2010). It is evident that The Statute supported the flow of knowledge and was against the monopoly of the book trade: its title even highlighted that it was "An act for the encouragement of learning" (Statute of Anne, 1709, Patterson, 1968, p.142, Rose, 2003). The Statute of Anne also goes on to state that the Act's objective is "the encouragement of learned men to compose and write useful books" (Statute of Anne, 1709, Rose, 2003). This shows that the Act had a collective motivation, which included the importance of the relationship between the author and society (Deazley, 2004). Public education was promoted over authorial rights and publishers' economic profit (Patterson, 1968, Rose, 2002b). Deazley (2004) argues that the public interest aspect of copyright is often not taken into consideration even though copyright was "primarily defined and justified in the interests of society and not the individual" (Deazley, 2004, p. 226). Although Parliament limited the term

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<sup>21</sup> The Statute was named after Queen Anne who was the Monarch during this period. Although Act is often known as the Copyright Act of 1709, although it came into force in 1710, so shall be referred to, in this thesis, as the Statute of Anne of 1709 (MacQueen, 2008).



of copyright and introduced an emphasis on authorship, this was primarily to stop the monopoly of The Stationers' Company and not, initially, to create the author's copyright. Patterson (1968) argues that The Statute of Anne was more of a trade-regulation than a copyright statute (Patterson, 1968). According to Rose (2003), it did not induce the development of the public domain but acted as a catalyst for much legal debate about perpetual copyright (Rose, 2003).

The monopoly of The Stationers' Company shaped The Statute of Anne, which completely restructured "*The Question of Literary Property*."<sup>22</sup> The Statute of Anne recognised the merit of the creator: something that reflects John Locke's theory of labour value in property, which will be discussed on pages 32-38 of this chapter. Despite this, Rose (1994) describes the statute as a "legislative continuation of the ancient trade regulation practices of the Stationers' Company" because it served booksellers more than authors (Rose, 1994, p. 213). Additionally, The Statute of Anne also separated the relationship between copyright and censorship that had existed, making copyright a property rather than a rule (Rose, 1993, Rose, 2002b).

"*The Question of Literary Property*" became a commercial altercation between booksellers. This historical battle highlights that booksellers did not share homogenous interests: those who owned copyright endeavoured to maintain control of the book trade, which diverged with the interests of those who

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<sup>22</sup> "*The Question of Literary Property*" is actually a reference to the numerous cases that occurred during this period. It stemmed from Sir James Burrows' report of the *Millar vs. Taylor* case, *The Question Concerning Literary Property Determined by The Court of the King's Bench* and subsequent reports (Rose, 2002).

endeavoured to publish out-of-copyright works<sup>23</sup>. The restricted copyright term was a problem for booksellers because they were accustomed to having perpetual copyright and, therefore, dominance of the book trade. After the Statute was established, the London booksellers still tried to retain perpetual copyrights by arguing that they owned their rights through common-law rights of property because their rights were actually transferred to them by the author, who they said had natural authorial rights in their work, and not through statutes. Members of the Stationers' Company believed The Statute of Anne to be a statutory affirmation of their perpetual copyright (Patterson, 1968, Rose, 1993, Rose, 2002b, Bettig, 1996, Sher, 2006). This literary property debate highlighted the differences between common and statute law, especially in relation to IP (Sherman and Bently, 1999). The limited term set out in the Statute of Anne meant that many works, formerly protected under perpetual copyright, began to lapse in 1831, and the London booksellers had several tactics to preserve their monopoly (Deazley, 2003). Many provincial printers and booksellers, particularly in Scotland, disputed this notion of common-law rights of property, which resulted in several court cases to settle the issue. Scottish booksellers acknowledged The Statute of Anne accordingly and were not party to the unofficial agreement of The Stationers' Company. For them, as outlined in The Statute of Anne, copyrights were limited to twenty-one years and after this period could be legally printed by anyone (Feather, 2006). As a result The Stationers' Company frequently obtained injunctions against other printers/booksellers who would reprint classic works, which The Stationers' company viewed as their literary property citing piracy

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<sup>23</sup> This is reflective of the situation in the contemporary publishing industry, which will be discussed in Chapter Two.

as their reason for objecting (Rose, 2003). More about the role of piracy in shaping copyright legislation will be discussed in Chapter Two (pages 56-62).

The success of Scottish education and publishing in the seventeenth and eighteenth centuries, and the southerly movement of Scottish talent and literature subsequent to the Treaty of Union of 1707, provoked Samuel Johnson to pronounce that “the noblest prospect which a Scotchman ever sees is the high-road that leads him to England” (Boswell, 1832 p.193, McGowan, 1997). Although this disparaging comment was a general slight compounded of envy and badinage, it may have partly originated in a circumstance of which Johnson was fully aware: the fraught relationship between London and Scottish booksellers. During this period there was a commercial battle between the Scottish and London booksellers. The Scots were increasingly proud of their flourishing printing and publishing industry<sup>24</sup> while the London booksellers wanted to retain control of the British publishing trade<sup>25</sup> (Rose, 2002b). Although, the Statute of Anne ended perpetual copyrights, it also opened up connections between London and Scottish booksellers. Prior to The Statute of Anne, the reprint business existed in Scotland without any objections from The Stationers’ Company<sup>26</sup> (Walters, 1974). However legal action was taken in two cases, *Tonson vs. Collins*

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<sup>24</sup> The Scottish Book Trade developed as a result of support from the councils of Scotland’s three major cities (Edinburgh, Glasgow and Aberdeen), Scottish universities (particularly Edinburgh) and a small amount of royal aid (Feather, 2006)

<sup>25</sup> In the 1730s and 40s many Scottish booksellers became discontent with purchasing all their books from London to retail in Scotland and of the general control that London had over the British publishing industry so they began printing their own editions (Rose, 1993,1994).

<sup>26</sup> Consequently, The Statute of Anne actually enabled the London booksellers to have more power in Scotland (Walters, 1974).

(1760) and *Millar vs. Taylor* (1769), without any resolution.<sup>27</sup> These cases were taken to the highest common-law court in England, the Court of King's Bench, which determined that not only was literary property a common-law right but that copyright was perpetual (Rose, 2002b). However in 1774 The House of Lords overturned the King's Bench's ruling in the momentous case of *Donaldson vs. Beckett* and stipulated that copyright had a finite term and that The Statute of Anne negated any perpetual common-law copyright based on authorial rights. During this court case only one Lord supported the notion of common law copyright. Lord Camden was particularly outspoken about his aversion to common law copyright, speaking about the greed of the booksellers and warning "[a]ll our learning will be locked up in the hands of the Tonsons and the Lintots<sup>28</sup> of the age" should the Lords vote to retain perpetual common law copyright<sup>29</sup> (Deazley, 2006, p. 19). Deazley (2006) argues that although numerous scholars have claimed that common law copyright existed before the Statute of Anne limited the term, copyright has never been a natural right protected under common law<sup>30</sup> (Deazley, 2006). Patterson and Linberg (1991) contend that the confusion surrounding contemporary copyright is as a result of copyright still being thought of as a natural right (Patterson and Linberg, 1991). Additionally, Craig (2002) argues

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<sup>27</sup> *Millar vs. Taylor* concerned a copyright infringement of James Thompson's poem *The Seasons* (Rose, 1993). Printing, and promoting, books at this time was very expensive so it was usually the mass-market/most popular books that were involved in infringement cases (Feather, 2008).

<sup>28</sup> Bernard Lintot was a London bookseller, who published the works of Alexander Pope. In fact Pope sued Lintot, invoking the terms of the Statute of Anne (Feather, 1994).

<sup>29</sup> Common law copyright asserts that copyright is a natural right and as such the copyright owner can control the right perpetually, in the same way as tangible property (Deazley, 2006).

<sup>30</sup> Craig (2002) argues that the natural right – where a property right is awarded based on labour expended (see pages 32-38 for more information) – does not take past contributions of knowledge into account (Craig, 2002).

that the notion of natural rights is in sharp contrast to the utilitarian view of copyright, discussed later in this chapter, and now overpowers it to guide copyright policy (Craig, 2002).

Although the role of the author as the creator and owner of these rights were widely communicated during these legal proceedings it is worthy of attention that all the parties involved in these cases were not authors but booksellers. The concept of the author and authorship, during this period, was one that could be used by publishers to benefit themselves rather than the writers. Jaszi (1994) argues that, during this period, 'authorship' "remained a malleable concept, generally deployed on behalf of publishers rather than writers" (Jaszi, 1994, p. 33). Although the Statute of Anne evolved to encourage public learning it also gave rise to the notion of authors' rights and, as such, booksellers during the eighteenth century capitalised on this and argued that copyright existed to protect the labour the authors had invested in their work. Consequently, the social value of copyright was overlooked (Marshall, 2006). Rose (1994b) observes that:

"all these cultural developments – the emergence of the mass market for books, the valorization of original genius, and the development of the Lockean discourse of possessive individualism – occurred during the same period as the long legal and commercial struggle over copyright. Indeed it was in the course of that struggle, under the particular pressures of the requirements of legal argumentation, that the blending of the Lockean discourse and the discourse of originality occurred and the modern representation of the author as proprietor was formed. Putting it baldly, and exaggerating for the sake of clarity, it might be that the London booksellers invented the modern author, constructing him as a weapon in their struggle with the booksellers of the provinces" (Rose, 1994b, p. 30).

Although this strategy was not successful in maintaining perpetual copyright, it did help shape the nascent copyright laws and the notion of authorship. By 1835 booksellers were acknowledging that literary property belonged to authors and they were essentially representing the authors as agents and assignees. This was perhaps as a result of Parliament's more sympathetic view towards creators (Rose, 2002b). At this time publishers and authors stopped fighting and started to work together to benefit from a strengthening copyright system and an increase in literacy and learning (Rose, 2002b). Feather (2010) argues that although the result of the *Donaldson vs. Beckett* case did engender a more enterprising publishing environment it was because the book trade was becoming more commercial anyway (Feather, 2010).

There were three main discussions about literary property during this period. Firstly, the supporters of perpetual copyright maintained that copyright was the author's natural right and ownership over his creative work. Secondly, challengers to perpetual copyright argued that copyright should be limited because ideas were not a personal property. Then, thirdly, the supporters countered that it was not the physical book or the ideas behind the book that they considered as property but the original style and personality behind the written words (Rose, 1988). Rose asserts that this stimulated the "simultaneous emergence in the discourse of the law of the proprietary author and the literary work" (Rose, 1988, p. 84). *Donaldson vs. Beckett* established that the monopoly of The Stationers' Company was actually detrimental to public interest because it kept books at a high price, which hindered learning

and the accumulation of knowledge<sup>31</sup> (Feather, 2006). The verdict not only marked a critical moment in the history of copyright but it also showed that Scottish booksellers could compete in the British book market and that London booksellers could not maintain their dominance of the book trade (Feather, 2006). Many critics have noted that the period between The Statute of Anne and the *Donaldson vs. Beckett* case saw the emphasis shift from the bookseller to the author, and a change from a regulated market to a more liberal one (Rose, 2002b, Lowenstein, 2002, Deazley, 2004, Feather, 2006).

Although the Scottish book trade was strengthened by the *Donaldson vs. Beckett* ruling, it also suffered financially due to increased competition resulting in discounted prices (Sher, 1998, Feather, 2006). Nevertheless, the Scottish book trade, particularly Edinburgh-based publishing, played an important role in the domestic market and in sustaining a unique Scottish culture. This situation is reflected in the contemporary Scottish publishing industry, as will be discussed further in Chapter Six. However, Scottish publishers seeking markets outside Scotland, after *Donaldson vs. Beckett*, had to look towards England (Feather, 2006). Many Scottish publishers at the time identified this and established relationships with English publishers to help break into the English market, for example Archibald Constable formed connections with Longman, a relationship that led to relative success<sup>32</sup> (Feather, 2006). Despite this, the partnerships forged between Scotland and

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<sup>31</sup> See page 17 for Lord Camden's significant statement about this case: He concluded that any work that could educate, inspire and enlighten society should be in the public domain, and not stockpiled by a small amount of people/companies (Rose, 2003).

<sup>32</sup> Archibald Constable was Scott's main publisher from *Minstrelsy of the Scottish Border* to *Woodstock* (Millgate, 1987).

London could also lead to failure, as was the case with Constable and London Agent Hurst and Robinson, where the collapse of Hurst and Robinson led to the collapse of Constable and Co. (Bell, 2007).

## **1.4. The Development of the Copyright Legislation**

By examining the earliest copyright discourse, and the subsequent development, we can compare the contemporary copyright system and the patterns of IP ownership.

### **1.4.1. Extension of copyright term**

The length of the copyright term was revised twice in the nineteenth century: the Copyright Act of 1814 extended the term from fourteen to twenty-eight years after publication or the author's lifetime and the Copyright Act of 1842 extended the term to forty-two years after publication or seven years after the author's death, whichever was greater (Rose, 2002b). It is evident that the author's role was being increasingly recognised at this point, with the 1842 Act introducing protection after the author's death<sup>33</sup> (Feather, 2008). Although parts of the Copyright Act of 1842 were unclear, it remained until the twentieth century<sup>34</sup> (Rose, 1994). Seville (1999) asserts that the 1842 Act was actually more important for laying the foundations of subsequent copyright acts, specifically the Copyright Act of 1911<sup>35</sup> (Seville, 1999). During the nineteenth

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<sup>33</sup> The change in copyright legislation at this point was due to the lobbying of various authors, including William Wordsworth, who believed that authors were overlooked in the Statute of Anne (Feather, 1994).

<sup>34</sup> The ambiguity surrounded derivative works such as abridgements, anthologies, dramatisations and translations etc. (Feather, 1994).

<sup>35</sup> The 1842 Act also provided a foundation for later acts such as the Acts of 1956 and 1988 (Seville, 1999).



century the booksellers, who originally advocated perpetual copyright, had become accustomed to the limited term and it was the authors who were campaigning for longer terms, and even perpetual copyright (Rose, 1994). In 1911 an act was passed that extended the copyright term to fifty years after the author's death<sup>36</sup>. However, if the author had assigned the copyright, to their publisher for example, the protection would be returned to the author's estate twenty-five years after the author's death<sup>37</sup> (Owen, 2006). The Copyright Act of 1956 had the same protection term as the 1911 Act, and it was this length of time that continued into the Copyright, Designs and Patents Act (CPDA) 1988, which was created in response to advancements in technology (Owen, 2006). As a result of a European Directive in 1996, copyright laws were revised to extend the copyright term to seventy years in keeping with other European countries. This highlights the international nature of publishing, and the importance of regulating international trade in rights. The common argument for extending this term is that without regulation it would be difficult to carry out international business deals in a fair way (Bettig, 1996, Owen, 2006).

#### **1.4.2. Extension to other forms**

The 1842 Act was ill defined because it dealt with literary works and did not include other artistic expression. Also, it did not take into account the emerging international nature of publishing and copyright (Seville, 2006). However, the nineteenth century saw copyright expanding to include music,

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<sup>36</sup> This act also abolished registration at Stationers' Hall and the work was protected as soon as it was published (Stevenson, 2010).

<sup>37</sup> Authors often used to sell their copyright outright due to financial hardship (Ward, 2007).

drama and art, as well as literature (Feather, 2006). This period also determined copyright on a more international scale with the introduction of The Berne Convention in 1886; this convention will be discussed later in this chapter (Owen, 2006). The Copyright Act of 1911 allowed literary work to be adapted by the new media of the time, so was 'hailed as the greatest single advance in the history of domestic copyright' (Bonham-Carter, 1978, p. 216). This 1911 Act took the international nature of publishing and copyright into consideration so reflects the increase in international trade, which was occurring at the time (Seville, 2006). However Seville (2006) argues that both the 1842 and 1911 Act failed to provide the service that rights holders and users required, which was "A definitive legal framework clearly mapping the boundaries of the protected intangible, and ensuring perfect balance between the many and varied interests touched by copyright"<sup>38</sup> (Seville, 2006, p.39).

The late nineteenth and twentieth centuries were periods of great change in the way information was produced, disseminated and accessed. The development of digital technology and the massive expansion of the Internet have generated the need for new copyright laws. There have been many new and advanced platforms and methods of dissemination created over the years, which affect the publishing industry. Many of these new mediums such as films, computer games and DVDs use literary work as their source, so new subsidiary rights have been formed as a result (Owen, 2006). Additionally, downloadable e-books and audiobooks have been on the rise due to the

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<sup>38</sup> Historically this intent was unrealistic; however it is increasingly so in the contemporary digital environment (Seville, 2006). This will be discussed further in Chapter Two.

popularity of smart-phones, iPods, tablets, and e-readers (Owen, 2010). During this period copyright laws have expanded to include broadcasts, photographs, sound recordings, films, computer programmes and databases (Haynes, 2005). Although the advancement in media technologies created new opportunities for authors, they are still dependent on publishers to create their works in a physical form (Bennett, 1999). Now, in trade publishing, it is commonplace for authors to licence certain rights to their publishers. This allows publishers the right to publish the work and exploit it in any way the author authorises them to (Owen, 2006). The author usually receives an advance for their work and royalties from the sales of their original work. In addition to this the author will receive a percentage of any income from subsidiary rights. This is a very different situation to the copyright arrangements of the eighteenth, nineteenth and early twentieth centuries (Owen, 2006).

### **1.4.3. Moral Rights**

It is evident that, during this period, the author's hard work and creativity were being recognised and rewarded because the CDPA 1988 introduced moral rights to the UK copyright legislation<sup>39</sup> (Owen, 2006). Moral rights are the right to be identified as the author (Paternity Rights), the right to object to derogatory treatment of the work (Integrity Rights) and the right to prevent false attribution of the work (CPDA, 1988, Shay, 2005, MacQueen, 2008). Moral rights are personal rights, and are only covered under copyright law and not under any other of the IPR (Lorimer, 1996). Moral rights differ from the

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<sup>39</sup> Moral rights, or *droit d'auteur*, had already existed for some time in other European countries' copyright systems (Owen, 2006).

author's property rights in that they protect the reputation of the author, and cannot be transferred, while property rights are used for trade and economic profit<sup>40</sup> (Lorimer, 1996). This is particularly important in the current market where the author's name can act as a brand or trademark (Ginsberg, 2005). The brand of an author's name is developed from the author's reputation, and the quality of their work, therefore any work published by the author is usually associated with their previous work<sup>41</sup>. This helps to create a relationship, and loyalty, between the author and their readers (Ginsberg, 2005). Therefore, it is clear that protecting an author's reputation is important because they are answerable to the public for all works associated with their name.

#### **1.4.4. The current copyright term**

As discussed on page 6, the current copyright term was extended from fifty years to seventy years after the author's death. Does the twenty-year extension of the copyright term increase the potential financial gain to authors and copyright holders? Gordon (2002) argues that the majority of the financial profit from a work normally occurs "in the first few years after publication" with the value decreasing over the years (Gordon, 2002, p.180). This argument is supported by Withers (2006) who argues that the social cost of extending the copyright term outweighs the economic value for creators and copyright holders (Withers, 2006). A recent study found that while the sales of both electronic and print books showed a decline after the initial publication sales peak, piracy helped to create a second sales peak (Nielan, 2009d). This

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<sup>40</sup> As discussed earlier in this chapter (on pages 4-6) the economic trade of these copyrights, by sale or licence, is what generates the income for the creator.

<sup>41</sup> This will be discussed further on pages 123-125) in Chapter Two.

suggests that a lengthy copyright term, to act as both a creative and economic incentive for authors, is unnecessary because the work is usually only successful for a short period after its publication: only extended by piracy. As a counter-argument, Withers (2006) gives several examples where works have kept their value for longer periods of time: these include: Dr Seuss, The Beatles and Elvis Presley. However, these cases are exceptions and not representative of the majority of works protected under copyright. Additionally a World Intellectual Property Organisation (WIPO) guide outlining the economic-incentives of copyright shows the disparities between artists in the Creative Industries and describes the 'typical' artist as, "multiple job holder ... earning a variable and lower than average income despite being highly educated" while a minority earn large income from their work<sup>42</sup> (WIPO, 2003). Withers (2006) believes that these high-earning artists distort the copyright system because it is them who benefit from strong copyright protection rather than the majority of 'typical' artists and, as such, they cannot act as a representative for artists in general (Withers, 2006).

#### **1.4.5. Internationalisation of copyright**

At present there is not one homogenous international copyright system and each country/sovereign state has its own copyright system and history behind it. These differing systems can cause difficulties in the international trade of copyrighted materials, especially in the current global market. This is because the level of protection of the original works and reverence of the author as the

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<sup>42</sup> The World Intellectual Property Organisation (WIPO), originally the International Office for the Protection of IP, was founded in 1893. The WIPO is now a guild for administering and mediating the numerous international IP treaties (Gowers, 2006).

creator of the works can vary from country to country. However, there have been several attempts to homogenise the basic standards of copyright and offer guidelines to help countries develop their copyright systems (Haynes, 2005). The nineteenth century established that it was economically, politically and culturally mandatory to consider the book trade internationally (Hemmungs Wirten, 2004). The earliest Act regarding international copyright was created as a result of British booksellers and authors trying to obtain protection from cheap foreign reprints being sold at home and abroad<sup>43</sup>. The 1843 Act gave the same copyright protection to foreign authors as British authors provided that their country of birth reciprocated this deal (Novell-Smith, 1968). The emergence of cheap reprints, for example American reprints being sold in Canada, entering the British colonies was further injurious to British booksellers and authors. The 1842 Copyright Act attempted to tackle this problem; however the clauses that forbade such reprinting, and import into colonial territories, could not be regulated easily<sup>44</sup> (Novell-Smith, 1968, Seville, 1999). The following years saw an effort to standardise copyright laws. The Berne Convention for the Protection of Literary and Artistic Works was developed in 1886, and was signed by 100 countries at this time, as a result in the rise in piracy in the mid-nineteenth century. Beforehand each country had customised copyright systems, which operated separately from other national legislation (Ricketson, 1987, Seville, 2006).

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<sup>43</sup> For example some Parisian publishers had a successful commerce of selling cheap reprints of, newly published, British books to British tourists in Paris (Barnes, 1974). So not only did this result in the erosion of this foreign market but this type of trade impinged on Britain's domestic market.

<sup>44</sup> The preventative legislation did not deter cheaper reprints being smuggled from USA to Canada because the British editions were so expensive. Also Canadian publishers were not allowed to publish cheaper editions because this would breach copyright (Seville, 2006). This situation is still in existence, and causing contention, in today's publishing industry and will be explored further in this chapter.

The Berne Convention stipulates minimum copyright standards of protection and enforcement that each member must assent to. Even though the Berne Convention has been amended several times in the last century, in accordance with the development of technology, it has not succeeded in creating a consistent international copyright system<sup>45</sup> (Haynes, 2005). Although the United Kingdom joined the Berne Convention in 1887 it did not actually execute large parts of it until the CPDA 1988, nearly 100 years later. On joining the Berne Convention in 1989 the USA refused to revise much of its copyright laws to adhere to the regulations<sup>46</sup>. This signifies a fairly recent shared copyright regulation between the world's two biggest producers of English-language books (Owen, 2006). Before the UK and the USA joined the Berne Convention, works from authors such as Charles Dickens and Mark Twain were printed transatlantically without any permission<sup>47</sup> (Barnes 1974, Owen, 2006).

In 1994, an agreement on Trade-Related Intellectual Property Rights (TRIPS) was organised, by the World Trade Organisation (WTO), to establish the basic directives for IP regulation (Haynes, 2005). This agreement first recognised IPR (including copyright) as both a method for rewarding creativity and innovation, and an important instrument in international trade (Haynes, 2005). The adoption of WIPO, the Berne Convention and TRIPS has resulted in authors having a high-level of protection worldwide (Gowers, 2006). There

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<sup>45</sup> The Berne Convention was revised in 1908, 1928, 1948, 1967 and 1971 to encompass developments in technology (Hemmungs Wirten, 2004).

<sup>46</sup> The USA did not even acknowledge foreign copyrights until 1891 and even then it was with certain conditions. Before that, American publishers published copyrighted works without permission or even payment. This would be called piracy nowadays (Seville, 2006)

<sup>47</sup> The first official copyright law in the USA was not passed until 1790 (Litman, 2001).

has been much controversy since the TRIPS agreement was established mainly about the effect on developing nations and indigenous culture. It has been argued that the TRIPS agreement is mainly beneficial for the knowledge rich, major trading nations such as the US and the European Nations, and detrimental to smaller, developing countries (Haynes, 2005). The irony is that the rigid, anti-piracy, copyright legislation that the US is trying to enforce is contrary to their historic attitude concerning copyright where only domestic authors were protected and the works of foreign authors were exploited without payment or permission (Tebbel, 1975b). Stevenson (2010) likens the attitude of American publishers, towards copyright, during this period to the attitude of large corporations such as Google and Microsoft in the contemporary publishing environment<sup>48</sup> (Stevenson, 2010). It is evident that economies are becoming more knowledge-based than industrial and this has led to a more global economy with a greater emphasis on IP trade and protection (Haynes, 2005). Additionally the WIPO Copyright Treaty was developed in 1996 to concentrate on online and digital issues: issues that are particularly pertinent in today's publishing environment and will be discussed further in Chapter Two (Seville, 2006).

## **1.5. Copyright Theories**

Fisher (2001) outlines the key motivations behind the justification of copyright. These justifications are that copyright is necessary to: foster the creation of literary and artistic work; reward the 'author' for creating the work; protect the author's original characteristics within their work; stimulate the development

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<sup>48</sup> The role of Google in the digital publishing environment will be discussed further in Chapter Two (pages 62-69).



knowledge and learning; and help promote a flourishing culture (Fisher, 2001). Additionally, there are six principal copyright theories in academic discourse: the instrumental/utilitarian approach; the labour theory of property; the personhood theory; social-institutional-planning; traditional proprietorship; and authorial constructionism (Fisher, 2001, Zemer, 2007). Zemer (2007) suggests a seventh theory: social constructionism (Zemer, 2007). These theories reflect the moral, social, cultural and economic interests of IP and will be used to form a context for contemporary issues in IPR and will be discussed throughout this thesis. A brief overview of each theory follows:

The instrumental/utilitarian approach champions copyright as a catalyst for innovation and creativity, as outlined in the Statute of Anne “the encouragement of learned men to compose and write useful books” (Statute of Anne, 1709). This approach promotes the balance between protecting both the author-creator and the public (Scrutton, 1883). As such, this approach can both support and undermine copyright legislation (Palmer, 1990). Landes and Posner (1989) argue that the key attributes of intellectual products, unlike physical products, are that they are easily replicated and that one person’s enjoyment of the product is not impeded by another person’s enjoyment because the product is not depleted, only replicated. As such, these attributes can lead to the creator not being rewarded for the effort they exerted into the work because, without copyright, anyone can copy and distribute the work, which leaves the creator with no economic incentive to write and thus culturally important intellectual works might not be written for fear of no

reward. Consequently, utilitarians promote a limited exclusive term of copyright to expand the canon of knowledge that already exists (Ladnes and Podnes, 1989). This theory reasons that authors would only create if they are rewarded for the work they have put into their creation; however, this study found that this is not true and that authors would continue to create without the protection of copyright. Additionally, it is evident that there was a culture of creativity before the first copyright laws and Fisher (2001) surmises that there is not enough empirical evidence to prove that copyright acts as an incentive (Fisher, 2001). Both Ladnes and Podnes (1989), and Boyle (1996) surmise the public domain is overlooked in the utilitarian argument.

Labour-based justifications focus on the labour expended into creating a work. By using the labour-based justification, a person can obtain the natural property rights to something, in the commons, that they have invested their labour into. Many theorists believe that John Locke's essay on property, which endorses a person's natural right to the fruits of his labour on the basis that removing the property from the commons does not result in the commons being depleted, forms the basis of this theory. Theorists subscribing to these principles believe the government should implement and support these natural rights. As such, this argument has been used by pro-copyright legislators over the years (Fisher, 2001). Despite being written over three hundred years ago, John Locke's theory of property still plays an important role in IP discussion with some scholars believing that Locke promoted the exclusive and individual nature of property and others believing that this

theory puts more emphasis on the collective and social nature of knowledge<sup>49</sup> (Spooner, 1855, Hughes, 1988, Hettinger, 1989, Becker, 1993, Drahos, 1996, Craig, 2002, Damstedt, 2003, Deazley, 2006, Zemer, 2006a). In his famous work, *The Second Treatise of Civil Government*, Locke (1690) surmises that people have the moral right to protect themselves, and provide for their future, so the removal of material goods from the commons (accessible by everyone) can be essential to their survival (Locke, 1690). It is widely claimed that Locke did not write this specifically with IP in mind and this theory is grounded in the view that the materials accumulated are essential for the preservation of the person's life and so is in contrast to the current view on expansive property rights (Drahos, 1996). However, Zemer (2006a) argues that the copyright discussion, based on Locke's theory of property, is incomplete because the majority of scholars base their arguments solely on Chapter V of *The Second Treatise of Civil Government*, and only by looking at Locke's other work, particularly his theories on knowledge and authors' rights, can Locke's theory of property be put into the correct context (Zemer, 2006a). Despite this, scholars have claimed that Locke's theory can be used to demonstrate that authors/creators have a natural right to their creations because of the labour they have expended into it (Spooner, 1855, Hughes, 1988, Becker, 1993). Rand (1966) continues this argument by contending that IPR are "the legal implementation of the base of all property rights: a man's right to the product of his mind" (Rand, 1966, p. 130). However, unlike natural property rights, Rand (1966) does not believe IPR should be perpetual because future heirs of the original creator are not responsible for the original creation and should,

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<sup>49</sup> Damstedt (2003) argues that Locke's theory of property is used as a natural law justification in many intellectual property court cases (Damstedt, 2003).

thus, not be rewarded (Rand, 1966). Additionally, Locke's theory can be used to show that the public dissemination of information and knowledge is necessary for a civil society because it highlights the importance of the "commons" (Gordon, 2003). Locke (1690) argues that a person can own a property right, to objects that do not already belong to somebody else, through the means of their own labour, as long as enough of these objects are left in the commons for other people to access<sup>50</sup>:

"Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this nobody has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others" (Locke, 1690, Chapter V).

A much-quoted passage in Thomas Jefferson's letter to Isaac MacPherson in 1813 can be used to form the basis of the argument against overprotecting intellectual work. Jefferson wrote:

"If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. He who receives an

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<sup>50</sup> This natural law right is called the sufficiency proviso (Damstedt, 2003).

idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. Inventions then cannot, in nature, be a subject of property” (Lessig, 2006a, p.182).

This quote highlights the difference between tangible and intangible property by arguing that shared ideas and writing are not subject to rivalry because one person’s use of another’s idea does not erode the original idea and/or remove it from the original creator (Lessig, 2006a). Adding to this, Tavini (2005) argues that Locke’s theory on property can be used to limit IPR based on objects found in the public domain/commons when:

“a particular law or policy diminish[es] the information commons by unfairly fencing off intellectual objects” and/or “ordinary individuals [are] made worse off as a result of that law or policy when they can no longer access information that had previously been [freely] available to them” (Tavini, 2005, p.92).

The argument here is that limiting IPR can prevent the information commons from being diminished and thus accessible to everyone. Many scholars, stemming from Jefferson’s writing, argue that although intangible objects of information cannot be diminished in that same way that a material object can, protecting and privatising them can lead to the decrease of the information commons/public domains, which has a restrictive effect on any potential

derivative work and is thus detrimental to society<sup>51</sup> (Lessig, 1999, Craig, 2002, Spinello, 2003, Tavini, 2005, Lessig, 2006b). In contrast, Hardin (1968) believes that although information and ideas are abstract and cannot be diminished in the same way that material products can, information in the copyright-free public domain will ultimately become exhausted from overuse (Hardin, 1968). Additionally, Damstedt (2003) argues that this privatisation of property can lead to information being wasted because it is not being shared, and, as such, the importance of cultural fair use is vital in these situations (Damstedt, 2003). Drahos (1996) comments, “as abstract objects ideas cannot spoil, but the opportunities that they confer may” in this case “opportunities” being the development of knowledge (Drahos, 1996, p.51). Hettinger (1989) and Zemer (2006a) argue that the problem with Locke’s argument in Chapter V of *The Second Treatise of Civil Government* is that it vindicates the privatisation of property, in this case intellectual property, from a commons that was created collectively and does not give a reason why the labourer should privately own the whole property (Hettinger, 1989, Zemer, 2006a). Godwin (1998) believes that the misunderstanding surrounding IP use and the digital environment is as a result of the unclear distinctions between private property rights and IPR: a problem that Patterson and Linberg (1991) expressed earlier in this chapter (Godwin, 1998). Additionally, Zemer (2006a) believes that Locke’s theory of property includes elements of both the utilitarian and natural law justifications, which balances public interest against private rights (Zemer, 2006a).

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<sup>51</sup> Copyright actually privatises sectors of the public domain, making them inaccessible to everyone (Rose, 1986). Lessig (2002) observes that locking away such resources will “harm the environment of innovation” (Lessig, 2002, p.6)

Zemer (2006a) argues that Locke was also referring to IPR in Chapter V of The Second Treatise of Civil Government despite the unclear distinction between physical and intellectual property. However, Craig (2002) asserts that applying Locke's theories to IP can be inimical to a balanced copyright system (Craig, 2002). Zemer contends that only by examining Locke's other work can Locke's philosophies on IP be properly understood. By studying other key Lockean discourse, such as Labour, An Essay Concerning Human Understanding, and Liberty of the Press, Zemer argues that Locke campaigned for authors' rights, the end of The Stationers' Company's monopoly, the limiting of copyright the encouragement of learning (Zemer, 2006a). In his memorandum Liberty of the Press, Locke disputed the monopoly of the book trade arguing that it had a harmful effect on the public domain and kept book prices at inaccessibly high prices<sup>52</sup> (Bettig, 1996, Zemer, 2006a). Locke actually petitioned against the renewal of the Licencing Act 1662 and proposed several amendments the Act such as allowing the author to retain reprint rights and the requirement that booksellers needed the author's permission in order to use their name in publications. This suggests that authorial rights were an issue for Locke at this point (Astbury, 1978). Additionally, although Locke believed that authors should have an exclusive right to the work, he believed this right should be limited to serve the public good. This negates any argument that IP should have the same protection as physical property and shows Locke actually had a utilitarian view of copyright (Zemer, 2006a). Zemer (2006a) concludes that Locke believed that IPR,

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<sup>52</sup> This argument helped to stop the renewal of the Licencing Act 1662.

particularly copyright, “is a social enterprise representing authorial and creative collectivity” (Zemer, 2006a, p946).

The personhood approach focuses on the development of the individual as a result of their control over resources they have worked for and contributed their personality into, such as property (Hughes, 1988, Waldron, 1988). In this case there is a distinction between personal property and property with market value, because the personal property cannot be replaced and the owner would experience great loss if it was removed from them (Radin, 1982). Personhood theorists believe that the work created by the author is an extension of their personality and, as such, they have natural authorial rights over the work (Fisher, 2001). This philosophy had helped to reinforce legal discourse such as moral rights and is contrast to utilitarian theories, which place the emphasis on economic exchange. Moral Rights in UK copyright law include the authors’ right to be identified as the author of the work and the right to oppose any derogatory treatment of their work (CPDA, 1988). However, there have been arguments against moral rights extending beyond the death of the author because it is difficult to understand how the dead author would experience loss through non-attribution or the derogatory treatment of their work (Palmer, 1990).

Social and institutional planning theory focuses how sustaining heterogeneous cultures plays an important role in the debate on copyright. The social and institutional planning theory focuses on this argument by considering how this diverse culture can benefit from a balanced IP system



(Zemer, 2007). Rigid copyright systems can be detrimental to both social and cultural communication because they limit creative expression and democratic discussion (Coombe, 1998, Netanel, 1996). Both Netanel (1996) and Coombe (1998) argue that in order to establish a more universal and democratic contribution to the sphere of knowledge, there must be substantial changes in the way that IPR is perceived and legislated (Netanel, 1996, Coombe, 1998). Netanel (1996) suggests that the term of copyright is decreased to increase the size of the public domain (Netanel, 1996).

Traditional proprietorism is based on the idea that copyright is a property right. This theory focuses on the concept of ownership and does not address copyright as a social concept. Although this theory is not commonly used as a stand-alone approach to IPR it does connect the other copyright theories and highlights the pervasive notion of copyright relating to property rights, which is the basis of all copyright theories (Zemer, 2007).

Authorial constructionism is based around authorship and ownership, and the role authorship plays in the construction of copyright. Many scholars criticise the Romantic notion of authorship, which they believe helps create a monopoly of copyright (Jaszi, 1994). Many scholars argue that all authorship is actually collaborative because works are the creation of society rather than the individual (Jaszi et al, 1994). This theory will be examined further in Chapter Three.

Social constructionism is an approach that combines the labour theory of property, traditional proprietarianism, and authorial constructionism (Zemer, 2007). This argument is based on the theory that authors and the work they produced are products of society and therefore the public should be attributed with the authorial rights (Zemer, 2007). This theory is based on arguments by Woodmansee, Jaszi, Boyle and Coombe, which will be explored further in this thesis. However, instead of focusing on the individual collaborations between authors, Zemer (2007) argues that the public should be recognised as a collaborator in all creative projects.

## **1.6. Organisation of thesis**

This thesis is divided into seven chapters. This introductory chapter of the thesis has provided a detailed historical overview and analysis of copyright. By providing a detailed historical overview of copyright and providing a contemporary analysis of the operational practices of the Scottish publishing industry, this thesis hopes to emphasise the cultural and economic value of copyright in a global and digital publishing environment. Charting the evolution of copyright – from the Statute of Anne 1709 to the Digital Economy Act 2010 (discussed in Chapter Two) – provides a framework in which to contextualise and evaluate the contemporary situation. It illustrates that a law that originated to encourage the dissemination of knowledge has evolved to protect the interests of authors and other copyright holders.

Chapter Two outlines the key issues in contemporary copyright and concludes by arguing that media conglomerates and authors have a powerful position in

the ongoing copyright debate and that the public good is often overlooked. Additionally, this chapter describes the different rights available for exploitation and the current climate in which this exploitation takes place. This will help place the operational practices of Scottish publishers, authors and literary agents who represent Scottish authors, into context in the discussions in Chapters Five and Six.

Chapter Three provides a historical overview of the development of authorship and the role that the Romantic author has played in the development of copyright laws. It argues that the Romantic notion of authorship is outdated in an increasingly collaborative creative environment and that focus on big-name authors can help to both perpetuate the perception of the Romantic author and hinder the development of lesser-known authors. This chapter also charts the rise of the literary agent in the publishing industry and demonstrates the important role the agent plays in the contemporary publishing process as a result of the conglomeration of the entertainment industry.

Chapter Four charts the development of the Scottish publishing industry and examines the changing nature in the relationship between Scottish and London-based publishing activity over the years. Additionally, this chapter introduces the methods used to achieve the aim of this research, which is to examine the effects of globalisation and the evolution of technologies on the Scottish publishing industry's operational practices of copyright exploitation and protection. A multi-method approach, which combines both quantitative

and qualitative research, was used. This includes questionnaire surveys with both Scottish authors and publishers, and a series of semi-structured interviews with Scottish publishers, authors, literary agents and London literary agents who represent Scottish authors. Together these approaches allow for a detailed and robust analysis of the operational practices of rights exploitation and protection.

Chapter Five gives a detailed overview of authorship and agenting in the twenty-first century through the analysis of interviews with Scottish authors and both Scottish and London-based agents who represent Scottish authors, and a survey of Scottish authors. These results are compared to previous studies to highlight the changing nature of authorship over the years. Both the survey and interview results paint a pessimistic picture of authorship in the twenty-first century, with the majority of authors earning very little from their writing and depending on alternative methods to improve their income. Additionally, Scottish authors are not benefiting from the numerous new platforms to exploit their work through, which could help to enhance their income. This is partly because many Scottish authors still have a traditional view of publishing and do not think about their work commercially, and partly because, in many cases, their rights are controlled by their publishers and not exploited. This survey also found that Scottish authors with London literary agents earned more income than their counterparts with Scottish agents; however, this was mainly because they were more likely to be published with London publishers. This shows that Scottish publishers are failing their authors by not fostering their rights efficiently and effectively.

Chapter Six provides an outline of the current shape of the Scottish publishing industry through the analysis of interviews and a survey with Scottish publishers. These results are compared to previous studies to highlight the changing nature of Scottish publishing over the years. Issues such as globalisation, rights exploitation and electronic/digital publishing are investigated to ascertain Scottish publishers' engagement in the contemporary publishing industry. A short examination of the independent publisher Canongate is used to illustrate how small Scottish publishers can compete in the global and digital environment. Both the surveys and interviews with Scottish publishers showed that the majority of Scottish publishers were not actively involved in rights exploitation, despite controlling the majority of the authors' rights. As such, these rights are lying dormant and no-one is profiting from them. Additionally, the study found that the Scottish publishers were not actively engaged in digital publishing, so were in danger of being left behind in the digital publishing environment. The reason for this lack of engagement in both rights exploitation and the digital publishing environment is partly because of failing to invest in a rights department, or staff trained in selling rights, and new technology, and partly because many of the Scottish publishers concentrate on the domestic Scottish market and, as such, publish cultural Scottish content that may not translate well to overseas markets or onto new technologies. Additionally, this Scottish content is important in maintaining diversity in the UK publishing industry. However, it does show that the Scottish publishing industry is inward looking and thus will

not be able to compete in the global market if publishers continue with their current business models.

### **1.7. Significance of research**

This thesis not only contributes towards the theoretical and empirical understanding of copyright operating within the traditional and electronic book publishing industry, but it also has a practical application by informing the development of workplace policies and practices for publishers, authors, literary agents, and organisational bodies. This research found that the majority of Scottish publishers, authors and literary agents are not fostering IPR effectively across international markets and new media: The failure to do this means that the operational practices of the Scottish publishing industry are not in harmony with the burgeoning digital publishing environment. If Scottish publishers, in particular, continue with current practices it will become increasingly difficult for them to compete in the national and international publishing environment. The digital publishing area has been considered as a panacea to bridge the gaps between different sized publishing companies: allowing small, independent companies to compete on an equal footing with cross-media conglomerates. However, this study has found that Scottish publishers are not capitalising on new technology and new platforms for dissemination: this is detrimental to their authors. This study concludes that only by better training and educating the Scottish publishing industry workforce in matters of rights exploitation and digital publishing can Scottish publishing compete in the international arena and contribute to, and benefit financially from, the knowledge economy.

## **Chapter Two: The Evolution of Intellectual Property**

### **2.1. Chapter Summary**

This chapter follows the evolution of copyright legislation in response to social, economic and technological factors, such as the role of the contemporary publisher, copyright infringement and new technology, and illuminates contemporary issues surrounding copyright protection and exploitation. Additionally, this chapter describes the different rights available for exploitation and the current climate in which this exploitation takes place.

### **2.2. Contemporary Intellectual Property Issues**

#### **2.2.1. Intellectual Property in the Digital Age**

As outlined in the introduction, the rationale behind early copyright laws was related to the nascent printing technology, which resulted in the growth in production and distribution of printed works. Copyright laws continue to develop in response to the evolution of technology, with legislation now extending to protect the Internet (as well as other technological advancements)<sup>53</sup>. Electronic/digital publishing is now an important component of the information age<sup>54</sup> (Jones, 2003). The digital environment developed largely in the 1990s, leading to change and increased activity in the publishing industry (Owen, 2006). During this period, several publishers started to include electronic rights clauses in their publishing contracts and develop

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<sup>53</sup> The Statute of Anne was in response to the Gutenberg Press and The Digital Economy Act, which will be discussed in pages 86-87, was in response to the Internet (Boyle, 2003).

<sup>54</sup> Clark (2008) argues that the failure of multi-media publishing, with the CD ROM, has made publishers wary about investing in e-books (Clark, 2008).

electronic publishing departments<sup>55</sup> (Klebanoff, 2002). Not only were publishers trying to publish electronic editions of existing and new books on their front-lists, they were also trying to secure the electronic rights for some of the important works in their backlist<sup>56</sup> (Klebanoff, 2002). Grimmelmann (2009) argues that the proliferation of electronic publishing is the biggest revolution of the book industry since the invention of the printing press (Grimmelmann, 2009). The development of technology has been a contributing factor in the development, and change, of copyright laws (Seville, 2006). Information is now distributed more widely and easier as a result of digital technology and this poses a challenge to copyright law. The affected groups rely on copyright for protection and to impose penalties on copyright infringers, while many users argue that copyright puts too many restrictions on important works and, ultimately, privatises the public domain (Yen, 1994). Lessig (2001) complains that copyright laws are now well beyond the parameters saying that “The framers of the original Copyright Act would not begin to recognise what the Act has begun” (Lessig, 2001, p.106). While some scholars predict that copyright laws will become insignificant, or even disappear, in the digital environment, other claim that the cross-media conglomerates will have more control than ever (Boyle, 1996).

Copyright owners now have far more control over how their products are consumed, as a result of digital technology, in comparison to the analogue system. Digital Rights Management (DRM) technology, for example, can

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<sup>55</sup> Simon & Schuster actually began to include electronic clauses in the mid-1980s while Time Warner did not start until the mid-1990s (Klebanoff, 2002).

<sup>56</sup> Simon & Schuster made history, and headline news, at this point by publishing the first, original, electronic novella: *Riding the Bullet* by Stephen King (Klebanoff, 2002).



control the amount of times you read an e-book or whether you can share your product with another person. Copyright law supports this control because it monitors 'copies' of the work<sup>57</sup> (Lessig, 2008). However, DRM technology is not always reliable and can be easily breached (Johns, 2009). DRM can often encourage piracy rather than prevent it<sup>58</sup> (Owen, 2010). Lessig (2009) argues that copyright legislation was originally meant to regulate a work when there was commercial activity surrounding it: normally when the book is first published and its popularity is at a high. The work could be accessed freely after the decline in this activity because the physical book could be moved around the world, from person-to-person, without triggering any copyright laws. However, the digital environment means that there are now new ways for the material to be copied and manipulated, so this prolongs the commercial activity and creates a digital alert of when a work is used or copied. This digital alert allows the copyright owner to have more control over their work (Lessig, 2009). While the amount of times you used an analogue product, such as a book, was untraceable, digital technology can track how many times you use a digital product, such as an e-book (Lessig, 2008). An analogue book can be read, lent and sold without the knowledge, or the permission, of the copyright holder once the user has bought the book. This is not the case with electronic books: permission is required to read, lend and even use short extracts of the book because all uses are 'copies' (Lessig, 2008). However, this change in control of cultural products did not come from legislation: it was a result of the new platforms of dissemination (Lessig,

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<sup>57</sup> Until 1909, in the US, copyright law did not actually regulate the "copies" it focused on the publishing and distribution of a book (Patterson, 1968, Lessig, 2008).

<sup>58</sup> It was for this reason that Apple removed DRM from iTunes in 2009 (Owen, 2010).

2008). Lessig (2008) proposes that instead of focusing on, and policing, these “copies”, copyright law should monitor how the copyrighted work is being used (e.g. If it is being used commercially or non-commercially). This corresponds to Litman’s suggestion, on page 9, that copyright should not be a reproductive right but instead a right defined by the commercial, rather than non-commercial, usage of a work (Litman, 2001, Lessig, 2008). Additionally, Boyle (2003) argues that while the Internet, and digital technology, may reduce the cost of illegal copying, and thus engender piracy, it also reduces others costs such as distribution and production and largely increases the size of potential markets. Consequently, Boyle believes that increased protection is not necessary because there is a growth in the benefits to the rights holders<sup>59</sup> (Boyle, 2003).

Electronic books (e-books) have been discussed extensively over the past couple of decades. Publishers have faced the dilemma of whether to invest in, often expensive, e-book technology, or not to invest and thus get left behind (Towle et al, 2007). Breede (2008) asserts that the main problem at the moment is the “lack of a universal standard” of electronic formats, which does not allow “interoperability between different electronic devices” (Breede, 2008, p. 15). However, when negotiating what rights to buy it is important for publishers not to buy rights that they cannot exploit fully. If the publisher does not have the e-book technology to exploit the works then it would be advisable for them to either take on a short-term licence or not to include them in the

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<sup>59</sup> Additionally, a UK government report found that although technology has now made it easier to copy and distribute work this has endorsed the role of collecting agencies, such as the Authors’ Licencing and Collecting Society (ALCS), who ensure that creators are remunerated appropriately (House of Commons report, 2009).

contract (Potter, 2009). Literary agents have been campaigning for short-term licences for electronic rights so that their authors are not at a disadvantage (Owen, 2010). Most American and British publishers try to include electronic rights in the contract because they do not want a competing edition available (Potter, 2009). If they do not have the technology to exploit the work then it is often the case that a short-term licence will be taken out to prevent anyone else from buying the rights. This means there would not be a competing edition and the rights holder would have to ask permission before selling the rights to anyone else (Potter, 2009). However, Weinstein (2010) observes that complicated international rights issues can prevent publishers from exploiting these electronic rights and thus there are not sufficient indigenous language e-books for market demand. Electronic rights issues can arise at a local level, when the ownership of the original language electronic rights is unclear and at an international level when different publishers own the territorial rights (Weinstein, 2010). The UK Publishers Association, the Society of Authors and the Association of Authors' Agents have been involved in discussions about the practice of digital rights negotiation and how this should be resolved within the head contract. This shows this triumvirate have identified that they must work together to progress successfully (Owen, 2010).

Many economists have admitted that IP legislation and markets are inefficient and primarily exist to strike a balance between private and public good. However, as technology develops, the need to re-evaluate legislation is pressing (Bettig, 1996). There have been several arguments suggesting that copyright would not be able to survive in the digital environment and should

be abolished because so much information is already freely available in the public domain (Barlow, 1996). However, according to Williams (2007), abolishing copyright would lead to complications surrounding the fair use of work and would also limit earning potential for creators, who might lose the incentive to create (Williams, 2007). Additionally, Breyer (1970) asserts that support for copyright, and the challenge to copyright abolition, is not down to appreciation of copyright efficiency but fear of what would happen without a copyright system (Breyer, 1970). Williams (2007) continues by stating that although the current copyright system has weaknesses, it does not necessarily need to be abolished; instead it needs to be modernised to fit in with the digital environment (Williams, 2007). However Anthony Murphy, the former Director of Copyright in the UK Patent office, argues that copyright was created as a result of the growth in printing so is actually a product of technological advancement. Furthermore, it is evident that copyright has survived, and evolved, in the face of the advancement in technology over the years, which includes the electric telegraph in the late nineteenth century, and will thus continue to grow and develop in accordance with technology (Murphy, 2002). However, the rate in which technology is advancing is much greater than ever before, which makes it more difficult for legislators to keep pace with (Murphy, 2002).

Murphy's suggestion to close the gap between the rise in technology and the relevant legislation is to make legislation more resistant to future technology. However, with the increasing rate of technological change, it would be impossible to encompass all new mediums and platforms. Murphy asserts

that a new copyright system is not enough to change the current state of copyright and contends that the current attitude towards copyright is one of lack and understanding and respect: not dissimilar to the attitudes before The Statute of Anne (Murphy, 2002). A new generation of consumers has emerged with a more anarchic attitude towards copyright and the belief that all information should be free. This has resulted in a lack of respect and understanding in the role copyright has in encouraging creativity. The UK's IP Office is particularly interested in integrating IP education into the school curriculum, to educate children on the importance of copyright, and other IPR. The IP Office created a free educational device called 'Think Kit', which is aimed at secondary school children (IP Office website, 2008). Murphy, a strong advocate of this scheme, believes that this will help raise awareness of copyright issues and help future consumers become more respectful of copyrighted works (Murphy, 2002). The Copyright Alliance also launched a similar project in America by developing and distributing copyright material to be integrated into the curriculum and the Authors Licencing and Collecting Society (ALCS) created comic-book-style information material to educate schoolchildren about copyright (ALCS, 2010).

Both Litman (2001) and Lessig (2006) argue that neither copyright nor the rise in new technology is the problem. The problem, Lessig argues, lies with an archaic copyright system, which is not equipped to deal with new technology (Litman, 2001, Lessig, 2006). Seville (2006) goes on to argue that the current copyright challenges are actually similar to the challenges faced in the past and so previous challenges must be examined to help resolve contemporary

problems. For example in the nineteenth century there was much discussion and contention about whether separate national copyright systems could work collaboratively for international trade (as discussed earlier in pages 26-29) This situation is comparable to the current discussion about whether the contemporary copyright laws can operate in cyberspace, where there are tangible confines (Seville, 2006). On the other hand, Helprin (2009) is critical of the digital environment believing that it makes copying much easier and suggests that copyright laws should be strengthened and lengthened in response to this threat. Helprin argues that this has historically been the case when ease of replication has advanced in the past (Helprin, 2009).

Weissberg (2008) argues that, “digital technologies are changing how books are conceived, created, published, marketed and sold” (Weissberg, 2008, p. 256). This digital growth, which included wireless internet connection via mobile phones, e-book readers, and e-book applications, have introduced new opportunities for innovation and product development, as Weissberg (2008) surmises “more products to make discoverable” (Weissberg, 2008, p. 254). From this it can be argued that the digital environment is enhancing the publishing industry, rather than damaging it, because it is creating new products and thus widening the markets in which the original work can be sold. While Amazon’s Kindle dominated the e-reader market, the launch of Apple’s iPad propelled e-readers into mainstream visibility<sup>60</sup> (Weinstein, 2010). The current digital publishing trend is the e-book application (apps),

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<sup>60</sup> However, currently more people read e-books on their mobile phones than on dedicated e-readers (Weinstein, 2010). First generation e-book readers were not as successful as anticipated; however, new machines such as the Amazon Kindle and Apple’s iPad have proved to be very popular (Owen, 2010).

called iBooks, for the Apple iPhone, iPod touch or iPad. This application adds enhancements, such as music, video and audio-books, to the electronic book and can tailor the book to the users' need (Page, 2009c, Weinstein, 2010). Page (2009c) warns that, "Slow moving publishers risk being left out of an explosion in the demand for the creation of the book application for the Apple iPhone and iPod touch" (Page, 2009c). Tivnan (2009) agrees with this sentiment, stating that, "apps are big business" (Tivnan, 2009). The Apple app store generates £121 million in monthly sales for Apple. Apple keeps thirty percent of this revenue and the remaining seventy percent is divided between the content owners and developers (Tivnan, 2009). This highlights the potential for market growth and demonstrates the large number of potential consumers. Independent Scottish publishing company Canongate were one of the first companies to capitalise on this growing trend with their *Death of Bunny Munro*, by Nick Cave, app (Tivnan, 2009). More on this will be outlined in page 314 in Chapter Six. However, the problem with new platforms lies with using technology that isolates the readers because they do not always have access to the necessary devices.

There is a danger that electronic/digital publishing could revise the role of the publisher and thus create a division between the publisher and the author. Core operating functions within the publishing company could become less intrinsic and thus create a more competitive environment where literary agents negotiate for specific rights that have evolved as a result of the digital environment (Epstein, 2002, Klebanoff, 2002). These problems are already occurring with publishers "trying to divide up the new digital world before we

have even mapped it out” (Epstein, 2002, p.23). Although the electronic world reduces overheads, authors are not, as yet, benefiting from this system<sup>61</sup> (Epstein, 2002). Klebanoff (2002) observes that authors and agents are petitioning for short-term contracts for electronic rights: something that could transform the publisher’s rights licencing business model (Klebanoff, 2002). This situation is particularly prevalent in the British publishing industry, where only a low number of backlist titles are available digitally, so agents are advising their authors to retain their digital rights because the small size of the market means the authors will not suffer large financial losses for not exploiting these rights immediately. However, Richard Charkin, the Executive Director at Bloomsbury, has warned that the lack of availability of digital books could lead to piracy (Page, 2010c). Epstein (2002) agrees with this and predicted in 2002 that e-books would not become popular until “a critical mass of saleable digital content has been assembled” (Epstein, 2002, p.187). This highlights the importance of digitising backlists and offering a large and varied choice to consumers. Equally, if publishers do not embrace digital technology, and the opportunities it generates, they may be left behind. A leading literary agent in America is planning to start a company to licence e-rights directly to companies such as Google, Apple and Amazon, in response to unproductive negotiations with traditional publishers: a move that is backed by several British literary agents, who predict that the number of specialist e-book publishers will rise in the coming years<sup>62</sup> (Page, 2010c). An indication of the role of the publisher in response to enhanced e-books was whether

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<sup>61</sup> The cost of “digitizing a text is only a few hundred dollars compared to the many thousands required to manufacture and distribute books physically” (Epstein, 2002, p.23)

<sup>62</sup> One London agent compares this to the rise in separate paperback publishing houses twenty five to fifty years ago (Page, 2010c)



Bloomsbury would be involved in the creation of the *Harry Potter* e-books<sup>63</sup>. Authors and their agents usually control the enhanced electronic rights and thus the future issue, for both agents and authors, will be who to work with when exploiting the work through this platform: traditional publishers, electronic book publishers, or apps developers (Page, 2010b). Although the *Harry Potter* phenomenon is over: extending into the e-book market could result in increased sales of the book and help Bloomsbury's profit, post-Potter<sup>64</sup>. Additionally, the availability of such a popular series in digital format could increase the rise in e-book piracy, so it will be an interesting case to follow<sup>65</sup> (Stevenson, 2007). Rowling decided to collaborate with Bloomsbury, who will receive a share of the revenue, and sell her e-books through Pottermore, a website based around the *Harry Potter* series (Jones and Williams, 2011). Despite Bloomsbury being involved, they have been relegated to a partner rather than the driving force behind the process: this demonstrates the changing and, in this case, less dominant role of the publisher in the digital publishing environment.

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<sup>63</sup> Before 2011, it was widely reported that J.K. Rowling had agreed to digitise her *Harry Potter* novels and news of Bloomsbury's involvement in this was highly anticipated. This case will help to examine the role of the publisher in the digital environment and illustrate the rise in e-book sales (Page, 2010b).

<sup>64</sup> Irrespective of any anticipated *Harry Potter* e-book sales, e-book sales in general have been cited as one of the reasons Bloomsbury's profits have risen in the last year (Williams, 2011).

<sup>65</sup> Shortly after the publication of the final *Harry Potter* book there were illegal copies available to download and numerous unauthorised printed versions (Stevenson, 2007).

### 2.2.2. Piracy in the Digital Environment

The main argument for strengthening copyright laws is copyright infringement, more commonly referred to as piracy, and the affect it has on rights holders<sup>66</sup>. However, piracy is not limited to the digital environment; it has been in existence for hundreds of years as discussed in pages 14-16<sup>67</sup>. Patry (2009) asserts that the term 'piracy' is used by policy makes and copyright holders to evoke negative images of violent theft, as conducted by sea pirates on the high seas, in order to create "moral panics" and thus extend control of copyright (Patry, 2009, p.133). As outlined in Chapter One, copyright legislation was created, in part, in response to piracy, and intellectual property, as a concept, did not exist until there had been at least 150 years' worth of public condemnation of piracy (Sherman and Bently, 1999). The role of piracy in guiding IP legislation can be examined by tracing the historical response of IP legislation to piracy and comparing it to the digital environment. During the days of the Stationers' Company copyright existed under a framework that protected the London book trade from external competition and to this day the arguments surrounding piracy focus on "economic causes and effects" and highlight how illegal copying and distribution can devalue the authentic market<sup>68</sup> (Taylor, 2006, p. 262). However, the pirates of the eighteenth century onwards have argued that they

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<sup>66</sup> The 'piracy' argument was used to lobby for the Digital Millennium Copyright Act (DMCA) 1998: an American copyright act enacted to protect copyright in the digital environment (Litman, 2001). Jack Valenti, the then president of the Motion Picture Association of America (MPAA) and renowned pro-copyright lobbyist, used the piracy analogies to help extend the protection term (Patry, 2009). The music industry claimed that worldwide piracy has cost them \$2.45billion; however these figures were later revealed as flawed (Boyle, 1996).

<sup>67</sup> In fact, according to Johns (2009), piracy was ubiquitous in the seventeenth century, with a dictionary definition at this time describing it a pirate as "one who unjustly prints another person's copy" (Johns, 2009, p.23).

<sup>68</sup> This is also a reason why Locke's theory of property, discussed on page 32-38, is used to defend intellectual property legislation.

sold cheap reprints for the good of the public, in response to the monopoly of the book trade, because they were making important works widely available and affordable (Hesse, 2002).

The development of the printing press gave rise to both piracy and the notion of literary property (Johns, 2009). Piracy evolved in response to the oligarchy of The Stationers' Company, while copyright developed as a result of this guild trying to maintain this control. Is this the way legislation is being revised in the digital environment? Piracy is now incredibly complex because IP encompasses more under its umbrella than ever before (Johns, 2009). Copyright infringement in the book publishing industry encompasses small-scale photocopying of textbooks to unauthorised translations to large-scale exports of English-language reprints overseas to digital piracy (Owen, 2010). Although this study focuses on the book trade, it can look towards other industries, such as the film and music industries, to see how they have adjusted to the threats of the digital environment<sup>69</sup>. The reactions by the film and music industries have been mixed and have included law-suits, petitions for stricter punishments for infringers and the introduction of alternative business models to compliment the digital environment (PricewaterhouseCoopers, 2010). The Internet has engendered quick and easy global communication and access to information; however, it has also made it easier to replicate and distribute copyrighted material, and so the rate

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<sup>69</sup> There have been numerous high-profile piracy cases in both the film and music industries such as the Recording Industry Association of America's (RIAA) lawsuit against Napster and the recent case against file-sharing service The Pirate Bay (Owen, 2010).

of copyright infringement has increased<sup>70</sup> (Langenderfer, 2001). The ubiquitousness of file-sharing has created a new generation of consumers who use and share material, ostensibly, without regard for copyright (Langenderfer, 2001). Helprin (2009) argues that the problem with pirates is that they have a sense of entitlement to the material because it can, and is, infringed so easily (Helprin, 2009). However, as discussed on pages 26-27, the term of copyright is longer than ever before and, as discussed on pages 4-6, this benefits large conglomerate companies, so, as in the seventeenth and eighteenth centuries, piracy is still often a response to the monopoly of the book trade (Hettinger, 1989). It is important to note that there are two types of piracy that exist “domestic” and “globalized”. While “globalized” piracy takes place on a large scale and for commercial purposes, “domestic” piracy is for personal, non-commercial, use<sup>71</sup> (Johns, 2009, p.431).

Piracy in the seventeenth and eighteenth centuries was monitored by The Stationers’ Company who acquired printing licences in exchange for policing their own members (Feather, 1994, Bettig, 1996). The campaign against piracy now operates at a global level: with the key economic industries, including the media industry, being surveyed and defended on a large, international, scale (Johns, 2009). The Alliance Against IP Theft has been campaigning against piracy for the last ten years and believes that this issue

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<sup>70</sup> Copyright infringement is particularly prevalent in the music industry, with the illegal downloading of songs becoming a popular activity over the last ten years (Langenderfer, 2001).

<sup>71</sup> An example of domestic piracy is taping radio broadcasts onto audio-cassettes: an act that was prevalent in the 1960s, 70s and 80s (Johns, 2009). Although the music industry claimed to have lost one billion dollars through people who created tapes at home, an industry economist of the time refuted this and said that the home-tapers actually bought more music than the average consumer (Johns, 2009).

is particularly relevant in the digital environment<sup>72</sup>. Members of the Alliance believe that copyright protection is even more important in the contemporary global environment, where knowledge-based trade is financially significant, and that severe measures should be in place to punish IP theft (Owen, 2006, Alliance Against IP Theft, 2010). Although piracy is more prevalent in the music and film industries, the rise of electronic books means that this issue is becoming increasingly important for book publishers<sup>73</sup> (Wise, 2009). It has been predicted that digital piracy of books will rise in conjunction with the popularity of e-books<sup>74</sup> (Stross, 2009). However, a year-long study, conducted by Magellan Media Partners in conjunction with O'Reilly Media and Random House, revealed that piracy could actually stimulate sales of both print and electronic books by activating a second sales peak after the decline of initial sales activity. As such, piracy could quite feasibly be used as a marketing tool (Neilan, 2009d). Johns (2009) argues that the current anti-piracy campaigns can often encroach on other aspects of society (Johns, 2009). An example of this is the 'three strikes' rule in The Digital Economy Act, which suspends possible infringers Internet access by linking piracy to IP addresses (outlined in pages 85-87). This rule would punish "domestic" rather than "globalized"

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<sup>72</sup> The Alliance Against IP Theft, formerly the Alliance Against Counterfeiting and Piracy, was formed in 1998 and is a partnership of numerous IP-related trade organisations and enforcers (Alliance Against IP Theft, 2010).

<sup>73</sup> The British Phonographic Industry (BPI), the trade association for the British music industry, said that illegal peer-to-peer file-sharing cost the music industry £180million per year in 2008, while market research company IPSOS found that file-sharing cost the film and TV industry £152million per year. There are currently no comprehensive figures for other industries such as the publishing industry (Digital Britain, 2009). However, Hankde (2010) contends that results of piracy on the music industry remain contentious and that further study is required (Hankde, 2010).

<sup>74</sup> Dan Brown's book, *The Lost Symbol*, was available to download illegally, for free, from numerous websites the week it was published. While bestselling books, especially novels, are usually the targets for such sites, the availability of academic textbooks, for illegal download, is on the rise (Owen, 2010).

pirates because professional pirates have technology that helps disguise Internet Protocol addresses. Additionally, persistent pirates can illegally appropriate wireless Internet connections, which put people with insecure connections at risk of being wrongfully accused of piracy (Sabbagh, 2010). Doctorow (2010) believes the threat of disconnection would further isolate consumers of entertainment industry products because, as outlined on page 61, “domestic” pirates are often the most avid of consumers and, as discussed on page 87, many users already find current copyright legislation to be restrictive (Doctorow, 2010).

Taylor (2006) argues that piracy can actually have positive outcomes for publishers if they strive to “legitimize at least a small part of the illegitimate market” because it can act as an indicator of demand and increase recognition of both the publisher and the author (Taylor, 2006, p.263). Will this change in the digital environment, which facilitates a quicker and easier type of electronic piracy? The culmination of illegal peer-to-peer file-sharing in the music industry indicates that these positive measures will still exist if the industries respond to them correctly. What peer-to-peer file-sharing did was create a demand for a digital format of music, which, ultimately, created a whole new lucrative legitimate industry for companies who chose to capitalise on this (Taylor, 2006). A 2010 report by PricewaterhouseCoopers predicted that digital music sales in the United Kingdom would surpass physical music sales by 2011, and that music sales will reach £1.75 billion by 2014, an increase of 4.4 percent from 2009. The report claims that while anti-piracy and copyright education strategies have had a positive impact on sales it is new

business models, such as streaming and legal downloading, that have been the driving force behind the increase in sales<sup>75</sup> (PricewaterhouseCoopers report, 2010). Additionally a recent study of the cultural and economic impact of file-sharing found that, despite music industry claims that file-sharing caused the decline in music sales, music file-sharers are as likely as non-file-sharers to buy music, with sixty-eight percent of file-sharers also buying music in addition to file-sharing.<sup>76</sup> These music file-sharers are also more likely to go to concerts and buy merchandising (Van Eijk et al, 2010). This shows that file-sharers do have a participatory relationship with the entertainment industries: buying the same amount of, if not more, products, and actively engaging in more extra events and merchandising than their non-file-sharing counterparts (Van Eijk et al, 2010). At this juncture it is important to add that authors cannot compensate for income lost through infringement through large events like concerts (Stross, 2009). However, the study also found that file-sharing contributed to a very small part of the decline in music, computer games and film sales and that file-sharing can actually act as a promotional tool. Some companies have reinvented their business models in response to file-sharing and have introduced legitimate paid-for downloading services for consumers (Van Eijk et al, 2010). This corresponds to the findings of the study, which found that piracy actually stimulated book sales (Neilan, 2009d). Additionally, book publishers have responded to the digital publishing environment by

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<sup>75</sup> The introduction of high-speed Internet access has allowed users to access streaming media online very easily (Austerberry, 2005). Examples of streaming media websites are YouTube, BBC iplayer and Spotify. Spotify, in particular, is an increasingly popular service that allows users to listen to audio content for free, with advertising, or for a subscription fee without advertising. Audiobooks are now also available on this service, which shows how the book-publishing industry can capitalise on new media services (Owen, 2010).

<sup>76</sup> The study also found that film file-sharers bought more DVDs than non-file-sharers (Van Eijk et al, 2010).

giving away free electronic content as a promotional tool, so it will be interesting to see if this helps to prevent piracy in the future<sup>77</sup> (Robles, 2010).

### **2.2.3. The Google Book Search settlement**

An analysis of the Google Book Search (GBS) settlement will illustrate how emerging technology can dramatically restructure copyright legislation and how companies operate within this framework. In 2003, the technology corporation Google established a print programme, called Google Print, with the intention of creating a large online digital library, which could be accessed universally (Owen, 2006). Google's initial aim was to digitise the books by scanning in the works and then offering access to them depending on whether they were in copyright, out of copyright, and in copyright but out of print: works that were out of copyright, and thus already in the public domain, could be accessed in full and often could be downloaded as a PDF; works that were still under copyright but out of print could be accessed partially, which would allow the user to see small extracts of the works, usually connected to the search words they has used; the access for works that were still in print, and still under copyright, depended on the amount of work the publisher, and/or authors, were prepared to share<sup>78</sup>. This could range from very small extracts to full chapters and more (Lessig, 2009, Grimmelmann, 2009). However, of

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<sup>77</sup> Internet piracy has risen in the last few years and websites such as Scribd allow users to illegally access and download entire books. However, this particular website has started to work in conjunction with key publishers and thus some of the content is now offered with the agreement of the publisher: this highlights the importance of restructuring the traditional business model to correspond to the changing publishing environment (Owen, 2010).

<sup>78</sup> The collections of works that Google scanned in were initially from publishers from their Partner Programme (Grimmelmann, 2009). Then in 2004 Google formed partnerships with some of the principal research libraries and began scanning their collections (Darnton, 2009, Grimmelmann, 2009).



the initial books that were to be digitised, only sixteen percent were out of copyright, and in the public domain, and nine percent were still under copyright; this left seventy five percent of works, which were out of print but, in all likelihood, still under copyright (Lessig, 2009). Google sought permission from publishers to digitalise the full text from books still in print in order to upload them onto this digital repository. Once the publisher agreed to this arrangement, hard copies would be sent to Google and subsequently scanned in and uploaded to the Google Print website (Owen, 2006). Revenue would come in the form of advertising and there would be the possibility that publishers can gain a share of this revenue. This revenue could be thought of as additional subsidiary rights, and therefore split with the author of the works dependent on their contractual clauses, or marketing revenue for the publishers (Owen, 2006). The GBS programme differs from other similar digitisation projects because it has an opt-out rather than an opt-in option, so they will offer snippets of information unless the rights holder objects (Grimmelmann, 2009).

Google's participation in the digital publishing arena has sparked much controversy and debate ever since. Not all companies were happy with the GBS and this prompted lawsuits from authors and publishers (Lessig, 2009, Grimmelmann, 2009)<sup>79</sup>. The premise behind the lawsuits was that Google required permission, from the copyright holders, before they could even scan the works because scanning was, essentially, copying the work thus infringed

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<sup>79</sup> Authors filed a lawsuit along with the Authors Guild, *Authors Guild Inc. Vs. Google Inc.*, while a group of publishers filed a lawsuit with the Association of American Publishers, *McGraw-Hill companies, et al Vs Google, Inc.* (Grimmelmann, 2009).

copyright law (Lessig, 2009, Grimmelmann, 2009). This complaint did not involve works that were out of copyright and already in the public domain, and permission could easily be sought for the works that are still in print, because the copyright owner could be identified without too many problems. However, the difficulty lies with the seventy five percent of books that are still under copyright but are also out of print because there is uncertainty about who owns the rights, and thus clearing the rights and permissions would be difficult (Lessig, 2009). In defence, Google used the fair use argument against these claims of copyright infringement, which mean that the court had to consider whether Google's use of the material had a cultural and social importance that was more important than the rights of the copyright owner (Kohler, 2007, Grimmelmann, 2009). However copyright owners argued that Google was using the programme as a commercial enterprise and thus not copying the work under 'fair use' (Grimmelmann, 2009). As outlined earlier, the current copyright system allows a work to be protected as soon as it is written down. The introduction of a registry system could solve the problem of orphan works, works that are still in copyright but the rights holders cannot be identified, in the future. Although Gowers (2006) does suggest that a voluntary copyright registry system is set up, this kind of system is in conflict with The Berne Convention, which states that, "the enjoyment and exercise of [copyright] should not be subject to any formality" (Gowers, 2006, 14b, Berne Convention, 1979, Art 5 (2)). An additional worry for publishers and authors is that, despite its stringent protection, the digital repository could be illegally accessed and thus unauthorised editions of all the digitally stored works would be available (Samuelson, 2010).

The GBS has encountered mixed reactions, and has caused much controversy, amongst publishers, authors, librarians and scholars alike. Many supporters of the GBS asserted that it would help works reach a wider audience and allow people to have access to culture and information that they normally would not, essentially creating a world-wide digital library (Kelly, 2006, Grimmelmann, 2009, Samuelson, 2010). According to Kelly, unlike standard libraries, an online digital library would “be truly democratic, offering every book to every person” (Kelly, 2006). However, an online digital library would not be “truly democratic” because it requires access to the Internet and related technologies. The American novelist and literary critic John Updike (2006) later inveighed against Kelly’s article, and his vision of the online library, by bemoaning the loss of bookshops; particularly those he remembered from his days at Harvard and Oxford University. Although Updike was defending booksellers and the practice of selling physical books, this elitist point of view only reinforces the argument about propagating knowledge to people who do not have access to comprehensive libraries and affordable bookshops in the same way that Updike did (Vaidhyathan, 2007). Kelly (2006) predicted that this vast online repository would help to paint a picture of the works available and thus highlight what knowledge is missing. Essentially, according to Kelly (2006), it would help establish “what we as a civilisation, a species, do know and do not know” (Kelly, 2006). Although the idea of a universal library has been supported, it is the monopolistic control of that library, by Google, that is being disputed (Grimmelmann, 2009). Lessig (2009) argues that we already have free access

to culture in the form of libraries: this gives us the ability to take numerous books home and read them without paying any money. However, in the case of many of the books on Google, the users only have access to “snippets” of information, and this varies according to the type of book/journal etc. Lessig surmises that our access to books in the future will be similar to our access to documentaries today: although there is limited access, and the potential for full access at a price, there does not seem to be the possibility to the free access to this culture in the future. Instead of Google creating a digital repository/library it is actually creating a digital bookstore. Lessig asserts that it is worse than a digital bookstore; he suggests that it is “A digital bookstore with freedoms of a library of documentaries”, which in Lessig’s opinion is “no freedom at all”. The reason that this problem has occurred is that the people who have ownership/control over the material want to control the access to the material through the law, by requiring permissions for access (Lessig, 2009).

The GBS settlement happened on 28<sup>th</sup> October 2008 after three years of legal action between publishers, authors and Google (Milliot, 2008, Lessig, 2009, Grimmelmann, 2009). However delays have prevented Google from offering orphan works through their GBS service and the case is still ongoing (Lessig, 2009). The \$125 million settlement includes an allocated \$34.5 million for the creation of a Book Rights Registry<sup>80</sup>, which will construct a database of right

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<sup>80</sup> The Book Rights Registry is a non-profit organisation (Lessig, 2009). A similar European rights registry (i.e. a registry for out-of-print and orphan European works) called the Accessible Register of Rights Information on Orphan Works (ARROW) has been developed by the UK Publishers Association, the CLA, the ALCS and a variety of other organisations. The Book Rights Registry, established under the GBS, is in

holders' information, and help distribute income earned through Google's services. The board of the Book Rights Registry will comprise of fifty percent authors and fifty percent publishers (Milliot, 2008, Grimmelmann, 2009). This settlement will allow rights holders to earn sixty three percent of the revenue, leaving Google with thirty seven percent (Milliot, 2008). The provision of the GBS settlement is that publishers and authors have the option to opt out the settlement<sup>81</sup> (Milliot, 2008). According to Google, twenty percent of the material in the library would be available for free access, because Google has already paid for it, and then users have the option to access more material for a fee (Lessig, 2009). The settlement offers the same arrangement that Google offered through its Partner Programme deal; however, the ground-breaking part of the settlement allows Google not just to scan and index the works but also to sell the books in an electronic format, to be read online through Google's server. This would make Google the biggest online bookshop, with access to a backlist of approximately ten million titles (Grimmelmann, 2009). This monopoly of the digital book trade, coupled with the introduction of a registration system brings to mind The Stationers' Company's dominance in the seventeenth and eighteenth centuries.

On the surface the GBS settlement appears to be a fair agreement for Google, libraries, publishers, authors and consumers. It allows the public, and libraries, access to a wealth of information, it develops a new revenue stream,

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conflict with ARROW, due to be completed in 2011, because it will include UK out-of-print and orphan works (Owen, 2010).

<sup>81</sup> Publishers and authors will have 120 days, after the GBS settlement is approved by the US courts, to opt out of the settlement. Additionally, publishers and authors can also opt out after this period; however the books will have been scanned through Google's Book Search programme (Milliot, 2008).

and new markets, for both authors and publishers, and it allows Google to earn revenue through advertising (Schnittman, 2008, Grimmelman, 2009). However, the concerns are that the settlement will result in Google having a monopoly, and thus control of access to the biggest online bookshop (Darnton, 2009, Grimmelman, 2009). It is no coincidence that Google is set to launch its digital bookshop Google Editions in 2010 (Neilan, 2010b). The question of orphan-works has been a very controversial one (Picker, 2009). The settlement allows Google access to digitise and sell these orphan works because the option is an opt-out one rather than opt-in (Picker, 2009). Although this allows works that are out of print to be available again, and available to a wider audience, the settlement only gives this access of orphan works to Google (Grimmelman, 2009, Picker, 2009). The terms of the GBS settlement are non-exclusive, which means that anyone who would like to use the copyrighted work can contact the rights holder. However, this is unfeasible for orphan-works because the copyright owner is unknown (Picker, 2009). This means that the work would only be available through Google. Although other companies are able to undergo similar digitisation projects it is very costly and most organisations do not have the access or the finances to do this<sup>82</sup> (Fischer, 2009). The 2008 settlement has been widely contested and has still to be resolved. However, Samuelson (2010) asserts that Google will not stop scanning books even if the settlement is revoked because of the investment they have made in this project. Samuelson surmises that the interest surrounding orphan works, and the revision of related legislation, will rise if the settlement is appealed. Additionally, Samuelson proposes that an

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<sup>82</sup> Microsoft has already stopped Live Book Search (Fischer, 2009).

alternative to GBS: a publicly funded, non-commercial, repository implemented by the leading research libraries, which would encompass all the positive attributes of GBS without giving control of all the digitalised works to one commercial company (Samuelson, 2010). Owen (2010) believes that this is a “lost opportunity by governments, publishers and libraries themselves in creating what could be viewed as a twenty-first-century equivalent of the great Library of Alexandria” (Owen, 2010, p. 363).

#### **2.2.4. Media Convergence**

According to Jenkins (2006) media convergence is “the flow of content across multiple media platforms, the co-operation between multiple media industries, and the migratory behaviour of media audiences who will go almost anywhere in search of the kinds of entertainment experiences they want” (Jenkins, 2006, p. 2). In essence, media content is circulated to different, and competing, international economies through both old and new media platforms (Jenkins, 2006). There are many inducements behind the increase in media convergence, these include: technological advancement, including the advent of the internet; deregulation, with new areas of trade opening up; globalisation, and the increase in international trade; change in consumer taste and wealth; technological standardisation; and repackaging old media content to be distributed through new media platforms (Wirth, 2006). While Jenkins (2006) argues that convergence is fundamentally a technological process, which connects different media functions, it is clear that convergence is also an economic, social and cultural phenomenon because it relies on the participation of media consumers (Pool, 1984, Jenkins, 2006). In an earlier

essay, Jenkins (2004) argued that media convergence is “more than simply a technological shift; it alters the relationship among existing technologies, industries, markets, genres and audiences” (Jenkins, 2004, p. 116). These factors, which were once disconnected, have been brought together by media convergence, with numerous ramifications. For example Weedon (1996), who compared the evolution of early twentieth century British book trade format and distribution methods with the advent of the Internet and the effect on the British book trade, concluded that the increase in competition and convergence was creating positive cooperative interaction “between publishers, software house, and online bookstores to develop and market electronic formats” (Weedon, 1996, p98). This type of convergence is considered to be complementary, because the separate entities are benefiting from the connection (Wirth, 2006).

One of the main factors that has developed from media convergence is the increase in Corporate Convergence, which Jenkins (2004) describes as: “The concentration of media ownership in the hands of a diminishing number of multinational conglomerates that have a vested interest in insuring the flow of media content across different platforms and national borders” (Jenkins, 2004, p. 116). Cross-media conglomerates seek to extend their control over content by exploiting it through numerous different media within their companies (Hemmungs Wirten, 2004). Boyle (1997) argues that it is the “focus on content that makes IP increasingly important in the information age” (Boyle, 1997, p. 94). This highlights the critical role the triumvirate of conglomeration, convergence and content has in maintaining the importance of IPR.



Additionally, the WIPO Copyright Treaty (WCT) emphasises the importance of convergence by “recognizing the profound impact of the development and convergence of information and communication technologies on the creation and use of literary works” (WCT, 1996, p.1).

### **2.2.5. The End of the Copyright Monopoly?**

Although The Statute of Anne ended perpetual copyrights, and the monopoly of the book trade, it is clear that a monopoly of the creative (including publishing) industries is still in existence today (Bettig, 1996, Rose, 2008). Bourdieu (1971) helps to link the relationship between cultural and economic control by exploring the battle for power between those who produce culture. This battle is the result of the demise of traditional authorities, such as the aristocratic patronage system and the church (Bourdieu, 1971). Bourdieu (1971) argues that the area of cultural production has grown more independent and advanced as a result of the demise of the traditional authority systems and the emergence of the literary marketplace, which has thus remodelled into a ‘field of relations governed by a specific logic: competition for cultural legitimacy’ (Bourdieu, 1971, p.163). Bourdieu (1971) suggests that the companies battling for this ‘cultural legitimacy’ are competing over valuable resources (Bourdieu, 1971). As discussed earlier in this chapter, IPR can be used as a “strategic corporate asset” so plays an important role in this power battle (Bettig, 1996, p. 40).

The primary entertainment companies, which exist in the contemporary publishing industry, are actually cross-media, global conglomerates. This

provides these companies with access and control of the different media markets and, according to Murdock (1982), “an unprecedented degree of control over the range and direction of cultural production” (Murdock, 1982, p.120). These media conglomerates are able to control the IPR of the creators of the work because they own the instrument of communication: authors have to transfer their IPR to these companies in order to be published (Bettig, 1996). Having control over IPR allows these companies to extend and strengthen this control/dominance. The entertainment industry is also becoming increasingly globalised and commercial: this has led to IPR becoming more lucrative than ever (Bettig, 1996). Lessig (2002) argues that less control should be given “to the industries of yesterday to ensure that they cannot use law to constrain the creators of tomorrow” (Lessig, 2002, p.xvi). This highlights the utilitarian need for a balanced copyright system that both protects creators and allows future creators access to influential work: while there has to be some degree on control; however not so much that it stifles creativity and growth (Lessig, 2002, Netanel, 2008). As outlined earlier, companies, such as publishers, use copyright to both make a profit recoup their investments so the lengthy term of extension seems to be in place to protect these companies, rather than authors because authors do not always need copyright as an incentive to write (see Chapter Three and Five for more detail) and even if they did they may only reap financial profits during a short period subsequent to the work being published (as discussed on pages 26-27). Therefore it is clear that copyright in the contemporary climate exists primarily as an economic incentive for publishers, and other content providers, rather than a creative incentive for authors.

According to Vaidhyathan (2005) even though the current copyright laws, and ways of implementing them, are stronger than ever, there is an extensive range of digital material freely available on the Internet. This current system, with its powerful protective laws, is one that benefits large, global companies such as cross-media conglomerates. However, it is evident that many people strive against such an oppressive system; this has resulted in the wide-scale infringement of copyright (Vaidhyathan, 2005). So, according to Vaidhyathan the current IPR are both stronger and weaker than they have ever been. There have been many critics of the current copyright system; these include Coombe (1998), Litman (2001) and Lessig (2004), who believe that current copyright laws are detrimental to individual creativity and does not allow knowledge and culture to be shared (Kaplan, 1967, Litman, 2001, Coombe, 1998, Lessig 2004, Vaidhyathan, 2007). David Held (2002) argues that global corporations have superseded the civil government, or theocracies, to become “the central producers and distributors of cultural products” (Held, 2002, p.2). Although private organisations, such as publishing houses, have been in existence for hundreds of years they previously did not have the global reach that global conglomerates do now (Held, 2002).

According to Lemley (2005), the term ‘Intellectual Property’ is a relatively new one, which originated from The United Nations IP Organisation when it was constructed in 1967 (Lemley, 2005). However, Hesse (2002) establishes that the expression ‘intellectual property’ first appeared in the *Oxford English*

*Dictionary* in 1845 (Hesse, 2002). The term 'intellectual property' adds corporeality to intellectual endeavours, and as such the term adds legal credibility to the argument that IP should be protected in the same way as physical property (Fisher, 1999, Patry, 2009). Lemley (2005) argues that IPR should not be thought of as a property right and that utilitarian theories of copyright should be followed instead of non-utilitarian theories such as labour-based justifications (Lemley, 2005). Vaidhyanathan (2003) argues that although the term has been used increasingly over the past thirty years, it can also have pernicious implications. Intellectual property, essentially, protects against the misappropriation of a creator's work, so it is therefore argued that the highest level of protection should be in force. However, this can often result in limited access, and usage, of culturally important works (Vaidhyanathan, 2003). So, as Vaidhyanathan argues, it is important to focus on creating a new "policy" instead of enforcing stricter regulations to prevent "theft". Instead of concentrating on the property aspect of copyright, it might be more beneficial to look at the policy; this way a balance can be struck between protection and availability (Vaidhyanathan, 2003). Stallman (2009) agrees with this and argues that the term 'Intellectual Property' can cause confusion and that companies capitalise on this confusion to protect and extend protection. Stallman (2009) goes on to argue that the only way to end this confusion is to dismiss the term 'Intellectual Property' as inappropriate (Stallman, 2009).

### **2.2.6. The Dual Nature of Copyright**

There is a fine balance in creating an IP system that gives incentives for innovators to create but also gives access, to the knowledge/information, to consumers and future innovators, such as future writers and publishers. It is important that future innovators have access to this knowledge/information so they can be inspired to create in the future (Lessig, 2002, Gowers, 2006). This dichotomy in copyright has been described as “the tension between protection and communication” (Taylor, 2006, p.262). Books are an important part of society/culture because they have social and cultural value. They educate and inspire people so it is important that they are widely available and easily, and affordably, accessible. However, scholars, particularly those who subscribe to the utilitarian theory, believe that the creators of the work require adequate rewards or they would not have the incentive to work (Fisher, 2001, Lessig, 2002, Sinclair et al, 2004). The Adelphi Charter, in particular, signalled that governments should help to preserve the balance between public and private interest, competition and monopoly, by guaranteeing the limit on IPR and supporting open access models<sup>83</sup> (Adelphi Charter, 2005). While the digital environment offers new opportunities for the public to be both content creators and distributors themselves it also allows traditional content creators and providers to petition for stronger and lengthier copyright protection (Garlick, 2009). Proponents of stronger IP laws argue that IPR stimulates and drives economic growth, which enriches knowledge and benefits society, and will also be responsible for future growth (Lehman, 1996). However, Boyle (2003) argues prohibitive copyright legislation can actually inhibit innovation, as well

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<sup>83</sup> The Adelphi Charter on Creativity, Innovation and Intellectual Property was launched in 2005 to highlight the policy of what good, balanced, intellectual property practice is (Adelphi Charter, 2005).

as supporting it, because obstructions caused by the need to obtain relevant permissions and licences can impede the creative process (Boyle, 2003). As such, Boyle (1996) contends that the copyright term should be restricted to twenty-one years and that the fair use doctrine should be more expansive<sup>84</sup> (Boyle, 1996). This limited term correlates Gordon (2002) and Withers (2006) argument that lengthy copyright terms are unnecessary because the financial gain from copyrighted work depreciates after the initial publication and which Withers (2006) believes is both perpetuates and distorted by high-earning artists (Gordon, 2002, Withers, 2006).

As IP laws become stricter, the public domain and open access models, such as the Creative Commons, become a popular, alternative source of information (Hemmungs Wirten, 2006, Withers, 2006). Historically the individual need, i.e. how the publisher and author can profit financially from copyright, has always come before the shared needs of society, i.e. how society can benefit from the works (Rose, 2003). Although IP laws give authors the impetus to create it is evident that the strict rules that protect the author do not necessarily mean that the author will be more creative. Strict IP laws could actually stifle creativity. It is clear that people take inspiration from the work of others, original thought and ideas are often influenced by something already in the public domain, so if there is too much control over works it could stem creativity on a wider scale<sup>85</sup> (Lessig, 2002, Hemmungs Wirten, 2006). 'Standing on the shoulders of giants' is a metaphor first coined

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<sup>84</sup> This twenty-one year term is similar to the stipulations of the Statute of Anne.

<sup>85</sup> According to Lessig (2002) "The very act of creativity was understood to be the act of taking something and reforming it into something (ever so slightly) new" (Lessig, 2002, p.8).

by twelfth century philosopher Bertrand de Chartres, and famously used by Isaac Newton (Ghindini, 2010). It means that in order to progress and develop intellectually, it is essential to use the understanding gained by major thinkers who have come before us. All creators use the work and understanding of major thinkers that came before them, and for this reason it is very important that valuable knowledge/information is accessible to others. The greater the wealth of information available to others, the more likely others are to create and develop knowledge: this is how IP gains its value. Consequently, an ingrained sense of what authorship and originality is can become a hindrance (Hemmungs Wirten, 2006). Instead of thinking of one particular person as the 'author' it might be beneficial to look at collective authorship – creativity and ideas that have evolved and developed from culture over the years (Foucault, 1984, Hemmungs Wirten, 2006). The notion of authorship is further explored in Chapter Three and Five. Lessig (2006) describes this shared culture as 'Remix', which is essentially how culture is created. Creators are inspired by other people's works, and can often 'remix' and recreate the works with their own interpretation (Lessig, 2006). The implications of looking at creative works in such a manner could result in more lenient copyright system, which reflects the collective nature of creativity instead of the individual. However, authors such as Mark Helprin have argued against such a notion, saying that this remix culture bastardises the profession of authorship (Helprin, 2009). More information about collaborative creativity will be outlined in Chapter Three, pages 136-139.

As discussed in the introduction, utilitarians argue that the balance between protecting both creators and consumers can be achieved by limiting the monopoly of the copyright because limited control can actually act as a stimulus to innovation and creativity (Fisher, 2001, Zemer, 2007). Consequently, the economic gain of the creator plays a major role in the incentive to innovate (Drahos, 1996). Mennell (2000) argues that that IP can be split into two theories: utilitarian and non-utilitarian theories<sup>86</sup> (Mennell, 2000). However Boyle (1992) argues that this utilitarian approach is flawed because the social interest is measured against the economic reward and copyright is also motivated by economic incentive (Boyle, 1992). Zemer (2007) surmises that endeavours to classify IPR can lead to inaccurate information and confusion because many of the theories are actually interconnected (Zemer, 2007). This suggests that there needs to be a balance for these two creative cultures, the commercial and the collective cultures, to exist in conjunction with one another, and this could be supported by doctrines such as fair use/fair dealing, and/or ideologies such as Creative Commons.

### **2.2.7. 'Copyleft' and the Open Source Movement**

Literature has established that the current copyright legislation is not widely supported by all copyright scholars, authors and consumers (Owen, 2006).

Owen (2006) argues that copyright must adapt and evolve in relation to the

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<sup>86</sup> However, Mennell (2000) included many other theories within the non-utilitarian umbrella, such as the natural right/labour theory etc. (Mennell, 2000). In fact, of the six main copyright theories outlined in the introduction, only one is utilitarian while the other five are non-utilitarian. Additionally, the seventh theory, proposed by Zemer (2007) is also non-utilitarian.



changing nature of the creative industries, particularly in light of the rapid development of technology, which creates many challenges such as demand for free and instantaneous data, and peer-to-peer information sharing (Owen, 2006). Patterson and Litman both observe that copyright was, to begin with, used to limit bookseller-publishers from publishing physical books (Patterson, 1968, Litman, 2001). It was not until the early nineteenth century that the word copy was used in legislation and so covered all acts of duplication (Lessig, 2008). Litman (2001) suggests that copyright should be recast as “an exclusive right of commercial exploitation”, which would, ultimately, mean that authors would have more control over work that was being pirated for commercial purposes and that non-commercial duplication would not be regulated by copyright legislation (Litman, 2001).

Copyleft is a form of licencing, which allows copyright holders to grant permission for others to use, study, reproduce, distribute, and adapt their work under certain conditions<sup>87</sup> (Jones, 2003). Copyleft encompasses three traditional principles and thus is regarded to be a return to the early days of copyright when copyright served the public good. These three traditional principles are: knowledge is based on prior knowledge/information; knowledge cannot be owned by an individual because it is only through sharing and use that it can develop and prosper; and knowledge is dependent on traditional knowledge, which grows gradually. Therefore new knowledge must build on traditional knowledge, by either assimilating or refuting it, to make it authentic

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<sup>87</sup> ‘Copyleft’, a play on the word copyright, is a term coined by computer scientist Richard Stallman (Jones, 2003, Vaidhyanathan 2003). Stallman developed the GNU General Public Licence, which allows software to be shared freely (Garlick, 2009).

(Jones, 2003). While the existing copyright system appears to favour producers and distributors of content, such as publishers, and places restrictions on content users, the copyleft system uses copyright law to reverse the systems that fosters monopoly. The only condition is that any derivative or adapted works must be available under the same copyleft licence. The logic behind this condition is that, in theory, it would be possible for someone to adapt an existing work and then use copyright legislation to protect the work and thus prevent the public from benefiting from the adaptation (Garlick, 2009).

Creative Commons is a non-profit organisation, which gives creators the opportunity to decide how their work can be used and exploited<sup>88</sup> (Lessig, 2008, Creative Commons, 2010). This freedom is enabled by various, different levels, licences with the specific terms varying in accordance to the creator. According to their website: “Creative Commons defines the spectrum of possibilities between full copyright - all rights reserved - and the public domain - no rights reserved. Our licences help you keep your copyright while inviting certain uses of your work - a “some rights reserved” copyright.” (Creative Commons, 2010). Having “some rights reserved” instead of the traditional “all rights reserved” allows growth in the collection of content that can be used, remixed and shared without permission (Garlick, 2009). This makes it clear that Creative Commons is a resource for creators to both offer their works freely and control the use of access so while it does offer an

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<sup>88</sup> Creative Commons is particularly beneficial for people who want to convey their work as widely as possible without adhering to current copyright licences and still maintaining the credit for their work (Owen, 2010).

alternative to restrictive copyright laws it still reinforces the idea that information should be owned and/or controlled by individuals. According to Lessig (2002) “Free resources have always been central to innovation, creativity and democracy” and without them “creativity is crippled” (Lessig, 2002, p.12, p. 14). The rise in digital technology has raised issues of control: whether control is needed and, if so, who is best to control these resources (Lessig, 2002). However, the content on Creative Commons is not entirely free and a level of control is still in existence.

With Creative Commons the creator can choose which licence is most suitable for them by using the licence generator on the Creative Commons website and choosing from three licencing condition: Whether they will allow the work to be used commercially or not; Whether they will allow derivatives or adaptations of the work to be created or not; and Whether they require that any derivative/adaptations are protected by the same type of Creative Commons licence or not (Garlick, 2009, Creative Commons, 2010). As a result there are six core Creative Commons licences, all of which require attribution, for the user to acknowledge the creator of the work. Attribution is the least restrictive of the six licences and, essentially, allows the user to share verbatim and derivative versions of the work both commercially and non-commercially, as long as the creator of the work is acknowledged. The most restrictive licence allows the user to share the verbatim version of the work non-commercially, as long as the creator is acknowledged (Garlick, 2009, Creative Commons, 2010). However, there are some problems regarding this business model. For example, the usage of the work is not

monitored so it is difficult for the creator to get feedback of the users. Additionally, the more lenient licences, which allow the creation of derivative works, do not protect the original creator's moral rights (Owen, 2010).

There have also been criticisms of this model of copyright protection. For example Helprin (2009) described this free culture movement as "The vast bulk of this army may be just a bunch of wacked-out muppets led by little professors in glasses, but they will do more damage to the underpinnings of civilization than half a million Visigoths smashing up the rotted, burning cities of Rome" (Helprin, 2009, p. 18). Although this sentiment might be both controversial and profane, it is clear that Helprin believes that free culture movements, such as Creative Commons, undermine the notion of original authorship and thus damage the control the authors, and the authors heirs, would have over their work in the future (Helprin, 2009). Conversely, Lessig (2002) argues that the emphasis on extending copyright so heirs, and future heirs, can benefit from it can result in future creators being obstructed from building on, and reworking, other creative work, like their predecessors did (Lessig, 2002). Lessig also argues that there is a misconception that free resources are of lower quality than those with restrictions (Lessig, 2002).

#### **2.2.8. The Government and Intellectual Property**

When The Labour Party won the 2005 general election, their manifesto stated: "Copyright in a digital age: We will modernise copyright and other forms of protection of IP so they are appropriate for the digital age" (The Labour Party Manifesto, 2005). The reason for the call for the change in

legislation: increase in peer-to-peer filesharing, introduction of Creative Commons, Google Book Search, the Adelphi Charter, and other digital initiatives. Since then there have been several key reports culminating in the Digital Economy Act, which was passed in April 2010<sup>89</sup>. Additionally, as the manufacturing industries move to overseas countries, the UK Government have shifted their emphasis on new ways to compete in the global market: namely creative economies built on IP exploitation and protection (House of Commons report, 2009). The Gowers Review is evidence that the Government recognised the importance of IP and the challenges that globalisation and economic specialisation brings<sup>90</sup> (Gowers, 2006). The Government commissioned the Review to establish whether the current IP system was capable to deal with these challenges. Although Gowers does not think the current system needs to be completely reformed, there are elements that need to be improved, which could benefit both consumers and the industry (Gowers, 2006). Gowers recommends that improvements be made in three main areas: Stronger enforcement of IPR to cut down on piracy and counterfeit goods; making sure it is affordable for all sizes of businesses to register and litigate IPR; and ensuring that individuals, businesses and institutions can use information in a balanced and flexible way, consistent with the digital age (Gowers, 2006). This study was generally well-received by the publishing industry because it emphasised the importance of IPR and the need to protect against large-scale – “globalized” - infringement (Owen, 2010).

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<sup>89</sup> The Digital Economy Act will be discussed in pages 86-87.

<sup>90</sup> Andrew Gowers, former editor of The Financial Times, undertook the review between 2005 and 2006 (Owen, 2006).

It is now evident that the national and global economies are driven by trade in knowledge rather than industrial products. Therefore it is important to protect this knowledge. As a result the United Kingdom's IP system must promote and protect the innovation of its creators. Knowledge based industries, and the IPR that comes with them, have become the crux of the UK's economic activities. In 2004, the creative industries contributed 7.3 percent of the UK Gross Value Added; therefore it is clear that Gowers has taken a very balanced view (Gowers, 2006). The Gowers report stimulated fresh discussion about creating an equitable IP system that is fair to creators, distributors, and consumers of copyright-protected products. An interesting recommendation by Gowers was not to extend the copyright term for sound recordings. Gowers asserted that income derived from music was concentrated to a small group of artists who retained their popularity for a long term: with the works by the large majority of artists remaining profitable for a short period only. As such, Gowers found that extending the length of term would be harmful to the public (Gowers, 2006). This corresponds with Gordon's (2002) argument, on pages 26-27, highlighting the short-term popularity of entertainment products. Despite this, in a response from National Endowment for Science, Technology and the Arts (NESTA), it was suggested that further improvements were necessary, in addition to the recommendations made by Gowers (NESTA, 2006). Although NESTA strongly supports Gowers' recommendations they believe further support and education is required. NESTA suggests that the government support smaller businesses in protecting and developing their IPR by providing an IP insurance scheme, and helping businesses focus on IP strategy. NESTA also

recommend that young people should be educated on IPR so they can make an educated decision about IP use (NESTA, 2006). Williams (2007) concurs that copyright education is equally as important as copyright enforcement (Williams, 2007). As outlined earlier, on page 51, there have been several programmes issued by various organisations to implement copyright education in schools. The Alliance Against IP Theft does not believe that The Gowers' Review answered all the issues rights holders face; however, they plan to develop and refine the review over the coming years (Alliance Against IP Theft, 2010).

In June 2009, The Department for Culture, Media and Sport and Department for Business, Innovation and Skills published the Digital Britain report, which acknowledged the importance of IP's economic contribution to the GDP and outlined the British government's aim to preserve Britain's identity as a leading digital economy. The government stressed that they believed piracy, namely illegal downloading, was theft and as such would be dealt with in a criminal court. To combat piracy the government pledged to educate consumers about copyright and offer them affordable alternatives<sup>91</sup>. As such, the government proposed to tackle piracy by providing a framework to encourage legal downloading and streaming services that are convenient and affordable for consumers (Digital Britain report, 2009). However, the report also outlines proposed measures to challenge wide-scale online piracy: giving the power to Internet Service Providers (ISPs) who will in turn deter pirates by notifying them of infringement, collecting information on repeat offenders,

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<sup>91</sup> A number of these educational initiatives have been outlined in page 51, and alternatives such as streaming were discussed in pages 60-61.

blocking infringing websites, and capping the bandwidth of repeat infringers (Digital Britain report, 2009). In light of recent technological advancements the government have suggested amendments to the CPDA in the form of the Digital Economy Act (2010), which focuses on online copyright infringement such as peer-to-peer file-sharing<sup>92</sup>. The Digital Economy Act, which was passed in April 2010 – nearly 300 years after the first copyright act was passed – emanated from the Digital Britain report (detailed above). The Digital Economy Act is a controversial one and has undertaken numerous revisions while it was a bill. While it was the Digital Economy Bill, the provision was to develop different copyright licences and will ensure that orphaned works are accessible to the public. However, the controversial Clause 43, which allowed orphaned works to be in the public domain, was discarded after protest from various rightsholders, particularly photographers. In keeping with the Digital Britain report, this controversial act gives responsibility to Internet Service Providers (ISPs) to track copyright infringement, contact persistent offenders, and give Internet users a ‘three-strikes’ option<sup>93</sup> (Neilan, 2009a, Ofcom, 2010, Owen, 2010). If these written notices do not reduce infringement then OFCOM have the power to restrict or suspend the Internet access of relentless offenders (Owen, 2010). The government have stressed the importance of the creative economy and thus believe this act will help protect and benefit creators<sup>94</sup>. However, many commentators believe the Act will

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<sup>92</sup> The Digital Economy Bill was created by The Department of Culture, Media and Sport and the Department of Business, Innovation and Skills (Neilan, 2009c)

<sup>93</sup> Whilst it was still a bill, the DEAct caused much controversy and over 15,000 people signed an online petition appealing for this bill to be stopped. The main argument being that illegal downloaders have the ability to use different Wi-Fi networks (Neilan, 2009b).

<sup>94</sup> Lord Mandelson stated that “On current definitions our digital economy accounts for nearly £1 in every £10 that the whole British economy produces each year – so



actually be detrimental to the creative economy, by placing Draconian restrictions on Internet users and might not actually stop piracy<sup>95</sup> (Neilan, 2009a). The Publishing Association gave the bill its approval by praising its “foresight” into the ways in which copyright could be infringed in the future<sup>96</sup> (Neilan, 2009c). However, as outlined earlier, commentators have warned that the DEAct could punish small-scale, domestic, pirates rather than large-scale international pirates because infringement is based on IP addresses, which could result in consumers feeling marginalised (Neilan, 2009b, Doctorow, 2010). This could impact the entertainment industries because, as outlined in page 61, domestic pirates are usually the most dedicated to buying legal products as well (Van Eijk et al, 2010).

In November 2010, David Cameron commissioned Professor Ian Hargreaves to conduct an independent review of the current intellectual property framework in the UK<sup>97</sup>. The review was commissioned after the founders of Google said they could never have started their company in the UK because of the copyright legislation; consequently, Cameron wanted an investigation into UK IP laws to see if they could be made “fit for the internet age”

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our creative and digital industries are crucial to Britain’s future economic success. This bill will give them the framework to develop competitively and make the UK a global creative leader. Better protecting our creative communities from the threat of online infringement will ensure existing and emerging talent is rewarded and will bring new choices for online consumers” (Neilan, 2009a).

<sup>95</sup> Cory Doctorow argues that “It is a declaration of war by the entertainment industry and their captured regulators against the principles of free speech, privacy, freedom of assembly, the presumption of innocence, and competition” (Neilan, 2009a)

<sup>96</sup> The PA also praised the extension of Public Lending Rights (PLR), proposed in the bill, which would offer more protection to rights holders (Neilan, 2009c). PLR were introduced in the UK in 1979 and allow authors to claim income, which they do not share with their publishers, from their work being loaned at public libraries, with the top-earning authors, from PLR, being popular, big-name, authors (Owen, 2010).

<sup>97</sup> Professor Ian Hargreaves is the Professor of Digital Economy at the Cardiff School of Journalism, Media and Cultural Studies, at Cardiff University.

(Cameron, 2010). The widely anticipated *Hargreaves Review of Intellectual Property and Growth*, or *Digital Opportunity - A review of Intellectual Property and Growth*, which was published in May 2011, made ten recommendations to guarantee that the UK's IP framework supports and promotes innovation and economic growth in the digital environment (Hargreaves, 2011). While the Hargreaves Review replicates many of the suggestions made by the Gowers Review, it is quick to point out that less than half of the recommendations Gowers made have been implemented. The ten recommendations by the Hargreaves Review are as follows: Objective evidence should be the basis of developing the IP framework; there should be an international IP objective, with the UK considering emerging economies; a cross-sector Digital Copyright Exchange<sup>98</sup> should be created to support copyright licensing and trade; new legislation should be developed that will allow access to orphan works; the regulation of copyright should be limited and should give exceptions to activities that do not hinder incentive to create; obstructions to innovation, such as patent thickets, should be investigated and their role as an incentive barrier should be limited; the IP framework should support the, previously neglected, design industry; the Government's approach to IP should be consolidated to encompass enforcement, education, and measures to strengthen and expand IP-protected markets; the Intellectual Property Office (IPO) should help small businesses access and benefit from the IP system; the IPO should be given the power to update the IP framework in response to technological and economic changes (Hargreaves, 2011). The Hargreaves Review has received mixed reviews from the publishing industry: while the

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<sup>98</sup> The Digital Copyright Exchange would be a digital marketplace where copyright licences could be easily bought and sold (Hargreaves, 2011).

Booksellers Association and ALCS praised the review, the Publishers Association denounced it as “fundamentally flawed” because of Hargreaves suggestions to limit copyright and develop new exceptions (Davies, 2011, Williams, 2011b, Page, 2011). The introduction of the Digital Copyright Exchange could be especially beneficial for small and medium-sized enterprises (SMEs) because it would make rights licensing cheaper, easier, and more efficient (Hargreaves, 2011). Although the Digital Copyright Exchange would bring together rights holders and make the trade in rights more efficient, especially for those who are ill-equipped to deal with rights, it would not provide a forum for developing rights skills or knowledge.

### **2.2.9. A Balanced Intellectual Property System**

Gowers confirms that IP has three main roles: to stimulate the creation of knowledge, thus generating wealth; to collect knowledge in a culture; and to preserve, strengthen and promote an individual identity. Gowers asserts that it is clear the IP system must be balanced and flexible to achieve these three responsibilities (Gowers, 2006). As outlined in pages 31-32, Utilitarians argue that it is important that an IP system provides an incentive for innovators to create knowledge. Without adequate protection there would be no economic/financial motivation to create. Although many creators do not create for financial reward, it is important to have a protective system in place. The IP system gives the creator of the works exclusive rights over their work, which means nobody else can exploit their work without permission from them. For that reason Gowers asserts that the IP system should be flexible and work in conjunction with the development of new technology (Gowers, 2006). It is important to balance giving an incentive to create and having

important knowledge in the public domain for future innovation. Although exclusive rights to the creator provide them with the incentive to create, it can also result in a monopoly in certain industries and inhibited access to knowledge (Gowers, 2006). Although there is much work to be done to harmonise international copyright systems, the European Directive has already harmonised the copyright term, the majority of exclusive rights and the sphere for exceptions, as outlined in pages 27-30. According to Rose (2003) copyright is no longer a booksellers' or authors' concern – it is now a general concern (Rose, 2003).

#### **2.2.10. Globalisation and Intellectual Property**

Globalisation is a term used to describe the increasingly global nature of society and culture, with interdependent economies of countries from around the world. There has been a rise in international trade, which creates larger markets for businesses but also increased competition (Robertson, 1992, Gowers, 2006). This means that markets for entertainment/media products are being extended from one country to another (Lorimer, 1992). Globalisation is not a new phenomenon and studies have showed that publishers experienced similar global pressures in the nineteenth century. Parallels can be drawn between historical and contemporary evidence, with historical evidence helping to give some insight into the contemporary situation (Seville, 2006).

The world economy is changing as a result of globalisation and technological advancement. There is now an increase in international trade, particularly with

emerging economies such as India and China, which brings opportunities but also threats to progressive economies such as the UK. However, the UK has an economy based on knowledge resources, which gives them an advantage in international trade (Gowers, 2006). Globalisation and technological advancements have, undisputedly, resulted in many opportunities for businesses and consumers. Businesses now have the opportunity to reach, and sell their products to, much wider markets while consumers have a wider range of products available to them. For most trade publishers, globalisation means the opportunity to exploit their world rights and thus create a larger market for their author and their company. However, literary agents are increasingly retaining world rights and thus interrupting the publisher's worldwide ambition<sup>99</sup> (De Bellaigue, 2004). Large multi-national companies are well placed to negotiate world rights within their contract and there are a few smaller companies, such as Canongate and Bloomsbury, who try to keep possession<sup>100</sup> (De Bellaigue, 2004). The trade of rights will be discussed in depth in pages 98-125. Additionally, there still remains the problem of protecting and enforcing IPR on a global scale as most IP systems are national and differ from country to country. The global market, particularly the development of technology, has made it much easier, and cheaper, to illegally copy and distribute these works. It is evident that there is an increase in the amount of people accessing information and the ways in which information is shared, and so the current IP laws must be amended to reflect this change. Scholars and IP commentators have argued that IP laws are currently

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<sup>99</sup> World rights are the subsidiary rights that can be licenced in addition to volume rights and can include dramatic, electronic, foreign, and first and second serial rights (Owen, 2006).

<sup>100</sup> Bloomsbury is a medium-sized company whereas Canongate is a small publisher (De Bellaigue, 2004).

outdated and need to be rethought to fit in with the new digital age and the opportunities and challenges it brings (Boyle, 1996, Litman, 2001, Lessig, 2002, Gowers, 2006).

The IP system faces challenges as a result of globalisation. Some economists have questioned the length of the term of IP protection as a result of larger markets. The theory is that because markets are now larger, more products can be sold during the protection term, this means the creators can obtain adequate reward for their work within a shorter period of time. For that reason, it has been asserted that the IP protection term could be reduced to better serve consumers and producers (Gowers, 2006). This corresponds to Gordon's (2002) argument, on pages 26-27, that the term of copyright should be limited because the scope for profit decreases greatly after the first few years of publication (Gordon, 2002). There is also much speculation that the increase in international trade has also resulted in the increase in illegal trade. Copyright infringement is now more difficult to police on a global scale, particularly in the digital climate (Gowers, 2006). A solution could be to reduce the copyright term and strengthen measures to combat piracy. While global markets are now integrated, IP systems have not kept pace: the harmonisation of global IP systems is far from being established and it is costly for businesses to licence and enforce IP rights in different jurisdictions (Gowers, 2006). In 2007 The Property Rights Alliance created the International Property Rights Index (IPRI), which evaluates private property

rights globally<sup>101</sup>. Indexing and scoring countries worldwide on their IP protection contributes to this evaluation. In 2007 this comprised of seventy countries but this has risen to 125 in 2010 (Horst, 2007, Jackson, 2010). Each report has found that a strong economy is linked to a strong IP system and thus legal protection of IPR is required for economic growth (Jackson, 2010).

### **2.2.11. Competing in the Global Market**

British book publishing, and the markets it appeals to, have changed and evolved considerably over the years. During the 1930s and 40s, as a result of lack of dialogue with other countries/cultures due to the war and culture of historic imperialism, British publishing was parochial, and often xenophobic, with a strong national focus. However, by the 1950s there was a real curiosity for current affairs and what was going on in different cultures. By the 1960s and 70s British publishing had a more international focus and there was an increase in publishing activity. Books were now more of a business commodity and British publishers were looking to different geographical regions to sell their products. The escalation of globalisation in the 1990s introduced new threats and opportunities to publishers from larger markets, new methods of dissemination, and new formats (Weidenfield, 2004, Clark, 2008).

The UK has already established an accumulation of knowledge-based resources, which will help when competing in the global market (Gowers, 2006). According to Lorimer (1992), four principal factors have been recognised as paramount to globalisation: content; language;

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<sup>101</sup> The Property Rights Alliance (PRA) is an American organisation that is committed to the global protection of both physical and intellectual property rights (PRA, 2010)

entrepreneurship and management; and law, policy and market organisation (Lorimer, 1992). How well the content, of media products, translates into other cultures is an important factor in determining its success. For example, the more unfamiliar a product appears the less likely it will be accepted into a new market (Lorimer, 1992). It is thought that, dependant on cultural content, a product decreases in value the further away it travels from the original country of production (Hoskins and Mirus, 1988). However, there are certain products that remain popular universally such as scientific, literary, and academic information. Therefore the problem lies with transporting cultural works from country to country (Lorimer, 1992). Language is a particularly important factor for British publishing in the global market. Although it is not the most widely spoken language in the world, English is the most dominant language in business and science. It is also the most dominant second language in many countries. English has been the *lingua franca* in business, and publishing, for many years due to historical colonisation. This has resulted in important literature (e.g. scientific, creative, historical, humanities, and social science information) being translated into and from English quicker than any other language. Consequently, media products of English language origin have an advantage over other languages regarding the size of market available and the prospect of translation (Lorimer, 1992). Lawrence Venuti (1995) argues that this cultural dominance can result in a lack of interest in other languages and cultures, which means that minor languages are often overlooked<sup>102</sup> (Venuti, 1995). Many multi-national companies have developed over the years; this has created ties between different countries. Consequently the flow

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<sup>102</sup> In many cases, when foreign language books are reviewed, there is often much emphasis on the fluency of the translation of the work (Venuti, 1995).



of products and information between countries has increased. These global companies exploit the law, politics, the economy and global markets to their advantage (Lorimer, 1992). Lorimer (1992) emphasises the importance of information being easily accessed and communicated. However, globalisation has resulted in more information being imported and exported and competing with national information necessary to maintain a country's culture or heritage. The more information coming in from other countries means that there is less space for national indigenous information, which is detrimental to the community. Although it is important that the individual has access to information from different countries/cultures, this may lead to a country losing its own culture (Lorimer, 1992). This free flow of information allows better opportunities for creators to exploit IPR over different territories. Recent copyright laws have strengthened the position of copyright owners, and the publishers they licence them to. Larger, more dominant, companies are now using these copyright laws to reinforce their dominance. This point is particularly relevant to the Scottish publishing industry and highlights the importance of indigenous publishing companies (Lorimer, 1992).

There is a disadvantage to globalisation and the increase in global trade, where the model is exploited to the advantage of the more powerful nations resulting in more control, wealth and authority over smaller, less wealthy nations (Bozicevic, 2001). Globalisation can be influential in determining the interests and tastes of a consumer (Weidenfield, 2004). This can result in a homogenisation of the products available and the dominance of one particular culture or language (Hemmungs Wirten, 2000). This contrasts with the view

that globalisation should support, promote and encourage multi-culturalism, national characteristics, cultural identity and independence, which are vital for keeping smaller languages, customs and cultures alive (Bozicevic, 2001). One of the most distinguishing characteristics of globalisation, in print culture, is transposing literature from one culture into the context of another, generally by translation (Hemmungs Wirten, 2000). The Mosaic Publisher's Network was created in 1998 with the aim of promoting smaller language literature from regions of Europe, which are often overlooked by multi-national, cross-media conglomerates. The Network is committed to ensuring that translations of this type of works are made, and promoted, as extensively as possible. It is important that an author is not hindered by factors such as writing in an unfamiliar language, about unfamiliar cultures, or having an unusual/unmarketable name. Publishing such work is very important because it helps to contribute the bigger picture, and to give an important background understanding (Bozicevic, 2001). However, it is evident that there is still a disproportion between the number of books translated into English and those translated from English<sup>103</sup> (Hemmungs Wirten, 2000). In 2004 it was confirmed that forty percent of all new titles were of English-language origin (Owen, 2006). It is unmistakable that English language is the dominant language of mass media, mass culture and translations, a position it has held since Colonial times (Hemmungs Wirten, 2000, Sinclair et al, 2004). There is a widespread fear that products are actually becoming Americanised as a result of internationalisation, although this is true for many products it happens

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<sup>103</sup> Since World War II, English has become the most widely translated language. However, it is not very widely translated in to (Venuti, 1995). For example US publishers publish very little translated works: approx three percent of titles published are translations (Smerillo, 2009).

less frequently in book publishing (Luey, 2001). Although there are a large amount of English language works available, national products and authors, in countries where English is not the indigenous language, are strong competition for these English language products, frequently outselling them (Hemmungs Wirten, 2000). However, it is clear that English language publishers are more disinclined to translate and publish foreign language books as a result of the popularity and dominance of English language books, and the high costs of translation (Luey, 2001). According to Venuti (1995), British and American publishers travel worldwide to book fairs selling the translation rights to English-language books but seldom buy the rights to translate foreign language books into English. This can result in an inequality of trade with serious cultural consequences. The consequences can include the global spread of Anglo-American cultural values, pressed upon a global readership, a homogenisation of products available, and the lack of representation for smaller cultures and languages (Venuti, 1995). If a book is in demand, then it is more likely to be translated because the sales will compensate the translation costs. However, smaller, but by no means less important, works are less likely to be translated because there are less commercially in demand (Weidenfield, 2004). Therefore it is impossible to ascertain a true indication of globalisation in publishing without having access to translated texts from all the countries in the world, no matter how small. There is currently only a small amount, and variety, of writing available. It is clear that we are missing some vital information, which will help develop and advance our understanding of the world we live in (Hemmungs Wirten, 2000).

Although Scottish literature is currently benefiting from increased international visibility and prominence since the early nineteenth century, it is not largely translated outside of Europe (Barnaby and Hubbard, 2007a). Selling translation rights can result in financial gain and international exposure for authors and publishers, so they can play an important role when negotiating an author's contract (Owen, 2006). However, if a literary agency has a department specialising in these rights, the agent will not include these in the rights package and will often deal with sub-agents in the different overseas markets (Owen, 2006). It is evident, because of the different cultural, political, economic and social perspectives of the wide range of trading countries, that some works translate better into different cultures than others, and are therefore more likely to be translated (Owen, 2006). However there are many surprise successes such as Irvine Welsh's, highly colloquial, *Trainspotting* being translated into Japanese before the author or the book were internationally recognised (Owen, 2006).

## **2.3. Selling Rights**

### **2.3.1. The History of Rights Sales in the Publishing Industry**

The development of technology and communication in the twentieth-century resulted in a better understanding and recognition of cultures around the world (Owen, 2006). Also the prospect of translation rights sales increased after the end of the Second World War, when international trade recommenced and the paper restrictions were lifted (De Bellaigue, 2008). These developments were particularly advantageous for writers who had gained popularity in one country and could therefore strive to appeal to

readers in other countries (Owen, 2006). At this point the Berne Convention made it possible for rights sales to be profitable, because there was a basic, universal, copyright system (Owen, 2006).

The rise of the mass-paperbacks, when Allen Lane published the Penguin paperbacks in 1935, played an important role in developing paperback and imprint rights (Owen, 2006). The paperback revolution meant that some publishers, such as Penguin, Pan, and Corgi, were keen to retain the paperback rights for as long as possible (De Bellaigue, 2008). Paperbacks were becoming increasingly profitable, due to consumer demand, and publishers wanted to take advantage of this phenomenon. As a result hardback publishers began to acquire paperback imprints, and vice-versa. This gave rise to vertical publishing where the same company published both hardbacks and paperbacks<sup>104</sup> (De Bellaigue, 2008). Although this vertical publishing structure increased the profitability of the publishing houses and made hardback to paperback transactions much easier, it also had a damaging effect on the size of a company's rights department. For example when Bloomsbury was solely a hardback publisher it had a strong rights department comprising of six rights staff; however in 1995, nine years after it was launched as a company, it developed a paperback division and the rights department was reduced to four staff (De Bellaigue, 2008). Large and medium sized publishers nowadays usually have specialised rights department, with at least one member of staff trained in selling rights; however, smaller

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<sup>104</sup> For example hardback publisher Collins created the paperback imprint Fontana, and Penguin developing its hardback division by acquiring Viking, Hamish Hamilton and Michael Joseph (De Bellaigue, 2008).

companies tend to use existing staff, such as editors and sales staff, to deal with rights. The control of rights sales internationally has become so important that UK publishers acquired imprints in America and vice-versa (Clark, 2008). The most significant evolution in rights sales is the proliferation of the different types of rights available (Owen, 2006). Publications can now be disseminated in a variety of new ways e.g. on smart phones, tablets, laptops etc., which opens up new avenues for rights trade. While these new methods of dissemination have expanded the market for books, they have also complicated the system of rights exploitation and protection (Owen, 2010). Nowadays, the potential of rights sales is paramount in deciding whether a book/project will be feasible (Owen, 2006). Publishing companies are increasingly developing products that yield opportunities through different platforms, and thus can be available for sale, worldwide, in conjunction with one another (Baverstock, 2000). Additionally, rights sales are important because they can generate additional income through, often small, initial direct costs (Clark, 2008, p.219). It is clear that rights exploitation plays an important role in both generating extra income and extending markets; however, this attitude is not reflected in the practices of Scottish publishers as will be discussed in Chapter Six.

The primary economic impact of book publishing is the money gained through book sales. However, there is an increasing, and notable, secondary economic impact where the book is developed into a film, television programme, computer game etc. (Sinclair et al, 2004, Baverstock, 2000, Clark, 2008). This can result in spin-off merchandising, which is particularly

lucrative in children's publishing<sup>105</sup>. Although it is evident that merchandising existed at the start of the twentieth century, for example Beatrix Potter took a great interest in merchandising and patented a variety of Peter Rabbit toys<sup>106</sup>, and that adaptations into film existed in the 1930s, the range of rights really diversified in the twenty-first century to include rights that may have seemed implausible before<sup>107</sup> (Owen, 2006). Additionally, a study by the Publishers Association found that rights sales brought in an income of £128.5 million for the larger publishers in 2004, which shows how lucrative rights exploitation could be (Clark, 2008).

### **2.3.2. Contemporary Issues in Selling Rights**

The rise in the diversification of rights reflects the development of new technology, the escalation of the Internet, the growth of international trade and the creation of the many new formats in which information can be disseminated. These new rights can be favourable for authors and publishers because it allows them to exploit the original works to a wider market through a range of forms. Consequently, it is important for the publisher or agent to cover this range of rights, and any other rights that may materialise in the future, in the author's contract (Owen, 2006). However, the increase in multi-national, cross-media, publishing companies has resulted in more inter-

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<sup>105</sup> Merchandising stems from the exploitation of a popular character, personality or design from one medium, such a character from a book, to create a spin-off medium or product, usually by licensing. The popular character can be directly reproduced to create products, such a toys or clothing, or used to promote another established brand name, such as a popular food product (Owen, 2006).

<sup>106</sup> Potter first agreed to products based on her characters when they first became popular, between 1901-1913. Over a hundred years later, merchandising of her characters is now estimated to generate, at least, £500 million a year. Significantly, licences exist to protect the "integrity" of her characters (Owen, 2006 p. 266)

<sup>107</sup> The new rights include adaptations of books into computer games, audio books downloaded to iPods, and online academic journals (Owen, 2006)

company licensing (Owen, 2006, p.40). For example, as discussed earlier, paperback rights used to be licenced to paperback publishers but now they are kept within the company and passed to the relevant imprint (Owen, 2006). This is not always the case, especially where small publishing companies do not have the capital to publish and distribute mass-market paperbacks, for example Alexander McCall Smith's *No.1 Ladies Detective Agency* series was first published by independent Scottish publisher Polygon before the reprint paperback rights were licenced to Abacus, allowing the series to reach a larger market<sup>108</sup> (Clark, 2008). Many publishing companies have become absorbed in large cross-media conglomerates that also have strong interests in other media such film, television, radio, newspapers and magazines and new technologies. This has resulted in increased competition and a stronger emphasis on IP and how it can be re-used and exploited across all media, for example books can be turned into television programmes and films, which can result in merchandising and spin offs (Squires, 2007). However, while multimedia conglomerates can exploit rights across different media very easily and at little cost, because of shared ownership, it is more difficult and expensive for small to medium companies (Sinclair et al, 2004). In spite of this, Clark (2008) contends that, "the majority of books have no significant rights sales income", although consumer products are more likely to have some rights potential (Clark, 2008, p. 220).

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<sup>108</sup> The series is now published by Abacus, part of the Little, Brown group, although hardback editions of some of McCall Smith's other series are published by Polygon, keeping the tradition of separate hardback and paperback rights licences (Alexander McCall Smith, 2010).



Many small publishing houses do not have rights departments and deal with rights on an ad-hoc/provisional basis. Publishers may not have the experience or resources to exploit rights correctly, as this study found (see Chapter Six). Nevertheless, in trade publishing, an industrious and efficient rights activity can, ostensibly, result in the increased productivity of a company. This is particularly the case with rights deals on works, which do not involve production costs; however the costs of employing rights staff must be considered<sup>109</sup> (Owen, 2006). Owen (2010) contends that an organised and dynamic rights operation can contribute significantly to the financial growth and stability of a publishing company. Furthermore, Owen (2010) asserts that linchpin of any rights operation is a comprehensive and organised system, such as a computerised rights database, which records all relevant information and transactions. The use of a more complex, tailored, database shows that selling rights is an important part of this business model. Not only does it keep an organised record of all transactions but it also allows the company to monitor and analyse all the data logged (Owen, 2010). As outlined in both Chapters Five and Six, this research found that the majority of both Scottish publishers and literary agents do not use this kind of organised, electronic system.

Although electronic rights and digital issues are at the forefront of the current publishing industry, it is clear that many publishers have misgivings about selling and exploiting these rights due to confusion about the many new

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<sup>109</sup> Different sized publishing houses usually have varying size of rights departments. For example, a small independent company might only have one person focussed on rights, while larger conglomerate companies might have a dedicated rights team, which is divided into geographical areas (Owen, 2006).

platforms available and fear of a security risk (Holman, 2007). Publishers have also been faced with a difficult predicament: whether to invest in digital technology, or not invest and get left behind (Towle et al, 2007). Better education for publishers, agents, and authors would help them to exploit the rights correctly, and more profitably (Owen, 2006, Holman, 2007). Although rights staff have, traditionally, learned 'on the job' the fast-moving nature of the digital publishing environment has led to the development of a number of both university and vocational courses (Owen, 2010). A selection of rights workshops and sessions were created at the Frankfurt Book Fair in 2007, which offered publishers, authors, and agents practical advice, and further information, about digital rights<sup>110</sup>. This informative support group is particularly beneficial for small and medium publishers, which might have insufficient expertise, experience or resources (Holman, 2007). In such cases publishers might be advised to licence the content to experts, who would exploit the rights correctly, before learning about and implementing new technology themselves. This way the publisher would be guided into the digital environment and not left behind (Holman, 2007). Many similar seminars, including a rights workshop, have been included in the London Book Fair (LBF, 2010).

### **2.3.3. Rights Trading: Online and face-to-face**

Conventionally, rights deals are instigated at book fairs. There are about thirty book fairs held on a yearly basis. These book fairs provide people in the book

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<sup>110</sup> The Frankfurt Book Fair is the largest of the book fairs because it covers all areas and draws an international crowd. Consequently, it plays a significant role in international rights trade (Owen, 2010).

trade the opportunity to network, engage in market research, reach an agreement with pending deals, and consider collaborations on future projects. However, book fairs can be expensive to attend, especially for smaller publishers and non-attendance can lead to missing important rights deals (Owen, 2006). Additionally, much paperwork and other administration work, can mount in response to book fair attendance and can leave smaller publishers with extra work to attend to if they do not have specialised staff to deal with it (Clark, 2008). This situation is particularly pertinent for many Scottish companies, as will be discussed in Chapter Six.

The advancement, and development, of technology has had a huge impact on all aspects of the publishing industry. Lines of communication between publishers in all different parts of the world are now faster and more efficient, consequently so is the process of selling rights. Publishers are increasingly using their websites as a tool for selling rights by displaying the contents of their catalogues, and featuring upcoming titles, online. Literary agencies are also using their websites to promote and sell rights (Owen, 2001). If the company has an extensive range of international rights, they might have a separate rights department website covering all the important information (Owen, 2006). Although this is a useful tool, the publisher's printed catalogue remains the primary contact/business card for new customers, which shows that traditional practices are still important in an increasingly digital environment (Owen, 2006). There are now several established intermediary companies who enable sellers and potential buyers to correspond with each other and search through the extensive range of rights available, and there is

also an 'e-stand' at the Frankfurt Book Fair, which allows companies to promote themselves (Owen, 2001). The Frankfurt Book Fair has also developed an online rights catalogue that can be used all year. This type of service is particularly useful for small publishers who might not have a specific rights department, or the opportunities to visit the many book fairs (Owen, 2001). Additionally, the London Book Fair has a rights promotional service through its website packages (Owen, 2010). These online tools and methods of communication are an important way of keeping in touch, and up-to-date, however, they do not prevail over face-to-face selling; which allows sellers to evaluate if a potential buyer is interested, and can help forge relationships between buyers and sellers (Owen, 2006).

#### **2.3.4. International Rights Sales**

The existence of a domestic publishing industry has resulted in products being exported to other countries. This has been made possible by selling and licensing rights either by setting up agencies overseas or using an agent based in that particular country (Lorimer, 1992). Many global companies have agencies all over the world while smaller companies use an agency to help sell and promote their works. Lorimer indicates that overseas sales are usually directed by marketing, with readers buying the most popular books in bookshops, and so it is fair to say that companies with larger marketing budgets would benefit from this situation (Lorimer, 1992). As such, big-name, bestselling authors tend to travel well (Owen, 2010). Publishers, especially small to medium-sized ones, often use subagents to sell their rights overseas.

Subagents can be very important, particularly in overseas markets where they have a more detailed knowledge of that market (Owen, 2010).

In trade publishing, the probability of rights sales can play an important role in determining whether a project is achievable. This can be because of the high risk involved in many trade-publishing projects, such as high initial investment or production costs. To offset these high initial costs, publishers often make arrangements for various rights deals such as: serial rights, foreign language rights, book-club rights etc. The rights department is often asked to measure the predicted profit generated from the various licences, which plays an important role in promoting the project and thus securing investment (Owen, 2006). The range of rights on offer now usually depends on the author's agent, who can restrict the number of rights available to the publisher (Owen, 2006).

### **2.3.5. Volume and Subsidiary Rights**

As discussed earlier, the range of rights available for exploitation have multiplied in conjunction to the development of technology. Traditionally, volume rights are the rights included in the original deal with the publisher, which they could exploit themselves or sub-licence to other companies. The volume rights include the right to publish the work in either hardback or paperback form, or increasingly both (as discussed earlier). Additionally, other rights such as anthology and quotation rights can be included within volume

rights for an additional fee<sup>111</sup>. However, the differences between volume rights and subsidiary rights are becoming difficult to differentiate between. Subsidiary rights are the additional rights that can be granted, although literary agents are, increasingly, holding on to these. Key subsidiary rights include: English language territorial, electronic, dramatic, foreign, merchandising, and first and second serial<sup>112</sup> (Owen, 2010).

### **2.3.5.1. Territorial Rights (English Language and Foreign)**

Territorial rights are the exclusive rights licenced to publishers in the specified territory, which allows them to exploit the copyrighted work. The emphasis is on the exclusive nature of the licence: without it the publisher does not have an incentive to invest in a work that could be published elsewhere and sold for a lesser price (Owen, 2006). Territories can be determined by geographical location or language: Spanish language rights can actually be licenced up to four times (in Spain, Argentina, Mexico and the US) and French language rights can be sold to France and Canada. If a publisher is granted world rights in their language then they are able to licence the work in most places that speak that language. However, territorial restrictions mean that territories can often be limited. Territorial rights have always been a point of negotiation

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<sup>111</sup> Anthology or quotation rights, commonly described as “permissions”, allow for a copyright-protected work to be included in another piece of work (Owen, 2010).

<sup>112</sup> Serial rights are the rights to publish extracts of the book in newspapers or magazines. First serial rights are licences for before the book has been published and second serial rights are for after. Other subsidiary rights include: reprint, which is the right to reprint the work, for example a small publisher in a developing country acquiring a licence to reprint a low-cost edition of an educational textbook or a specialist publisher acquiring a licence to reprint a work that is now out-of-print; audiobook, which is the right to publish the work in an abridged, unabridged, single voice reading or dramatised audio format; book club, which is the right to distribute the work under a book club organisation umbrella, at a discounted price to its members, by reprint or copies manufactured by the publisher; single-voice reading, which is the right to read the work on the television or radio in an undramatised format (Owen, 2006, Owen, 2010).

between publishers and literary agents and, as such, are usually outlined in the head contract (Potter, 2009). For the most part, literary agents and authors favour exclusive territorial rights licences because it makes the royalty payments a more straightforward process (Owen, 2006). However, there has been some contention from Australian publishers because of the longstanding territory agreements Australian publishers cannot sell directly to the USA and vice-versa. As a result the work has to be sold to British publishers, who control the English language rights. Unfortunately, for Australian authors and publishers, this means they receive export royalties instead of home royalties (Rosenbloom, 2008). Although the rights could be split between the American and British publishers, Rosenbloom (2008) argues that American publishers buckle under the pressure of British publishers, who often pull out of the deal if they cannot get full rights, because the British market is too lucrative for American publishers and agents (Rosenbloom, 2008). Consequently many American titles remain unpublished outwith the USA because British publishers do not want to publish them. These titles could be successful in other English-speaking countries, such as Australia; however, the archaic territories agreement can prevent the work from being exploited (Rosenbloom, 2008). Despite this, some Australian publishers have successfully published some American titles and found new markets for them: this has not gone unnoticed by the American publishing community and has resulted in some American publishers splitting their rights and selling directly to Australian publishers. This shows that British publishers cannot hold on to their dominance of certain English-speaking territories forever, which has serious implications for both the British and Scottish publishing industries especially

smaller companies who already have difficulties competing in the global market (Rosenbloom, 2008). Other burgeoning, English-speaking, publishing communities such as Canada, South Africa and India also want to rights to be split so they can publish their own edition, instead of importing the British editions (Blake, 2007, Karthika, 2007).

English language territorial rights determine which English-language territories the rights can be sold in. For British publishers these can include important territories such as America, Canada, Australasia and South Africa (Owen, 2006). For example, if a British publisher wanted to sell rights to an American publisher they could do it through a reprint licence or co-edition<sup>113</sup> (Owen, 2010). There is a decrease in the number of publishers creating these licensing agreements with key English-language territories as a result of the un-abating amalgamation of publishing, and other media, companies into larger multi-national conglomerates. Instead, the larger multi-national companies can use their various imprints or affiliated companies to distribute one English-edition worldwide (Owen, 2006). This means there would only be one contract, instead of different licences. This can be convenient for the author because there is just one advance and royalties to be negotiated (Potter, 2009). However, this is not always the case because such inter-company deals do not always benefit the author fully, for example the associate company, within the conglomerate's bracket, might not specialise in

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<sup>113</sup> A reprint licence would entail, in this instance, the American publisher printing their own edition of the book whereas co-edition would allow the British publisher to print the book in addition to their own print runs (Owen, 2010).



the type of book the author has written, so it would be of more benefit to the author to licence the rights externally (Owen, 2006).

The global nature of bookselling on the Internet, particularly through popular channels such as Amazon, has disrupted the trade in territorial rights and is a growing concern for publishers (Owen, 2006). A survey in *The Bookseller* in 2005 revealed that while some people believed that it was important to uphold traditional territorial rights trade, others thought that globalisation, particularly online bookselling, would succeed over traditional trade (Owen 2006). The traditional territorial rights trade now faces threats from online traders, consumers, and government actions (Clark, 2008). This problem emerged with a battle between British and American publishers over English-language territories (Owen, 2006). Until the twentieth century American publishers did not sell their editions outside the USA, except for a few mass-market big name authors, while British publishers traded with Commonwealth countries (Spivey, 2007). Traditionally, British publishers had control of the UK market and other Commonwealth territories, as chartered in 1947. This left American publishers with control of the whole of the United States, its dependents and the Philippines. The rest of the world was considered to be an open market for all publishers to compete (Owen, 2006). This restriction of territories can result in important books not being published. If a British publisher does not obtain a title then it will not be published in certain territories because the American publishers have restrictions and cannot sell directly (Savavese, 2007). However, legal action was taken against both American and British publishers in 1976 for holding an inimical monopoly of the international book

trade, which resulted in no exclusive territories for either country (Owen, 2006). Consequently, exclusive licences can now only be granted title-by-title instead of automatic assignment (Owen, 2006). Developing countries such as India, Malaysia, and Singapore are showing a demand for American business books so instead of American publishers selling directly to the publishers in those countries they have to sell to the British publishers instead, who then import the books to that country<sup>114</sup> (Savarese, 2007). Although American publishers are trying to dismantle these traditional barriers and gain access to established British territories, such as India and Malaysia, this increased competition can have an adverse effect on authors as a result of lower royalty rates and potentially damaged sales (Neilan, 2010). Cathryn Summerhayes, a literary agent with William Morris Endeavor Entertainment, surmises that, "With territories where we are seeing decent sales growth, like India, Australia, New Zealand and South Africa, it is important that rights are granted to the publisher who is best placed to exploit them. Historically that has been UK publishers and for the time being that will continue to be the case" (Neilan, 2010).

Foreign rights, often referred to as translation rights, are the right to translate the works into a different language in agreed territories. Translation rights can also include the right to sub-licence other volume and subsidiary rights in that language (e.g. serial rights, audiobooks etc.) Whether e-books rights should be included in foreign rights deals is an area that is becoming ever more

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<sup>114</sup> Additionally overseas territories are proving to be very lucrative with export sales rising by 2.4 percent to £201million in contrast to the 3.3 percent (£278million) decline in the home market sales (Neilan, 2010).

important, and often depends on the overseas publishers' electronic publishing programme (i.e. if they are going to publish the ebooks themselves and sell them through their website or if they are going to sub-licence the rights). As discussed on pages 91-96, translations of English works dominate overseas markets, particularly for big-name authors, so these rights are particularly desirable. However, literary agents are frequently holding on to these rights nowadays and, as discussed earlier, are now working with overseas subagents to foster the work as widely as possible. As discussed in pp. 27-30, worldwide copyright laws are not homogenous so international rights trade often requires an extensive knowledge of copyright. Translation rights can be licenced in the same way as ELT rights (i.e. through co-edition or reprint licences), the only difference being that a translator is involved. In either case, the licensee is usually responsible for finding, and providing funds for, a suitable translator (Owen, 2010).

#### **2.3.5.2. Electronic and Multimedia Rights**

The development of technology and the convergence of media companies have caused publishers to react in different ways. While some publishers made shrewd partnerships with electronic producers, other, mainly larger conglomerate, publishers developed electronic publishing departments and became electronic producers themselves. However, by 1997 many publishers began to sell their multimedia publishing operations because of the costs involved with this type of publishing (Owen, 2006). Rights issues have changed as technology develops and the publishing industry becomes more globalised (Potter, 2009). Electronic and digital rights are complex and many

challenges have arisen since their emergence. These challenges include piracy issues, rights disputes, distribution models and the change in copyright legislation (Towle et al, 2007). Electronic publishing, and the technology behind it, had led to an author's work being frequently adapted and modified but it has also made plagiarism, manipulation of the works, and non-attribution much easier (Clark, 2008). The advent of digital publishing has triggered publishers to revise their contracts so they do not lose lucrative rights. An example of this is the *Random House vs. Rosetta Books* case, where authors sold the rights to publish their works in digital format to RosettaBooks because these rights were not in existence when they signed the original contract with Random House. Random House was unhappy that a competing electronic version of the book was available; however the court ruled that RosettaBooks owned the digital rights and thus had the right to publish the e-books (Towle et al, 2007, Clarida, 2009). This case shows that there is no clear paradigm for the exploitation of electronic rights and, as such, both publishers and authors' agents have to be flexible when negotiating these rights at the contractual stage. Owen (2010) suggests that short-term licences could be used when dealing with ambiguous electronic rights and that a termination clause could be useful if the rights are not exploited during this period (Owen, 2010).

The implications of electronic publishing and the digital environment on copyright have highlighted the need to update the Berne Convention and current copyright legislation (Owen, 2006). One of the main problems is that the word 'book' is not defined in the Copyright Act: this means the onus is on

publishers, agents, and authors to stipulate this within the copyright agreement. The reason that RosettaBooks won their court case was because Random House had the rights to “print, publish and sell the works in book form” while RosettaBooks had the exclusive rights to publish all the works in e-book format (Clarida, 2009, p.201). The court ruled that RosettaBooks owned the right to publish the work in a digital format because they found e-book to be a separate format (Clarida, 2009). This case highlighted the problems with electronic rights within contracts and the issues surrounding it. As a result contracts were redrafted to include information about electronic publishing, and more importantly, any formats that may arise in the future e.g. “in all electronic form, in all media now known or hereafter developed” (Clarida, 2009, p.203). However, this clause can actually generate additional complications because “all media” might imply film rights: rights that authors/agents generally hold on to. Also, this “all media” clause can be restrictive because not all publishers are going to be able to exploit the work through all media (Clarida, 2009).

Two types of electronic rights can be negotiated: Verbatim Electronic rights, which is the exact digital replication of the printed book, and Multimedia electronic rights, which is the digital text with enhancements such as images, music, and video etc. (Owen, 2006, Hildebrant, 2008, Potter, 2009). Publishers try to include electronic rights within volume rights because they consider the electronic books to be a competing format (Hildebrant, 2008). The difference between these electronic rights has been particularly contentious in recent years with the popularity of iPhone book applications.

Enhanced e-books are now increasingly available for download onto devices, such as the iPhone and iPad, and this has resulted in publishers and agents negotiating over electronic subrights (Page, 2010). While many publishers are happy to negotiate multimedia electronic rights separately from verbatim electronic rights, Canongate, for example, negotiates multimedia rights on a project-to-project basis, other publishers try to incorporate multimedia electronic rights within the verbatim electronic rights umbrella, which are often sold as volume rights<sup>115</sup> (Page, 2010). Literary agents are eager that the distinction between multimedia and electronic rights is made, and determined within the publishing contract, because selling these rights under volume rights/verbatim e-book rights could result in loss of control of work in the future<sup>116</sup> (Page, 2010).

As discussed earlier in this chapter, there is a danger that electronic/digital publishing can divide publishers and authors, particularly the way in which electronic rights are controlled. Tom Holland, the chair of the Society of Authors, recently spoke out against publishers who attempt to appropriate electronic rights for the full copyright term, which confines authors into constrictive deals that Holland believes are "not remotely fair" (Flood, 2010). The main dispute surrounds the small royalty rate of twenty-five percent, which Holland, and a number of authors, believes is too low for the full term of copyright because, once the initial electronic publishing infrastructure is set up, the cost of publishing ebooks is relatively low, and the electronic market is

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<sup>115</sup> According to Page (2010), a spokesperson for Hodder stated that they "aim to get all digital rights" (Page, 2010).

<sup>116</sup> However, in 2008, e-books and print-on-demand titles, sales contributed to less than one percent of the US market (Nawakota, 2008).

growing. The solution the Society of Authors proposes is to offer limited term licences of two years with the potential of renewal. Holland believes that failure to create a fairer system might result in bigger name authors, such as J.K. Rowling, exploiting their e-rights elsewhere, which will be detrimental to both the publishers and the other authors within the publishing house who benefit from the investment (Flood, 2010). As discussed in pages 53-55, the role of the publisher in the digital environment is being dramatically revised and refusal to negotiate fairer rights deals could result in them being excluded from the digital arena altogether.

### **2.3.5.3. Dramatic Rights**

Dramatic rights licences cover the works being dramatised on the radio, television, film and the stage. New platforms of dissemination, such as smart phones, iPods, and web-based streaming and downloading services, have extended the range of licences being offered (Owen, 2010). Although dramatic (particularly cinematographic film and television rights) are very lucrative, publishers are usually inexperienced in selling these rights. As such, external companies have been established to exploit the author's work through film and television. However, the percentage of books being exploited in this manner is very low and even if a book is optioned it is not always made into a 'big screen' project<sup>117</sup>. Despite this, options can be a pleasant additional source of income for an author (Owen, 2006). Larger

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<sup>117</sup> Options are provisional, short-term, licences where a small percentage (on average five percent) of the actual investment cost is paid to reserve the rights with the full cost being paid at the production stage. However, the percentage of books being optioned for cinematographic film is very low, approximately five to ten percent, and only a tenth of these will proceed to production. The figure is higher for television (Owen, 2010).

publishers often form partnerships with production companies, which allow them to both sub-licence an authors' rights, if they control them, and also buy the rights to any books that are based on films or television programme (Clark, 2008). However, established authors do not generally grant lucrative rights, such as film, television and merchandising rights, to the publisher, instead allowing their literary agents to manage the rights. As such, the role of the publisher in film and television rights exploitation is now largely defunct (Owen, 2010).

The start of the twentieth century saw the advent of the Hollywood film industry and film industries elsewhere. The film industry developed the reputation for its storytelling capacities and is, as such, a narrative medium (Butt, 2007a). As a result those involved in the film industry exploited the completed narratives in literature as the frameworks for their films. This type of book to film adaptation remains a popular option today because they are usually a relatively safe venture. This is because target audiences may already be familiar with the original works, and thus marketing the film becomes easier (Butt, 2007a). It has been determined that approximately a third of all Hollywood films produced each year are based on literary works which have already been published (Owen, 2006). The results of the 2008 Academy Awards were keenly anticipated by people in both the film and publishing industries. This is because several of the nominated films were literary adaptations, an occurrence that is increasingly frequent<sup>118</sup>. The attention surrounding the Oscars can generate increased sales for the original

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<sup>118</sup> It has been estimated that forty two percent of the films that have received Oscars are based on literary works (Owen, 2006).



books, and most publishers capitalise on this with tie-in book covers<sup>119</sup> (Richardson, 2008). Even if the film is not nominated for an Oscar, a book adaptation can still act as a promotion, generate extra sales and bring in new readers to the original work. Although commercially large and successful films generate more attention and sales for an original work, it is clear that smaller, art-house, or less commercially successful, films can also help in increasing sales. The 2005 film adaptation of Imre Kertesz's *Fatelessness* resulted in Vintage selling 10,000 copies of the film tie-in books. This was twice the estimated amount of paperback sales for this title (Richardson, 2008). However, there are certain readers who are disdainful of tie-in book covers so publishers are divided on whether to use the film image (Richardson, 2008). Although this snobbery still exists in many companies it is clear that a film adaptation can help increase sales for all editions of the original book. According to Michael Jones, the fiction buyer of the now defunct Borders, the film tie-in editions are usually prominently displayed in their shops, and appeared weekly in Borders' top ten bestseller list for six consecutive months (Richardson, 2008). This is probably because the film image is instantly recognisable to new readers, especially those who are not frequent readers.

It is important for the publishing and film industries to work together when creating film adaptations of a book. Film companies and publishers have dissimilar timetables and agendas, so communication is crucial when organising promotional material and images (Richardson, 2008). Although cross-promotion between industries is advocated by film companies when

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<sup>119</sup> For example Ian McEwan's *Atonement* was driven back into the number one spot in The Bookseller's top fifty list after the release of the film (Richardson, 2008).

high profile authors, such as Ian McEwan, are involved this is not always the case for less well-known authors (Richardson, 2008). Even so, it is beneficial for publishers to work in conjunction with film companies because they usually have very high marketing budgets, much higher than the average book marketing budget, so publishers can enjoy more attention and coverage than they normally would (Richardson, 2008). Nowadays it is more likely that the author's agent will keep possession of the more lucrative dramatisation and documentary rights, which include stage, radio, television, and film rights (Owen, 2006). However, many publishers might own the dramatisation and documentary rights for older books in their backlist, where the author may not have negotiated to keep such rights (Owen, 2006).

The way in which Scotland has been represented in film, and television, has changed and developed over the years (Butt, 2007a). Before 1920 over twenty five percent of the films produced in or about Scotland were adapted from Scottish literature. Furthermore, these film adaptations were based predominantly on the works of three Scottish authors: Walter Scott, Robert Louis Stevenson, and J. M. Barrie<sup>120</sup> (Butt, 2007a). The first Scottish film adaptation was Scott's *Rob Roy*, directed by Arthur Vivian and produced in a Glasgow film studio. This was followed by subsequent Disney adaptations of Scott's novel. However neither Vivian nor Disney acknowledged Walter Scott as the source for their films (Butt, 2007a). Despite this, Scott's literary depiction of Scotland has been greatly influential, since the advent of cinema, in creating a vision of Scotland for the international film industry (Butt, 2007a).

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<sup>120</sup> All of the film adaptations of Scottish literature until 1922 were based on works by these three authors (Butt, 2007a).

Stevenson's novels have been adapted many times, by many different entertainment companies. *Jekyll and Hyde* is not only the most repeatedly adapted work of Scottish literature into global cinema, but also the third most repeatedly adapted works of all literature (Butt, 2007a). Barrie was the only one out of the three authors to directly profit from the film adaptations of his work, and they proved to be a stable but lucrative source of income. Probably the most famous adaptations of his work, involved his novel *Peter Pan* (Butt, 2007a).

It is clear that Scottish classic works, such as *Rob Roy*, *Jekyll and Hyde*, and *Peter Pan*, play an important role to the subsequent film adaptations. Without such an important body of work, such film adaptations would not exist. However, it is also clear that the film adaptations of this work play an important role in the 'internationalisation' of Scottish literature and culture (Butt, 2007a, p.55). Butt (2007b) argues that although the new mediums, such as film and radio, had a "parasitic" relationship with literature, in that they habitually relied on exploiting the original works, they helped to promote the original works (Butt, 2007b, p.18). Danny Boyle's 1996 film version of Irvine Welsh's 1993 book *Trainspotting* prompted revived international interest in Scottish literature. This revival helped Alasdair Gray's book *Lanark* to become translated into French, Portuguese and Czech (Barnaby and Hubbard, 2007a). *Trainspotting* was actually translated into eighteen languages, and ensured success and recognition for Welsh's subsequent work (Barnaby and Hubbard, 2007a). This shows that rights exploitation does not only benefit

those directly involved but can also promote the industry in which the author publishers in, including authors within the same genre.

#### **2.3.5.4. Merchandising rights**

Merchandising is the exploitation of a character, design, or personality from one medium to another through direct reproduction and/or being created into another product, such as toys or clothing. The licencing of merchandising is particularly lucrative because it has been estimated that merchandised product bring in an income of over \$200 billion. Entertainment publishing is a growing phenomenon, which is increasingly popular with young readers. It is tied across all media, so it can be particularly lucrative, and it shows that book publishing is just one section of a larger entertainment business (Kornman, 2004). Book publishing can act as the source for further, more lucrative, projects especially if the characters are well developed (Hooper, 2005). Exploiting the works through other media, such as television, can draw in new audiences and also result in increased sales of the original work. For example, the sales for Norman Bridwell's *Clifford the Big Red Dog*, first published in the 1960s, increased from £4million to £45million a year after the animation was broadcast in 2000 (Hooper, 2005). So exploiting rights across other media is not only profitable, it is a good opportunity to widen the readership and attract new fans.

Children's literature is often exploited after the death of an author, due to popularity established while the author was alive. Chorion, an entertainment content company, has owned the full rights for Enid Blyton's works since 1996

(Chorion, 2008, Horn, 2007). Chorion plans to take advantage of the author's enduring popularity and create a spin-off series from *The Wishing Chair* books. The content of the books will be adapted to suit a more modern audience and Orion is also looking to exploit the works through other media (Horn, 2007). This is all part of the process of creating an internationally recognisable brand name. Chorion has also entered into a substantial deal with Hodder Children's Books, the original publisher of Blyton's works, who will publish a series of books to tie-in with the new *Famous Five* television show, due to be broadcasted by Disney Channel . In addition to the spin-off books, Hodder will publish *The Famous Five Adventure Survival Guide*, a diary apparently written by the Famous Five characters, and renew their audio rights for several of Blyton's popular series' (Rushton, 2007b). This is a good example of publishers taking advantage of new technology and a more modern audience to exploit their literary property fully, and across all media. By doing this, Hodder and Chorion will be able to mix classic and modern publishing and bring well-loved stories and characters into the twenty first century: a venture that will ensure financial success for both companies.

The popularity of a character or series can be very lucrative for the author and publisher. However, there have been numerous cases where companies, who were not originally involved with the work, have exploited this popularity to their own advantage (Holman, 2008). The most recent, widely covered, case was between J. K. Rowling and RDR Books in 2008. RDR Books were planning to publish an unofficial reference book, *The Harry Potter Lexicon*, written by Steve Vander Ark and based on his *Harry Potter* fan website

(Bookseller, 2008). Although there have been many unofficial Harry Potter spin-offs published, where the unofficial publishers have made a large profit from the popular brand, this is the first case to have reached a court room with the results pending. This case raised issues that are of particular importance to authors whose characters generate a large fan base, and subsequent fan sites, and those who create and operate those fan sites (Holman, 2008). J. K. Rowling publicly spoke out against the unofficial encyclopaedia, and the publisher and author that sought to profit financially from it, saying it would violate her IPR. In this case, it is clear that Rowling was differentiating between the commercial, published edition of the lexicon, and the non-commercial activities of the fan website (Tivnan, 2008a)<sup>121</sup>. However, RDR insisted that they were not violating Rowling's IPR because it was a commentary and therefore 'fair use' (Tivnan, 2008a). In the US 'fair use' can be used as a defence if the work is reproduced for purposes such as commentary, criticism, research, news reporting etc, and is similar to the British rule of 'fair dealing' explained earlier in the thesis (Owen, 2006). Therefore, the Court must have examined several factors when determining whether the use of the content is actually fair. These factors include: the objective of the use, whether the use is commercial or non-commercial, the nature of the copyrighted work, the amount of copyrighted work used in proportion to the copyrighted work as a whole, and the effect the use has on the value of the copyrighted work, or on the potential market (Owen, 2006). It would have been impossible to predict what factors the court would deem to be important in a case like this one. However, in this instance, J.K Rowling

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<sup>121</sup> Methuen, a British Independent publisher, had planned to publish the encyclopaedia in Britain if RDR Books won the court case (Tivnan, 2008a).

won her copyright case against RDR, with the judge deciding that the lexicon would cause Rowling irrevocable damage as an author (Bookseller, 2008b). Although this case was particularly high profile it is not isolated. Whenever a book or character becomes popular it becomes a target for unofficial spin-offs. However, the outcome of this case was predicted to have a huge effect on this profitable business (Holman, 2008). Jane Ginsberg (2005) argues that because readers form a relationship with an author, and his/her works, as a result of their previous work and reputation, the author is therefore answerable for all works associated with their particular brand (Ginsberg, 2005). This brings in the notion of moral rights, where attribution of the authors name legitimises the product (Fisk, 2006). It is clear in this circumstance that J.K. Rowling was asserting her moral rights to protect her brand and her reputation as an author. The role of the author has evolved over the years from an ancillary character in the book trade to the now central player in the global publishing industry. J.K. Rowling can assert her moral rights to protect her work because of a lengthy authorial campaign, which will be discussed in the following chapter.

## Chapter Three: Authors and Agents

### 3.1. Chapter Outline

This chapter provides a historical overview of the development of authorship and the role that the Romantic author has played in the development of copyright laws. It will also chart the rise of the literary agent in the publishing industry and demonstrates the important role the agent plays in the contemporary publishing process.

### 3.2. What is an Author?

The idea of the author as the original creator of a works is a modern concept, a product of the Romanticism of the late eighteenth and early nineteenth century<sup>122</sup>. Before this era, ideas were not considered to be original inventions that could be owned or controlled, because they were products of knowledge accumulated from the past (Hesse, 2002, Feather, 2007). The writer was regarded as just another artisan, along with other artisans such as the papermaker, the proofreader and the printer, who contributed to the making of the book (Woodmansee, 1984). However, the Romanticism of the eighteenth and nineteenth century brought about the concept of proprietary authorship, and placed a greater emphasis on the individual, while often neglecting the wider social context (Feather, 2007). Theorists of this period began to put more emphasis on original genius, rather than craftsmanship, with an ‘author’

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<sup>122</sup> In his renowned essay *What is an author*, Michael Foucault not only proposes that the concept of the ‘author’ is a modern one, but also one that is becoming outdated because it does not reflect a contemporary, and more collaborative society (Foucault, 1979). Romanticism, an artistic, literary and intellectual movement, occurred in response to the Industrial Revolution (Newlyn, 2003).



finding inspiration within themselves to create the original work<sup>123</sup> (Woodmansee, 1984). It was during this period that the concept of creating knowledge was tied into private property (Feather, 2007). The theories linking the author to their work through natural rights supported and fortified the notion of authorship, and the merging of literary and legal debate engendered the idea that authors had an entitlement to profit earned from their work (Rose, 2002b). Rose (2002b) asserts that proprietorship is what defines a modern author: someone who owns the work as a commodity because they created it (Rose, 2002b). Over the years copyright legislation has helped to perpetuate this Romantic notion of the author as an original genius while, in turn, the concept of authorship has helped to legitimise copyright laws and strengthen the terms: it is a mutually beneficial relationship (Kaplan, 1967, Boyle, 1996, Saint-Amour, 2003). Consequently the Romantic notion of authorship in contemporary culture has become “so widespread as to nearly be universal” (Stillinger, 1991, p.183). However, many theorists have argued against the Romantic notion of authorship by contending that authors create works by combining past influential creativity (Bourdieu, 1993, Litman, 1990, Jaszi, 1991, Woodmansee, 1994). The objections against literary property focus on the annexing of ideas, which were believed to belong to the public domain. Consequently, those arguing for the rights of the author had to differentiate between ideas and the physical expression of those ideas and thus ideas were excluded from copyright protection. However, this only

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<sup>123</sup> In *Essay, Supplementary to the Preface*, William Wordsworth suggests that the poet possesses a genius, which allows his to create original intellectual material. This 1815 essay brought together all the arguments to reconceptualise the idea of writing and authorship, and, essentially, created the modern notion of authorship (Woodmansee, 1994b).

reinforced the Romantic idea of the author who created original expressions (Chartier, 1994).

### **3.3. The Historical Development of Authorship**

Until the eighteenth century, writing for money was disapproved of and authors had to rely on patrons to fund their writing (Brewer, 2002). Writing was generally viewed as of a recreational activity for the solvent gentleman (Bettig, 1996). The author was, essentially, the patron's employee with the patron providing financial support in exchange for the author's work (Feather, 2006). During the seventeenth and eighteenth century, patronage was such a widely established practice that all authors, even the most revered such as Alexander Pope and Samuel Johnson, were affected by it (Griffin, 1996). Johnson, who has a reputation for being one of the most independent writers of the period, received a pension from George III as a political writer (Griffin, 1996). The benefits of patronage did not only consist of financial support, some authors were rewarded with introductions to influential people, recommendations, protection and other advantages. In exchange for this patrons could bolster their reputation, receive praise and often dedication, and also, in the case of George III and other patrons of the time, political services (Griffin, 1996).

Griffin (1996) argues that the book trade replaced patrons as the author's source of financial help, in the eighteenth century (Griffin, 1996). By the end of the seventeenth century writing for money, or "writing for the booksellers", was an accepted profession, although it was still not a reputable occupation

(Feather, 2007, p.235). Booksellers bought the work from the author, and gained control of it from then on: the normal practice was for authors to sell their copyrights outright, to booksellers, in exchange for a sum of money; however, the author was then declined any profit from the book (Hesse, 2002, Rose, 2003, Feather, 2006). However, Patterson (1968) contends that booksellers started paying authors to maintain the book trade rather than for any moral or legal authorial right (Patterson, 1968). Scholars, such as Hauser (1951) and Habermas (1991), have observed that reading increased in popularity when booksellers/publishers became the author's patron, which marked the end of the aristocratic control of the book trade and the start of a more commercial one (Hauser, 1951, Habermas, 1991). The increase in literary levels, and the change in the religious and political situation, resulted in the need for additional new books. As a result, authors were employed by publishers to create new books, and edit old books, to meet these requirements, something that challenged the traditional notions of authorship (Hesse, 2002, Feather, 2006). Feather (2006) surmises, "The professional author, just like the professional publisher, is a product of the age of the printed book" (Feather, 2006, p27).

### **3.3.1. The Statute of Anne and Authorship**

The Statute of Anne was therefore, in part, responsible for supporting the notion of the author (Rose, 1994). It is evident that The Statute of Anne supported the circulation of knowledge and was against the Stationers' Company's monopoly, because it is subtitled "An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or

purchasers of such Copies, during the Times therein mentioned,” The Statute also goes on to state that The Act’s objective is “the encouragement of learned men to compose and write useful books” (Statute of Anne, 1709, Rose, 2003). This shows that the Act had a municipal motivation, which included the importance of the relationship between the author and society, and endeavoured to create a competitive market of knowledge by combining the ideas of the Enlightenment with the economic concerns of an increasingly commercial book trade (Deazley, 2004, Rose, 2003). However, as outlined in the introduction, the Statute of Anne favoured the public right over authorial rights and, as such; the promotion of authorship was almost an accidental occurrence. It was publishers, and not authors, who were the key participants during the fifty-year legal battle for literary property, outlined in the introduction. Publishers falsely used authors’ rights as their reason for suing other booksellers/publishers in court, when they were vying for economic control (Rose, 2003, Feather, 2006). Although it has been established that the literary works, being fought over, had originated from the author, it was the publishers who profited from them (Feather, 2006). However, there were a few authors who capitalised on The Statute of Anne after it was established and manoeuvred their rights sales to gain more control of their product. Alexander Pope was someone who exploited the Act proficiently to his own advantage and even became a financial patron to a printer and bookseller (Feather, 2007). However Pope was fully conscious about the financial value of his writing, and depended on it for his income (Feather, 2006). This allowed Pope to control various aspects of the publishing process such as the physical appearance of the product, and being paid relative to the number of copies

sold rather than selling his copyright outright (Feather, 2007). Although very few authors then, or since, have been able to apply the same level of control of their work, Pope did establish that authors could exploit the emerging copyright laws, and therefore were collaborators in the publishing process (Feather, 2006, Feather 2007).

### **3.3.2. Authorship as a Profession**

By the end of the eighteenth century some publishers were paying for the right to copy and publish authors' works. This was, in part, because many classic works were now in the public domain and publishers were searching for original new works (Bettig, 1996). Therefore, it became recognisable during this period that the author was at the start of this business chain: When the publisher bought a copy from the author, the author was actually selling a commercial commodity that they had constructed, and so the ownership of the work emerged from the notion of authorship (Feather, 2007). The occupation of writing had become an unquestionable way to earn a living by the end of the eighteenth century. In 1710, Daniel Defoe wrote: "A Book is the Author's Property, 'tis the Child of his Inventions, the Brat of his Brain: if he sells his Property, it then becomes the Right of the Purchaser" (Rose, 1993, p.9). This encouraged other authors to regard their work as their own property, which could be legally transferred to another person if they desired; however, it meant that they did not need to sell their copyright outright to see their work published if they did not want to (Hesse, 2002). Daniel Defoe recognised that the competitive marketplace could be responsible for the success of an author, and also regarded writing to be a quest for recognition (of one's talent)

and financial success (Bettig, 1996). As Eisenstein argues, when personal literary works increasingly became commodified “Possessive individualism began to characterize the attitude of writers to their work” (Eisenstein, 1979, p.121). Authors strived to be recognised and maintain control of their work because their works were now commercial commodities<sup>124</sup>. Owning their literary property gave authors a bargaining power with the booksellers. Despite that, this bargaining power was undermined by the proliferation in the number of professional authors writing during this period. The number of professional authors multiplied during the eighteenth century so only those authors with powerful patrons or great talent - and even then this did not guarantee success - had any leverage (Collins, 1927). However the copyright acts of 1814 and 1842 changed the nature of copyright in favour of authorship by increasing the term to first include the author’s life and then extending the term to after the author’s death (Rose, 1994, Feather 2008). This legal revision placed the author at the forefront of copyright, and showed that authorial incentive bore greater importance than ‘the encouragement of learning’ (Woodmansee, 1994a).

The end of the nineteenth century saw a group of disgruntled authors, who were fed up of being exploited, join together to create a professional body for authors: The Society of Authors formed in 1884 and led by Walter Besant. Besant recruited many prominent authors, such as Matthew Arnold and Thomas Huxley, with Alfred Tennyson as the first President (Le Fanu, 1991). Although the society was formed to establish a better, and fairer, relationship

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<sup>124</sup> Lowenstein (2002) describes this as “possessive authorship” (Lowenstein, 2002).

between authors and publishers, it was derided in the press as the 'Society for the Prevention of Cruelty to Authors' (Le Fanu, 1991, p.21). Consequently, the Society of Authors was quick to establish that the aims of the society were to maintain relationships and negotiations with publishers, rather than divide them, create a more efficient marketplace, and to ameliorate the copyright situation (Le Fanu, 1991). The Society of Authors currently has over 8,500 members, which represent the extensive range of authorship that exists today (The Society of Authors, 2009). The Society of Authors also played a key role in the establishment of the Authors' Licensing and Collecting Society (ALCS) in 1977. The ALCS collects money on behalf of the author, for any work that has been copied, broadcast or recorded, from sources that might be difficult to independently manage, such as photocopying fees and other secondary rights payments (Le Fanu, 1991).

As outlined in Chapter Two, the publishing industry has changed dramatically in the last fifty years with new platforms of dissemination and larger markets benefiting both authors and publishers. Significant opportunities arose for both publishers and authors as a result of the conglomeration of the communication and entertainment industries in the 1980s. Publishing companies were subsumed into larger global media companies, which augmented the potential for cross-media trade. An authors' work could be sold through other mass media, such as television, film and radio, which were often owned by the same company (Turow, 1992). In recent years, the rise of digital publishing has provided authors with a multitude of new avenues to exploit their literary work for financial gain, such as e-books (an avenue that

has been discussed extensively over the past twenty years), with many subsidiary rights developing as a result<sup>125</sup> (Owen, 2006). Electronic publishing, and the technology behind it, has led to authors' works being frequently adapted and modified but it has also made copyright infringement, plagiarism, manipulation of the works, and non-attribution much easier (Clark, 2008). The digital environment also makes it easier to rework material and thus engenders a more collaborative creativity (Woodmansee, 1994). Although the practice of writing is increasingly collaborative, especially with the development of digital technology, copyright legislation still favours the Romantic notion of the author (Jazsi, 1994, Landow, 2006). The implications of electronic publishing and the digital environment on copyright have highlighted the need to update the Berne Convention and current copyright legislation (Owen, 2006). There are two main factors that give insight to what motivates an author to write: the genre and the individual personality. For example, poets and fiction writers are often driven by an innate need to write, while academic write to further their careers. However, no matter what the motivation to write is, the truth is that the majority of writers do not earn very much from their writing<sup>126</sup> (Clark, 2008). This is corroborated by the findings of this research, which are outlined in Chapter Five.

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<sup>125</sup> The advent of digital publishing has triggered publishers to revise their contracts so they do not lose lucrative rights. An example of this is the *Random House vs. RosettaBooks* case, where the authors sold the rights to publish their works in digital format to RosettaBooks because these rights were not in existence when they signed the original contract with Random House. Random House was unhappy that a competing electronic version of the book was available; however the court ruled that RosettaBooks owned the digital rights and thus had the right to publish the e-books (Clarida, 2009).

<sup>126</sup> A survey conducted by the ALCS in 2007 found that the average wage for an author in the UK was £16, 531, while the typical wage was £4000 (Clark, 2008).



### **3.3.3. Authorial construction: Against the notion of the author**

In recent years scholars have been connecting the cultural notion of the author, the original genius behind the work, and the legal notion of the author, the owner of the literary property. The seminal works of both Michael Foucault, in *What is an Author?*<sup>127</sup> (1969), and Benjamin Kaplan, in his book *An Unhurried look at Copyright* (1967), have been influential in connecting both literary and legal perspectives. Woodmansee (1984) chronicles the relationship between copyright legislation and the developing nature of authorship, along with the advent of new technologies, with an emphasis on 'originality', a concept that is strongly in existence today. Authors have become the fulcrum of copyright, replacing the publishers in importance. John Locke's theory of property (discussed on pages 32-38) is often used to defend the rights of an author and their labour in creating a work, "That labour put a distinction between them and common: that added something to them more than nature, the common mother of all, had done; and so they became his private right" (Locke, 1690). However, Craig (2002) argues that this Lockean view of copyright is detrimental to the public interest and the encouragement of public learning promoted by the Statute of Anne (Craig, 2002). Boyle (1996) agrees with this, arguing that cultural resources are overlooked in favour of original genius (Boyle, 1996). Additionally, Lemley (1997) criticises the exclusive copyright legislation, arguing that it promotes and protects the first author at the cost of the following authors (Lemley, 1997). Despite Lemley (1997) agreeing with Boyle (1996) that copyright legislation places too much value in the author, Lemley (1997) asserts that the Romantic notion of

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<sup>127</sup> Foucault suggests that the concept of authorship is actually one that has been constructed by society and that the author is separate from the text. Therefore the author does not exist as a person but as a model of discourse (Foucault, 1984)

authorship does exist in contemporary copyright legislation, which limits authorial control by limiting the term of copyright (Lemley, 1997). As such, Lemley (1997) subscribes to the economic justification of copyright legislation (Lemley, 1997). In his seminal text 'Death of an Author', Roland Barthes challenged the Romantic notion of authorship by arguing that the author was not the sole creator of a work they created (Barthes, 1968). The notion of original genius is flawed and can actually be inimical because it can lead to false glorification: as Barthes surmises, "A text's unity lies not in its origin, but in its destination" (Barthes, 1968, p148).

#### **3.3.4. Collaborative Creativity**

Woodmansee (1994a) surmises that not only is the concept of the 'author' a modern one, it is becoming outdated because it does not reflect a contemporary, collaborative society that has less emphasis on the individual (Woodmansee, 1994a). Additionally, the collaborative nature of writing was apparent right through from the Middle Ages to the Renaissance: it was only during the Romantic Age that the notion of individual genius was advocated<sup>128</sup> (Woodmansee, 1994a). Even Samuel Johnson, who was involved in championing the idea that original authorship was an act of individual genius, participated in many projects that challenged the notion of individual authorship. For example, the *Dictionary of the English Language* (1765), the work Johnson is strongly connected to, was a collaborative project. Johnson

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<sup>128</sup> Masten (1997) asserts that collective authorship was prevalent during the sixteenth and seventeenth centuries before it was superseded by the Romantic notion of individual authorship (Masten, 1997) Additionally, the idea of collective authorship has existed since Ancient Greece, where the Greek poets regarded their works as a collaborative accomplishment (Hauser, 1951).

was also well known for providing written material for his friends and, famously, wrote sermons although he was not a clergyman (Boswell, 1823, Woodmansee, 1994a). As discussed in Chapter One, booksellers promoted the notion of authors' rights in the eighteenth century in order to maintain control of the book trade. Although common law copyright was thwarted by the limited term set by The Statute of Anne, the notion of authors' rights is still used today in order to protect copyright<sup>129</sup>. Even though the notion of the author as an individual genius is still in existence today, these issues of collaborative creativity are now prevalent in the contemporary publishing industry (Woodmansee, 1994a). Kaplan (1967) anticipated that collaborative projects would moderate feelings of exclusive proprietorship and "thus modify conceptions of copyright" (Kaplan, 1967, p.117). The concept of collaborative creativity does not fit easily within the current copyright framework: a framework that uses a single author as its model (Jaszi, 1991, Boyle, 1996). Although the CPDA 1988 does recognise multi-authored works, where "a work produced by the collaboration of two or more authors in which the contribution of each is not distinct from the contribution of the other author or authors"<sup>130</sup> (CPDA, 1988 s10 (1)), problems arise when the correct accreditation is not given to all the authors involved (Zemer, 2006). Also "collective" works can differ from "joint" ownership because collective works depend on different contribution from the collaborators instead of them collaborating on one amalgamated item. The CPDA 1988 describes a collective work as "a. A work of joint ownership, or b. a work in which there

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<sup>129</sup> As discussed on page 17, Deazley (2006) argues that common law copyright, and authors' rights, never existed (Deazley, 2006)

<sup>130</sup> The copyright will expire seventy years after the death of the last author (CPDA, 1988, s12 (8) (a) (i)).

are distinct contributions by different authors or in which works or part of works of different authors are incorporated” (CPDA, 1988 s178).

The digital environment also makes it easier to rework material and thus engenders a more collaborative creativity (Woodmansee, 1994, Everett, 2003). Although the practice of writing is increasingly collaborative, especially with the development of digital technology, copyright legislation still favours the Romantic notion of the author (Jazsi, 1994, Boyle, 1996, Landow, 2006). Boyle (1996) argues that the significance of ideas and concepts already in existence are overlooked in favour of maintaining the notion of the author (Boyle, 1996). However, Lemley (1997) refutes the idea of the original genius impacting on the development on copyright laws, saying that the limitations on copyright protection are favourable for the public (Lemley, 1997). Building on Boyle’s (1996) concepts, Zemer (2007) argues that copyright legislation fails to strike the balance between private and public interests because copyright is based on the Romantic notion of the author as the original genius and thus dismisses the idea of a collective creative process (Zemer, 2007). However, Helprin (2009) is sceptical about collaborative work especially the remix culture that exists in the digital environment, which Helprin calls the “Legos” approach, meaning that these remixes are works that have been crudely stacked together like Lego building blocks and are not original works (Helprin, 2009).

According to Landow (2006) a common type of collaborative writing is ‘versioning’ where a work produced by one author is then edited and modified

by another person. In this case the editing/modification usually takes place separately (i.e. each collaborator amends the document separately from each other), and there can be numerous versions (Landow, 2006). This type of process occurs customarily in the publishing process, where the editor corrects and revises the author's work so it is suitable for publication (Gross, 2000). Landow argues that collaboration in creativity is not recognised, despite the belief that most "intellectual endeavors" are collaborative (Landow, 2006, p.138). The reason for this is that traditional notions of authorship do not recognise collaboration, instead focusing on the individual genius. There are many cases, particularly in academic publishing, where projects are entirely collaborative and there are numerous contributors. This can result in much confusion surrounding the issue of copyright because contacting all contributors each time a new licensing agreement is needed can be a laborious process. In this case, in academic publishing, it is not uncommon for the contributors to assign copyright to their publishers in exchange for a one-off payment (Owen, 2006). Publishers of academic journals follow the same rule although this has sparked much disagreement due to the frequent lack of payment of contributors to academic journals (Owen, 2006).

### **3.3.5. The Public Domain and the Author**

As discussed in the introduction, and above, copyright protects the words expressed by the author and not the ideas created. Accordingly, both Kaplan (1967) and Litman (1990) argue that no work is completely original and that the existence of the public domain ensures that creativity continues: If ideas

fell into the private domain then creativity would be stifled. Kaplan (1967) surmises that the thriving literary culture in the Elizabethan era was due to creators of that period having the freedom to appropriate different work. Kaplan concludes that restrictive contemporary copyright laws do not allow creators the same kind of freedom (Kaplan, 1967, Litman, 1990). Litman (1990) contends,

“All works of authorship, even the most creative, include some elements adapted from raw material that the author first encountered in someone else’s work... If each author’s claim to own everything embodied in their work were enforceable in court, almost every work could be enjoined by the owner of the copyright in another...Because we have a public domain, we can permit authors to avoid the harsh light of a genuine search for provenance, and thus maintain that their works are indeed their own creations” (Litman, 1990, p. 965).

Litman continues, “authorship in any medium is more akin to translation and recombination than it is to creating Aphrodite from the foam of the sea” (Litman, 1990, p. 966). Laddie (1996) adds that, “Without the public domain, copyright itself would not be viable”, a sentiment Hemmungs Wirten (2008) shares (Laddie, 1996, Hemmungs Wirten, 2008). Thus the existence of a robust public domain is essential for both copyright and authorship because authors could not create without the public domain and copyright cannot exist without authorship. It is here that Zemer’s copyright theory of social constructionism comes into force. Zemer (2007) argues that: “Every copyrighted entity is a social construction. It depends on the consumption of cultural and social properties that make an author capable of interpreting and absorbing the significance of these properties, then translating his creative ability into the language of copyright creation” (Zemer, 2007, p2). This builds

on the concepts of the work of Jaszi (1991), Laddie (1996) and Litman (1990). Zemer (2007) continues by adding that “every copyrighted work is a joint enterprise” with the two contributors being the individual author and the public (Zemer, 2007, p. 6). Society can be defined by the expressions of our culture, such as literature, film and music, and the commodification of these expressions can be harmful to society and the individuals within that society (who can also be defined by these expressions), as Vaidhyanathan (2001) writes:

“There must be a formula that would acknowledge that all creativity relies on previous work, builds “on the shoulders of giants”, yet would encourage – maximize- creative expression in multiple media and forms. But because twentieth-century copyright law has been a battle of strong interested parties seeking to control a market, not a concerted effort to maximize creativity and content for the benefit of the public, we have lost sight of such a formula along the way” (Vaidhyanathan, 2001, p.116).

Durham (2002) surmises that, “Authorship, according to this “un-romantic” point of view is less a manifestation of the author’s personal vision, created *ex nihilo*, than it is a synthesis of prior texts and cultural influences” (Durham, 2002, p.616). If we were to examine the author’s history, and all the information that he had been in contact with, then even the most revolutionary work could be linked to work already in existence. As Craig (2002) observes:

“Thoughts and ideas are not free-standing, but are inherently linked to the thoughts and ideas that went before. Simply because authorship or another form of expression is necessary to give rise to an idea, and to allow it to be communicated and developed, it does not follow that its entire value is attributable to that labour” (Craig, 2002, p.33).

Additionally, Craig (2002) contends that copyright exists as a result of the triumvirate of the author, the work and the public and, as such, each holds equal importance. However, as illuminated in the previous chapters, focusing on the role of the author in the creative process can be used to justify copyright protection and as a consequence the importance of the role of the public, in shaping the work, is overlooked (Craig, 2002). Craig continues by asserting that the natural rights rewarded to authors results in copyrighted works being overprotected and thus the copyright system is both undermined and disconnected (Craig, 2002). Scafidi (2001) argues that the “exclusive celebration of one individual not only obscures the role of the community and society at large in the development of intellectual property, but it also shifts attention away from the need for a robust public domain” (Scafidi, 2001, p.81). Protecting the works of the top-earning authors is damaging to the mass of lower-earning authors, who depend on information and inspiration from the public domain (Lessig, 2009). Consequently, Boyle (1996) argues that, “We need to show a much greater concern for the public domain, both as a resource for future creators, and as the raw material for the marketplace of ideas” (Boyle, 1996, p.168). Copyright actually privatises sectors of the public domain, making them inaccessible to everyone<sup>131</sup> (Rose, 1986). Lessig (2002) observes that locking away such resources will “harm the environment of innovation” (Lessig, 2002, p.6). Hemmungs Wirten (2008) agrees with this and contends that if we want to continue using the public domain as a source for future innovation then “we need to restock and manage the public domain,

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<sup>131</sup> Hemmungs Wirten has written extensively about the privatisation of the public domain and intellectual commons, comparing it to the “land grab” (i.e. the privatisation of common land) of centuries ago (Hemmungs Wirten, 2004, 2007, 2008).



not enclose it into nothingness” (Hemmungs Wirten, 2008, p.7). Although The Statute of Anne limited the term of copyright, ensuring that copyright was a statutory matter, the Lockean notion of authors’ rights remains and is an integral justification for copyright protection in the contemporary publishing environment. Waldron (1993) comments, “although the official line about copyright is that it is a matter of social policy, judicial and scholarly rhetoric on the subject retains many of the characteristics of natural rights talk” (Waldron, 1993, p.841). What started out as a societal policy, aimed at incentivising future creators, has become an individual entitlement based on moral authorial rights.

### **3.3.6. Authors as Celebrities and the effect of the brand name**

By the nineteenth century, the status of the author began to change, and the importance of copyright protections, in both domestic and overseas markets, demonstrate the growing profit that could be made from intellectual endeavours (Feather, 2006, Finklestein and McCleery, 2007). This was as a result of the demand for literary work and the development of renowned authors, such as Sir Walter Scott (Finklestein and McCleery, 2007). Walter Scott sold “more novels than all of the other novelists of the time put together” (St Clair, 2004, p.221). Significantly, Walter Scott managed to become an international success while being published in Scotland and thus became a role model for other Scottish writers who wanted to remain in Scotland (Millgate, 1987, Finklestein and McCleery, 2007). These ‘celebrity’ authors were able to secure a larger income as a result of their fame, particularly if they retained their copyright and, from the end of the nineteenth century, their

subsidiary rights (Finklestein and McCleery, 2007). However, this was not the case for middle and low ranking authors (Feather, 2006). Another example of the effect of celebrity on earnings is Robert Louis Stevenson. Stevenson's earlier novels, even the ones published in prominent periodicals, made him very little money as did his travel writing and essays. However the success of *Treasure Island* and *Dr Jekyll and Mr Hyde* increased Stevenson's popularity and resulted in large advances, and offers, for his work (Nash, 2007).

The role of the celebrity author illustrates the Romantic notion of authorship in the contemporary publishing environment, linking the past to the present, and shows how the relationship between the author and copyright is evident today<sup>132</sup>. Publishing in the twenty-first century has become increasingly celebrity/brand-name author driven as a result of the conglomeration of the publishing industry. Conglomeration has transformed authorship and publishing into a more competitive, cross-media discipline (Moran, 2000, De Bellaigue, 2008). Many publishers are now persistently looking for potential bestsellers, and authors who can be used as marketable commodities<sup>133</sup>. The Keynote report (2009) summarises that "the book market has become part of the publicity machine for celebrities of all kinds...they need the book market, and to some extent the book market needs them" (Keynotes, 2009). However, many of these books, particularly celebrity memoirs, often have very short-term appeal and stay in the bestseller charts for a few weeks only

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<sup>132</sup> The author as a trade-mark/brand name has already been discussed in pages 122-124.

<sup>133</sup> Celebrity memoirs dominated the non-fiction bestseller list, in the UK, in 2009 (Stone, 2010). Also, many authors are now celebrities in their own right and experience similar media coverage to their counterparts in the film, music and television industries (Moran, 2000).

(De Bellaigue, 2008). Although celebrities, politicians, sports personalities etc. have taken advantage of big-budget book deals for many years, Baker (1996) asserts that, “authorship has come to be seen in some quarters as some sort of high-paying embellishment of celebrity” (Baker, 1996, p. 41). While writing is not the main profession for celebrities, politicians, sports personalities etc. it does provide them with a very lucrative earning potential. The amount that celebrities earn from these memoirs, especially when they are ghost written, has caused contention amongst some authors<sup>134</sup> (Mosse, 2009). Clark (2008) observes that as the book market became more polarised, with the focus shifting towards bestsellers, publishers began to cut their lists and concentrate on their most marketable authors. As such, mid-list and first-time authors have suffered as a consequence (Epstein, 2002, Clark, 2008). Potential best-selling authors, both brand name and celebrity, receive very large advances and marketing budgets while the advances for lesser-known authors are decreasing<sup>135</sup>. This shows the massive gap between the successful authors and the less successful ones, which is reminiscent of the situation in the nineteenth century. Although authors’ advances have been dramatically reduced in recent years, it is the small to mid-list authors who have been affected rather than the best-selling authors, who are receiving

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<sup>134</sup> Lynda La Plante recently spoke out against publishers who spent millions of pounds on celebrity memoirs instead of reinvesting in their own authors (Mosse, 2009).

<sup>135</sup> The ongoing dispute is that these best-selling authors, particularly celebrity authors, are appropriating marketing and distribution funds, and advance income, from lesser-known authors. However, recent sales figures showed that ‘celebrity’ memoirs brought in an income of £128.6million, and could actually be subsidising other authors within the publishing houses (Stone, 2009). For example, without the success of the Harry Potter series, Bloomsbury might not have been able to keep its independent status (Stevenson, 2010). This situation is mirrored in the literary agency model: where agents rely on income from their bestselling authors to maintain the operations of the agency (Owen, 2010).

better advances than ever<sup>136</sup> (Page, 2009a, Page, 2009b). In actuality, more than fifty percent of all of the income earned by authors in the United Kingdom is earned by the top ten percent of authors<sup>137</sup> (Clark, 2008). This demonstrates that the majority of authors, especially lesser-known authors, cannot rely solely on advances and royalties for their income: exploiting their works through different avenues could help generate extra income. Additionally, recent reports found that peer-to-peer file-sharing can help boost the sales of works by new and non-big name artists<sup>138</sup> (Hankde, 2010).

Additionally, Rose (2002b) argues that many products created in the contemporary entertainment industry are formulaic, which contradicts the notion of the creative individual (Rose, 2002b). Formulaic literature, or formula fiction, can often be the basis of a bestselling genre, such as romance<sup>139</sup>. Even revered fiction by writers such as Jane Austen appear to follow a “sellable formula” and can be used to challenge the Romantic notion of authorship and highlight that writing is “a craft requiring basic skill and education” and debunked the notion “that fine writing required extraordinary experience, extraordinary character and a revolutionary ideology” (Lynch, 2000, p.64). However, using formula fiction as an example can highlight the

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<sup>136</sup> Mark Le Fanu, Secretary of the Society of Authors, estimated that there had been between a thirty and fifty percent drop in advances (Page, 2009b). It has since been reported that advances have been cut by as much as seventy percent (Page, 2009a).

<sup>137</sup> This result is based on a 2007 survey conducted by the Authors’ Licensing and Collecting Society. This survey also revealed that while the average earning for an author in the UK were £16, 531, the typical amount was only £4000 and only twenty percent of authors made all their earnings from writing (Clark, 2008).

<sup>138</sup> Although this research was based on other mediums, it can act as a paradigm for the book publishing industry (Hankde, 2010).

<sup>139</sup> As the term suggests formula fiction is fiction that follows an established formula (Warner, 1998).

problem of connecting the author to copyright legislation. Jensen (1984) gives the Canadian-based Harlequin romance novels as an example of formula fiction (Jensen, 1984). Harlequin books are so successful that they publish internationally across six continents and in twenty-six languages. Additionally, the romance books produced by this publisher are recognised as brand names, in a similar way to the work of brand name authors are recognised (Hemmungs Wirten, 1998). Jensen (1984) asserts that readers of this type of genre buy the books because of loyalty towards the publishing brand rather than because of the author<sup>140</sup> (Jensen, 1984). Hemmungs Wirten (1998) contends that the lack of originality exhibited by these formulaic products, perpetuated by the mass market and global publishing environment, is at odds with the idea of the original genius (Hemmungs Wirten, 1998). Additionally, Warner (1998) observes that formula fiction does not allow an authorial style to form and develop because the author is constricted by the established formula (Warner, 1998). As such formulaic fiction refutes the “notion that certain extraordinary beings called authors conjure works out of thin air” that many Romantic-author proponents invoke and thus places copyright legislation based on authorial rights in a precarious position (Rose, 2002b, p.142).

### **3.3.7. The Effects of the Development of the Media on Authorship**

The introduction of new mediums, such as radio, film and television, to the mass market had a detrimental impact on the book trade, with less people

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<sup>140</sup> Additionally Mesquita (2008) argues that while brands help consumers to establish an allegiance to a publisher or author, it often results in the consumer buying a product unquestionably because the trust they have with the brand (Mesquita, 2008).

reading books for entertainment (Feather, 2006). However, as outlined earlier, the development of the media created many new opportunities for authors. The increase in the number of avenues in which an author's work can be reproduced through had led to increased possibilities for authors to profit financially, and thus increase their income (Ward, 2007). According to Bonham-Carter (1978) The Copyright Act of 1911 was 'hailed as the greatest single advancement in the history of copyright' because the author's literary work could be adapted into, and disseminated by, the developing new media of the time and authors could therefore profit from subsidiary rights such as recording, performance, and film rights (Bonham-Carter, 1978, p.216). Although new media was originally regarded as a threat, it became clear that the author could actually profit from them (Ward, 2007). In light of this it can be concluded that the exploitation of rights through different mediums can provided an, often much-needed, supplementary income to authors and therefore will be further considered in this study.

### **3.3.8. The Publishing Contract**

The publishing contract, also called an agreement, between the publisher and the author is the foundation of their relationship (Clark, 1997, Clark, 2008). It is at this stage that the rights are negotiated and licenced; there is still a dividing opinion between authors and publishers about who controls what rights, particularly with the advent of the literary agent (Owen, 2006). It is important to note that although the author creates the work, the publisher publishes the work at their own expense so is looking for the most comprehensive opportunity to make a profit. Therefore the contract allows the

publisher and author to work in conjunction to create a book and fully exploit the work and, ultimately, make a profit (Clark, 1997). Negotiations usually favour the publisher and it is not uncommon for the author to sign the contract without negotiating the terms. This is less common for authors with agents (Clark, 2008). It is conventional, in trade publishing, for authors to keep possession of their copyright and grant licences to their publisher, or publishers, to publish their works in different formats or territories<sup>141</sup> (Owen, 2006). This is a far cry from the common contracts of the sixteenth and seventeenth centuries where the publishers would buy the copyright outright from the author (St Clair, 2007). Large publishing companies often have specialist contract departments, which show the importance in the role the contract plays in the publishing process (Clark, 2008). This methodical practice is not exercised in the Scottish publishing industry, where rights are predominantly dealt with in an inefficient manner. This will be discussed further in Chapter Five.

It is often the case that publishers, and literary agents, have *boilerplate* agreements, which can be negotiated and thus tailored to each individual author (Clark, 2008). Boilerplate agreements are standard contracts, issued to all authors, which can be modified after negotiation (Clark, 2008). The allocation of profits from rights sales and the exploitation of rights will be outlined in the contract, after the agent and the publisher have conferred (Owen, 2006). The development of new technology, and in the way

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<sup>141</sup> An example of this is an author publishing works in the UK and USA. The author might have different agreements with a British and an American publisher (Owen, 2006).

information is communicated, has led to the diversification of rights (Squires, 2007). This has resulted in publishing contracts becoming longer and more complicated due to the numerous different rights associated with the work. The author's agent plays a crucial role during this process, ensuring that the terms and conditions are looked at in depth and that the author's rights are protected (Legat, 1995b). As a result of the numerous new rights and licences that can be sold, and the demise of the Net Book Agreement in 1995, which lead to complications when negotiating royalty agreements, a large part of the literary agents' time is spent working on the authors' contract<sup>142</sup> (De Bellaigue, 2008). However, Lessig (2002) argues that contracts, and contract law, can actually undermine copyright law and the balance it attempts to achieve (i.e. protection and innovation) by giving the copyright holder greater protection than necessary (Lessig, 2002).

There are several factors that will influence the bundle of rights that the agent and publisher negotiate over. It is clear that the amount of money required by the agent in comparison to the amount the publisher offers plays an important role in the rights negotiation. However, it is also important that the publisher has the means, methods, and ability to promote and sell the work in a variety of different markets and formats. These factors can influence whether an agent decides that the best opportunity for the author is to have one, single arrangement with a multinational company or several, separate arrangements with smaller, niche companies. Spreading the rights across different

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<sup>142</sup> The Net Book Agreement was an agreement for books between British publishers and booksellers, which allowed books to be sold at a fixed price. It collapsed in 1995 resulting in the dominance of large chain bookshops and supermarkets that can afford heavy discounting (Clark, 2008).



companies ensures that authors are not committed to one company; this might give the author more control, and more financial gain. It might also ensure that authors' rights are exploited fully by the most experienced people and in smaller niche companies where the work might be more of a priority than in a larger company, although this is not always the case. It is essential for publishers to discuss with their authors the different rights they want to exploit and why, because the rights can only be licenced if the publisher has the means to exploit them (Owen, 2006). The Society of Authors and the Writer's Guild of Great Britain formed the Minimum Term Agreement (MTA) in 1980. This document, accepted by some British publishers, guarantees that authors receive an acceptable financial arrangement, are kept informed of how their rights are exploited and about other matters regarding their books, and are consulted about various marketing aspects of the book such as publication date and jacket design (Legat, 1995b)<sup>143</sup>. Although the MTA does not automatically ensure a problem-free publishing process, it does mean that the terms offered to the author are comparable to those offered by other publishers (Le Fanu, 1991). The MTA has contributed to the improvement of publishing contracts over the past three decades. However there are a couple of other factors that have also contributed: the development of professional literary agents, and the need to offer large advances and contracts with better terms in order to attract and obtain big name authors (Le Fanu, 1991). It is important to note that should the publisher breach the contract or stop using the rights then the author can request for their rights to be returned to them.

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<sup>143</sup> Publishers who have agreed to the MTA include Faber, Bloomsbury, Hodder & Stoughton, the Penguin Group, and many others (Le Fanu, 1991).

However, new technologies such as print-on-demand and digital storage help the work to remain in print (Owen, 2006).

There has been much furore between The Author's Guild, in America, and the American branch of publishers Simon & Schuster (S&S) regarding authors' rights when a book became out-of-print (Flood, 2007). It is usually written into the author's contract that their rights will be returned to them if their book becomes out-of-print and ceases to sell. However, S&S would not return the rights to their authors if a book was not out-of-print and available in different editions and formats, even if the book was not selling any copies. This row spilled across to the UK, where the US branch suggested that the UK subsidiary would adhere to the US branch's decision. However, S&S eventually decided to amend the contract so that the rights would return to the authors after sales of the book fell below a certain amount. This decision did not resolve the situation. Authors and agents are still campaigning for the limit to be based on copies sold rather than revenue. This situation highlights the importance of rights, to publishers, authors and agents, as a lucrative source of income. It is clear that all parties want to hold on to, and control, the rights for as long as possible. Discussions about reversion clauses, in author's contracts, being amended to reflect the change and development of new technology have occurred between British agents and the UK's Society of Authors (Flood, 2007). There have also been some, tentative, informal discussions with UK trade publishers, who accept the need for change. Random House have already been working on modernising their publishing contracts to correspond to a more modern industry. The main issue is the

concept of 'out-of-print', which is becoming increasingly obsolete as a result of digital technology such as print-on-demand. This has resulted in two different reversion clause requirements: clauses based on minimum revenue, which is mainly advocated by publishers, and clauses based on copies sold, which is advocated by agents and authors. Although the argument over reversion clauses is mainly one of principle, the issue can become particularly heated if an unforeseen film adaptation of the book is being made, or the author wants to move his/her front and backlist to another publisher. A new publisher can help revitalise an author's backlist by looking at it with a new perspective and repackaging it. There have been suggestions that industry trade bodies should resolve this issue rather than individual publishers to prevent these problems arising in the future (Flood, 2007).

### **3.4. What is a Literary Agent?**

A literary agent works on behalf of the author to ensure that the business aspects of their writing are managed correctly (Sissons, 1969). Legat (1995b) asserts that the first priority of the literary agent is to place their author's work with a suitable publisher, particularly because most publishers do not accept unagented authors nowadays (Legat, 1995b). However, Clark (2008) contends that, "their business is selling and licencing rights to a variety of media (not just book publishers) at home and abroad on behalf of their client authors" (Clark, 2008, p.92). Blake (1999) observes that many agents have worked for publishing houses before becoming agents and thus have experience of the publishing process and book trade (Blake, 1999). Blake asserts that the size of a literary agency is important when an author is

considering hiring an agent: small, medium and large companies all have both positive and negative qualities. For example, while authors with small agencies can often benefit from a more personal service, their agent can often be occupied with administration work, and while large agencies often come with the prestige of big name authors and large literary estates, they can often be income-driven and thus have less time for their authors (Blake, 1999). Literary agents are now referred to as 'authors' agents' as a result of the different genres they represent, and are mainly based in London (Clark, 2008). Additionally, agenting is more prevalent in the UK and the US than other countries (Clark, 2008). The popularity of agenting has spread to the Scottish publishing industry with eight literary agents established since 1989; this will be discussed further in Chapter Five.

### **3.5. The Rise of the Literary Agent: Historical Development**

Before the rise of literary agents, many authors were dependant on publishers and booksellers to manage the business side of their writing. Many authors also relied on friends, with business acumen, to ensure they were not swindled out of money, and to negotiate the terms and conditions of sales (Legat, 1995b). For example Walter Scott had John and James Ballantyne as his advisors. John acted as Scott's business agent by negotiating deals, while James took on a more copy-editing role (Greenfield, 1993). Although there were several authors who made large profits from their writing this was not the norm and the majority of authors made little profit from their works often as a result of the avarice of the publisher (Legat, 1995b). Although the desired outcome for authors and publishers was the same – a successful, well-

produced book – the conflict arose over the division of the profit (Le Fanu, 1991). However, the advent of literary agents changed the way in which the author was represented, giving them more control over their work. When literature became commercialised it established writing as a profession; this gave rise to the need for an intermediary between authors and publishers (Ward, 2007, De Bellaigue, 2008). Despite the well-documented incomes of a select few, well paid, authors, such as Walter Scott, it is evident that the majority of authors did not enjoy this financial success. Ward (2007) argues that an understanding of the nature of the publishing industry was necessary for an author to have a successful career (Ward, 2007). However, most authors were ignorant of the publishing business and publishers took advantage of this. Consequently, agents were, primarily, interested in exploiting the author's IP to guarantee that the author secured the largest financial reward possible: This often created friction with the publishers (Feather, 2006). The earnings of the agents are dependent on the success of the author, and the deals they negotiate for them, so they work primarily towards developing the authors' interests (De Bellaigue, 2008). Working closely with agents resulted in authors becoming more independent of their publishers, and begin to profit from authorship (Ward, 2007).

The first literary agent of any significance, in the UK, was Alexander Patterson Watt who previously had a career in publishing and in bookselling<sup>144</sup> (Feather, 2006). Watt established his knowledge and expertise of the industry by

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<sup>144</sup> The first usage of the term 'Literary agent' was in 1851 in an advert in the third edition of *Guide for the Writing Desk, or, Young Author's and Secretary's Friend* (Greenfield, 1993, p. 190).

working as a publisher; this is a very similar situation to the majority of agents today. After leaving the publishing company he began to act as a mentor and guide to several authors, building up his reputation as a literary agent, and negotiating sales and contracts (Legat, 1995b). Presently he accumulated a significant amount of clients including Rudyard Kipling and W.B Yeats, and created the standard commission of ten percent of the author's earnings, which was the guideline for many years<sup>145</sup> (Legat, 1995b, Feather, 2006). Watt set the standard and forged the way for many other literary agents of the time, including J.B. Pinker<sup>146</sup> and Curtis Brown<sup>147</sup>. Watt and his competitors faced criticism and antipathy from publishers, and even several authors<sup>148</sup> (Legat 1995b, Feather, 2006). Publishers worried about the adverse effect agents would have on their profits and on their relationships with their authors (Legat, 1995b). However, it was actually as a result of various disreputable acts by publishers - such as insisting that authors sell their copyright outright to the publishers - that instigated the literary agent movement (Ward, 2007). It eventually became clear to the publishers that agents could be of use to them and, during the late nineteenth and early twentieth century, many literary agencies developed in the UK (Feather, 2006). Although the Society of Authors were initially uncertain about literary agents, they eventually joined forces with them to establish a fair method of paying authors in accordance to

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<sup>145</sup> Nowadays an agent can maintain a profit of between ten and fifteen percent and even twenty percent on foreign sales when a subagent is involved (Owen, 2006)

<sup>146</sup> J.B. Pinker established his agency in 1896 and represented authors such as Joseph Conrad, Arnold Bennett, Oscar Wilde and H. G. Wells. Pinker was interested in recruiting new authors and formalised procedures by asking his clients to sign a contract to establish that he worked on their behalf (Legat, 1995b).

<sup>147</sup> Curtis Brown, an American journalist, established his agency in 1905, it remains one of the largest literary agencies in the UK today (Legat, 1995b)

<sup>148</sup> George Bernard Shaw was against literary agents and stated that only authors with no ability for writing or business would need an agent. However, he was lucky enough to have a strong business sense (Legat, 1995b, Greenfield, 1993)

their commercial success (Legat, 199b, Feather, 2006). Authors and their agents agreed that the outright sale of their copyrights was unfair to authors and, during the late nineteenth century, campaigned for royalties linked to the direct sales of the author's work<sup>149</sup>(Feather, 2006). The ideal paradigm was for the author to keep possession of the copyright and foreign/translation rights, in addition to, at least, ten percent of the net price of each copy sold. However, this standard was rarely upheld (Feather, 2006). The advent of the literary agent did, however, reduce the amount of authors selling their copyrights outright to publishers by establishing the division of the author's right into sectors such as serial rights, translation rights, overseas rights etc (Ward, 2007). Despite being in existence since the nineteenth century, Sissons (1969) describes literary agents as "very much a twentieth century phenomenon" (Sissons, 1969, p.11).

The literary agent became a more important figure in the twentieth and twenty-first centuries, mainly as a result of publishing companies increasingly becoming international, cross-media conglomerates. Editors were now moving from one publishing company to the next, leaving the author without an ally in a large company. Consequently, the agent has become the author's constant ally (Feather, 2006). The shift and change that happened in the publishing industry during this period resulted in less publishing houses and less in-house staff, with many editors being subcontracted, put strain on the author's relationship with the publisher, and editor, and strengthened their

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<sup>149</sup> The royalty system did not become a widespread practice until the 1880s, before that, authors usually sold their property to their booksellers/publishers. Selling the copyright ensured that authors did not receive any future financial gain from their work, with the profits going to the publishers (Ward, 2007).

relationship with the their agent (De Bellaigue, 2008). The majority of literary agents are ex-editors who have left conglomerates due to the many changes which have taken place in the publishing industry in recent years (Clee, 2006, De Bellaigue, 2008). Peter Robinson, who represents Scottish best-selling author Ian Rankin, left Curtis Brown Agency to become a solo-agent, giving him more opportunity to “focus on the authors” rather than on overheads (Clee, 2006, p.24). Consequently, the role of the literary agent is now multifaceted, and can include acting as the author’s editor, lawyer, accountant etc. (Ward, 2007). The literary agent is now an intermediary between the author and the publisher: this allows the author to enjoy a stress-free relationship, with the publisher, which does not involve face-to-face negotiations (Greenfield, 1993).

The publishing concentration that happened during this period resulted in four dominant publishing groups who now monopolise the UK book market: Hachette Imprints, Bertelsmann/Random House, Penguin Imprints, and Harper Collins Imprints. Many of the imprints within these groups started out as independent publishing houses (De Bellaigue, 2008). These concentrations of companies lead to a reduction in the number of publishing houses, which, in turn, lead to the rise in the number of literary agencies (De Bellaigue, 2008). By 2003 there were 161 literary agencies listed in the UK Writers’ and Agents Year Book (De Bellaigue, 2008). This has resulted in the increase in the importance in the role of the literary agent<sup>150</sup> (De Bellaigue, 2008). This is a huge increase from the thirty-nine literary agencies listed in

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<sup>150</sup> In the Sunday Observer’s 2006 list of the ‘Top 50 players in the world of books’ six were literary agents (De Bellaigue, 2008).



the 1946 edition of *The Artists and Writers' Yearbook*, the sixty-four agencies listed in the 1996 edition, and the 106 agencies listed in the 1986 edition<sup>151</sup> (Greenfield, 1993). However, there has been no rise since because the 2008 *UK Writers' and Agents Year Book* also listed 161 agencies<sup>152</sup> (De Bellaigue, 2008). In contrast, literary agencies did not exist in Scotland until 1989, when there was one agent listed in *Directory of Publishing in Scotland* (Ward, 2007). This has risen to eight agents in 2009 (Scottish Arts Council, 2009). Echoing the current situation in the publishing industry, where publishers are becoming increasingly separated between big and small book publishing, literary agencies are following in the same direction. There are several long-standing agencies that benefit from representing the literary estates of enduringly popular authors<sup>153</sup> (De Bellaigue, 2008). However, many newer agencies are looking towards finding a 'best seller', in the similar vein as publishing agencies (Greenfield, 1993). Some literary agencies are now also developing their companies to encompass different media and therefore exploit the author's work across many different platforms; however, this is detrimental to smaller agencies that cannot afford to develop their companies

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<sup>151</sup> However not all the agencies listed were literary. Four of the agencies in 1946 were not actually literary agencies, nine from the 1966 edition were other media agencies, or syndication or translation, and 22 from the 1986 list were performing arts, translation or non-fiction agencies. However this still meant that there was an increase of fifty seven percent of the number of literary agencies between 1946 and 1966, and an increase of fifty three percent between 1966 and 1986 (Greenfield, 1993, p.193).

<sup>152</sup> This lack of increase is a result of ICM (International Creative Management), a London-based American agency, co-agenting agreement with Curtis Brown. This brought the number of agencies down from 162 to 161 (De Bellaigue, 2008). Although each agency will keep its own clients, they will collaborate to sell the clients' UK and Foreign rights (Deahl, 2008).

<sup>153</sup> Another example of the lucrateness of representing an author's estate, and of the economic benefit of rights, is when Curtis Brown Agency received £7million from Disney in 2001 in the place of projected future earnings of A. A. Milne's work (De Bellaigue, 2004).

(De Bellaigue, 2008). It will be interesting to see if literary agencies will follow the route of publishing houses, by increasingly becoming large, cross-media conglomerates and, if so, what the implications will be for authors.

The first three chapters of this thesis have traced the history of copyright, the contemporary publishing environment, and the role of the author and the literary agent. While historical developments have affected the Scottish publishing industry, there is currently a lack of information/literature about the operational practices of Scottish publishers, the attitudes and earnings of Scottish authors, and the role of the literary agent in Scottish publishing. Findings from the first three chapters show that IP plays an increasingly important role in generating income, and thus contributes to the economy. Scottish publishers now compete on a global scale with large, global, conglomerates, and thus must exploit their resources fully to succeed in the global market. Chapter Four will begin with a historical overview of the Scottish publishing industry, which lays the groundwork for the study of contemporary publishing practices in Scotland, which are the focus of the empirical research discussed in Chapters Five and Six.

## **Chapter Four: Methodology**

### **4.1. Chapter Summary**

This chapter begins with a historical overview of the Scottish publishing industry, which will help contextualise the contemporary operational publishing practices in Scotland: the focus of this study. This chapter will examine the multi-method approach, a combination of both quantitative (self-completion surveys) and qualitative (semi-structured interviews and data analysis) methodologies, used in this study to elucidate its central questions about the way in which Scottish authors, publishers and literary agents harness IPR nationally and internationally, and across all media. This approach enabled exploration of perceptions of different samples of groups of Scottish publishers, literary agents, and authors, and London based literary agents who represent Scottish authors, to illuminate how in Scottish publishing industry operates in terms of capitalising on IPR.

### **4.2. Introduction**

#### **4.2.1. The Scottish Publishing Industry: Historical Development**

The Scottish book trade developed separately from the English book trade as a result of patronage from Edinburgh, Glasgow, and Aberdeen councils, support from the universities and a small amount of royal patronage (Feather, 2006). However, Scotland's printing history has often been overlooked in favour of, and merged with, the burgeoning industry in London (Mann, 2000). Scottish publishing and printing officially started when the royal patent was

granted to Chepman and Myllar in 1507<sup>154</sup> (McGowan, 1997). The Privy Council acted as the primary licensing authority during this period, and from the 1660s they granted the majority of publishing licences (Mann, 2000). These licences were granted for fixed periods: this highlights Scottish resistance to notions of perpetual copyright, something that would cause contention in later years<sup>155</sup> (Mann, 2004). Although the absence of a Scottish ‘Stationers’ Company’ meant that perpetual copyrights did not exist in Scotland<sup>156</sup>, it is clear that copyright disputes did exist in Scotland during this period, especially between different burghs.<sup>157</sup> The popular *Aberdeen Almanack* was central to one such argument.<sup>158</sup> Many counterfeit copies of this almanac were available, which caused the printer John Forbes and Aberdeen council to take action, which resulted in The Privy Council declaring that copyright had been infringed and all counterfeit copies must cease. This result not only shows that copyright altercations existed in Scotland before the union with England in 1707, but it also shows that the government consented to the local burghs granting copyright. Copyright infringement was not considered a serious crime during this period; printing and selling subversive texts was considered to be far more serious. However, from the 1560s financial penalties were established, along with confiscation (Mann, 2000).

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<sup>154</sup> It was the dynamism of groups of people, and not individuals, that assisted the emergence of the printing industry during this period. Walter Chepman and Andro Myllar are an example of this (Mann, 2000).

<sup>155</sup> See Chapter One for more details about *Donaldson vs. Beckett*.

<sup>156</sup> The Scottish licence actually gave the right to ‘print, reprint, vend, sell and import’ with no mention of the word ‘copy’ (Mann, 2000, p. 95).

<sup>157</sup> The absence of a Scottish Stationers’ Company meant that the different burghs had control of “approving and monitoring” the licences awarded by the government (Mann, 2000, p.19). This resulted in ‘local copyright’, which was regulated by the burgh councils (Mann, 2000).

<sup>158</sup> Almanacs were particularly lucrative because their print runs often ran to 50,000 copies. Therefore it was important to secure a patent for printing them, and to ensure they were protected from pirates (Mann, 2000).

Scottish publishing remained independent to English publishing until the union of their parliaments in 1707 (McGowan, 1997). The Union resulted in trade between England and Scotland, with many Scottish books inundating the English market. However, the Union also resulted in the demise of The Privy Council, leaving the copyright situation in Scotland unclear. In 1710, the Statute of Anne introduced copyright legally into the Scottish, and English, publishing industries. This Statute also opened up the British book market, giving English and Scottish booksellers the right to print books for each other's markets (Mann, 2000, MacQueen, 2008). There is not much written on the history of copyright in the Scottish publishing industry before The Statute of Anne, because The Statute of Anne began the legal discourse about IP in the publishing industry for English-speaking countries. Before The Statute of Anne, the copyright situation in Scotland and England was very different. The Crown granted publishing licences in Scotland for limited periods, which meant that 'copyright' was not perpetual as it was in England.<sup>159</sup> This meant that the Scottish 'copyright' system of this period was similar to that of Dutch and the French systems (Mann, 2000). Additionally, the length of the licences varied in accordance to the work being published, for example 'reprints' were granted shorter terms because they lacked the "novelty" of new publications and were thus seen as "inferior intellectual property"<sup>160</sup> (Mann, 2010, p.58). The Scottish legal perspective of copyright also differed from the English perspective. Unlike English law, Scots law did not recognise creations as a property right. It is also clear that Scottish authors experienced more

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<sup>159</sup> By 1670 the copyright term for works was nineteen years. Although before 1670, the term could be between six and thirty-one years (Mann, 2000).

<sup>160</sup> This also supports Gordon's (2002) argument about the decline of the popularity of a work after its initial publication, discussed in pages 26-27.

independence than their English counterparts. While in England copyrights could only be held by printers and booksellers, belonging to The Stationers' Company, a study by Alastair Mann shows that nearly half of the private copyrights, granted in Scotland between 1540 and 1708, were held by authors (Mann, 2000).

There was much intellectual activity in Edinburgh during the eighteenth century, particularly the achievements of figures such as David Hume and Adam Smith. However, this intellectual activity required printing support, and circulation, so many printers and publishers were established during this period. Consequently this intellectual activity, and subsequent printing network, demonstrated that Edinburgh could compete with London in terms of well-printed, important books, and the dissemination of ideas (Finkelstein, 2007). During 'The Golden Age' of Scottish printing and publishing, in particular, many of the most successful, and important, literary works of the time were published by Scottish publishers such as Archibald Constable<sup>161</sup> (Bell, 2007). Scottish migrants were conspicuously present in the London book trade, during this period, with many Scottish names, such as Alexander Donaldson, visible on some of the most important imprints of the time (Myres, 2007). Although Scottish publishing was flourishing during the eighteenth century many of Scotland's leading writers were published in London. This included key writers such as Smollett, Hume and Boswell (McGowan, 1997). During this period the Scottish booksellers challenged the monopoly of The

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<sup>161</sup> The supposed 'Golden Age' of Scottish publishing was after the advancement of the eighteenth century and before the decline during the late nineteenth century. It occurred from 1800-1830 (Bell, 2007).

Stationers' Company, as discussed in pages 15-22, which resulted in the London booksellers losing their dominance of the British book trade (Feather, 2006).

Despite the prominent *Donaldson v. Beckett* victory, London remains the dominant force in British publishing, and has a key role in defining the Scottish publishing industry (Sinclair et al, 2004). Scottish literature, during the nineteenth and twentieth centuries, predominantly promoted the notion of Britishness; this helped create a strong British identity. Scottish writers such as J.M. Barrie and Arthur Conan Doyle wrote literature, which helped establish an international picture and understanding of London. Baker Street, the fictional home of Sherlock Holmes, has become a hugely profitable tourist attraction (Crawford, 2007). Conversely Scotland, and Scottish publishing, has remained a subsidiary part of British publishing for the past two centuries. It transpired that the more dominant London became, the more it controlled Scotland. Scotland played an important role in building the empire but was pushed to the sidelines when London became more powerful. Now Scotland's culture remains very much in the shadow of its larger neighbour (Crawford, 2007). There remains a legacy, to this day, of the Scottish publishing/printing/bookselling dynasties that were established in the eighteenth century. This included Macmillan & Co., founded by Daniel Macmillan in 1843. This firm existed under six generations of family ownership before it was bought over by a German publishing company in 1995 (Myres, 2007).

Although Scottish authors had published their works outside Scotland before, it was happening more frequently in the nineteenth century. There was a general consensus that the Scottish publishing industry was in decline, mainly as a result of the dominance of London's financial and cultural situation (Crawford, 2007). Walter Scott was aware of the situation, writing in his diary that "London licks the butter off[f] our bread" (Scott, 1998). A situation that is prevalent today: this will be discussed further in Chapters Five and Six. Although Scotland had a strong, and distinctive, Church, education and legal system, which kept many talented Scots there, it was clear that many ambitious Scots were migrating south. Publishing in London meant that authors could tap into a much larger marketplace, and therefore earn more money (Crawford, 2007). During the eighteenth and nineteenth centuries, the success and expansion of Scotland's printing and publishing trade was dependant on accessing a larger, international market (Bell, 2007).

In the early to mid-twentieth century, Scottish literature did not succeed in attracting an international audience, and thus much important work was not translated (Barnaby and Hubbard, 2007a). There was no cultural body in existence during this period, which could support and promote Scottish authors and writing overseas. This could account for, in part, the failure of Scottish literature internationally during this period (Barnaby and Hubbard, 2007a). However after World War II, and until the 1970s, many Scottish classics were translated overseas for the first time (Barnaby and Hubbard, 2007a). International copyright treaties and book trade organisations began to form, such as the Scottish Booksellers Association in 1896, in order to



protect and act on behalf of various branches of the industry<sup>162</sup> (Finklestein, 2007c). This period also saw the formation of a distinctive, contemporary Scottish poetic tradition, with poets such as Edwin Muir and Norman MacCaig being translated overseas (Barnaby and Hubbard, 2007a). The increased awareness, and visibility, of Scottish literature overseas recommenced in the 1970s. Although Scottish literature is currently benefiting from increased international visibility and prominence since the early nineteenth century, it is not largely translated outside of Europe (Barnaby and Hubbard, 2007a).

Although Sir Walter Scott managed to become internationally successful while remaining in Scotland, the same cannot be said for many of his contemporaries. Although there has always been a strong Scottish presence in the British publishing industry, it is evident that much of Scotland's publishing talent, this includes writers, editors and others working in the creative industries, is based in London (McGowan, 1997). Despite this strong Scottish presence, the international strength and popularity of Scottish literature reached during Scott's time, has not been achieved since (Barnaby and Hubbard, 2007). Scotland has played an important role in exporting products, and talent, in all industries, particularly publishing. The Age of Enlightenment, particularly with the strong focus on education, engendered a knowledgeable and enterprising collective who were motivated to immigrate to larger and more prosperous countries (McGowan, 1997). However, the migration of Scottish talent (writers, printers, publishers) has been detrimental

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<sup>162</sup> The professional trade organisations founded during this period included The Society of Authors (1884) and The Publisher's Association (1896) (Finklestein, 2007c).

to the Scottish publishing industry. Migration to other countries had been a long-standing tradition for Scots. From the seventeenth century many Scots migrated to Europe and, in the later part of the eighteenth Century, America. However the Treaty of Union in 1707 meant that an increasing number of Scots were migrating south to capitalise on opportunities offered in England as a result of the success of the British Empire<sup>163</sup> (Smout, 2007). Circumstances have not changed in the twenty-first century, with ambitious authors looking towards the London-based publishing activity. This research will examine the factors which have led to many Scottish authors favouring London publishers over their Scottish counterparts.

#### **4.2.2. Research Rationale**

This section summarises the reasons for undertaking research into the effects of globalisation and technology on the way in which Scottish publishers and authors exploit IPR and examines the expected contribution to knowledge of this work. There are a number of reasons for embarking on this investigation. Firstly, there has been no in-depth study looking at copyright from the perspective of the Scottish publishing industry: There is currently a lack of information/literature about the operational practices of rights protection and exploitation, the attitudes and earnings of Scottish authors, and the role of the literary agent in Scottish publishing, so the results of the primary research will contribute to this shortage. Secondly, as discussed in previous chapters, IP plays an increasingly important role in generating income, and thus

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<sup>163</sup> During this period London was considered to be the most dynamic European cities, so a variety of different intellectuals from all different countries, including Scotland, were attracted there (Smout, 2007).

contributes to the economy. Scottish publishers now compete on a global scale with large, global, conglomerates, and thus must exploit their resources fully to succeed in the global market so understanding and exploiting IPR correctly is crucial to economic success. Additionally, there has been a growth in technology over the years, which has presented many new opportunities, and threats, to IPR owners. As a result, Scottish publishers, authors, literary agents, and consumers need to be educated about the importance of IPR. Lastly, there is currently a reshuffling of the Scottish Arts bodies to create a cultural development body to encompass all creative industries in Scotland, so there are many changes taking place and the clear need to engage in a discourse about copyright.

The intended aims and objectives of this research are as follows. Firstly, this study will give an overview of the current Scottish publishing Industry. It will provide an analysis of how Scottish publishers deal with, and understand, rights issues, which will enable them to exploit copyright successfully, and across all media, and ultimately contribute to a flourishing publishing economy. In addition it will build a case examining how authors' earn income and harness their IPR and highlight their attitudes towards authorship and copyright, and the role the literary agent plays in this, which will give a greater understanding of the role of the literary agent in Scottish publishing. Finally, this research will outline any shortcomings of IPR awareness, for authors, literary agents, publishers, which will help establish the necessary training required.

### **4.2.3. Study Focus**

The focus of this study is outlined in the previous chapters, where the key issues have been identified and the data analysed. The key issues include: the role of authorship in defining the evolution of copyright laws and the effects of globalisation and technology on IPR exploitation and protection. These key issues have been refined to generate specific research questions, which are outlined later in this chapter. It is evident from analysing the available literature that authors, publishers, and agents now work together to exploit authors; work more effectively, particularly with the advent of globalisation and the increase in media convergence. The purpose of this research is to learn more about these different groups and examine how they harness IPR nationally and internationally, and across all media; therefore it is essential to choose a research strategy in order to ascertain the relevant information. Fundamentally, the results of this study will outline the operational practices of the Scottish publishing industry in relation to IPR.

This study adopted a realist position, which helped to guide the methodological decisions. The primary aim of this study was to investigate how the Scottish publishing industry was exploiting its intellectual property and so organisational practices were examined. The realist approach allowed the structures and mechanisms, that cause the basis of workplace policies and practices, to be investigated and so allowed the researcher to discover how these evolved over time, how they helped the organisations involved, and how they could be evaluated and changed (Hatch and Cunliffe, 2006). The realist position also contends that research undertaken from various different angles and at multiple levels contributes significantly to understanding

because realities can exist at different and multiple levels (Chia, 2002). This investigation addressed several corresponding questions, rather than focusing on one question, so different methods were used to address different issues. Therefore a combination of methods, the multi-method approach, was used to answer the different research questions. Multiple methods can be used to enhance the validity of the findings. According to Gillham (2007) questionnaires/surveys are most effective when they are used in conjunction with another method because the results can be triangulated for validity. One methodological approach is generally not sufficient, and there are criticisms and difficulties with each individual method, so combining methods can overcome these obstacles because one method could offer a solution to a problem faced by another (Gillham, 2007, Brewer, 2005, Robson, 2002). The multimethod approach would therefore give credence to the findings and help build a more persuasive case (Brewer, 2005). The best way to examine the issues under investigation is to look at them from different angles and by collecting data from a variety of different ways. The reasoning behind using multiples sources is the triangulation of the evidence collected; this increases the reliability of the data collected and the process of collecting it because each source serves to authenticate the data collected from the other sources (Stake, 1995). This triangulation of qualitative, quantitative and interpretive methods will support the argument and give a greater insight into the issues being investigated (Bryman, 1992, Brewer, 2005, Robson, 2002).

The multi-method approach could have been undertaken through a case study. Yin (1994) defines a case study as “an empirical inquiry that

investigates a contemporary phenomenon within its real-life context when the boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used” (Yin, 1994, p.13). This shows that case studies are research based on in-depth observation and/or experience, over a long period of time, rather than theory. Case study research is particularly advantageous when exploring beneath the exterior of a situation/company and thus providing a strong background for understanding the phenomena being studied in addition to previous research (Yin, 1994, Stake, 1995). Case studies were considered for this research, using publishers as the organisations; however, this type of method requires that organisations are studied in depth, longitudinally, through a variety of ways, and it was not feasible to do this with a large selection of publishers. Time and economic constraints meant that only a couple of publishers could be investigated in this manner and this would not have been representative of the different types of publishers based in Scotland. One of the key features of case study research is that selected case/organisation is not used as sampling research so the findings are not used to understand other cases/organisations (Stake, 1995). As such, case study research is highly detailed and from a narrower range, which is at odds with the broad nature of this study. Additionally, case study research involves a constant presence within an organisation, which could be intrusive given that the majority of Scottish publishers are small and medium size enterprises practices (see Chapter Six for more detail) and that this study deals with sensitive material such as operational practices and income. As such, the presence of an observer could introduce a variable that distorts every day occurrences.

Each method used has the potential to produce well-founded empirical information, if used correctly. However, difficulties may arise when interpreting these findings. The multi-method approach allows different methods to be tested, which allows alternative interpretations of the issues (Brewer, 2005). Even if the different methods have divergent shortcomings, their convergent findings give a validity and confidence to the results that one single method could not achieve. Consequently each new set of findings, ascertained from the different methods, increases the belief that the research results demonstrate reality rather than inaccuracies of the methodology (Brewer, 2005). Contrasting findings are also important because they indicate that further research is required and highlight that relying on the results of one single method can result in inaccurate results (Brewer, 2005). The different research questions, of this study, included: Are authors, agents and publishers working in conjunction with one another to fully exploit the authors' work; Are authors, agents and publishers harnessing the IPR efficiently and effectively; and What are the effects of globalisation and media convergence on these issues? Also different methods were used at different stages of the primary research. Publishers, authors, and agents have very busy schedules and it would take numerous months to organise specific interviews with all the individual respondents. The principal goals of this research are to augment the theories covered in the literature review by both interacting with key players in the publishing industry to find explanations and individual occurrences, and by structured examination, where factors are connected by systematic questions. This means that the findings are both reflective and

founded on the response and conduct of the participants, and based on precise data analysis, which are founded on connections throughout the data (Allen, 2009). Initially qualitative interviews were conducted, which provided further information to construct the qualitative surveys. Consequently the findings of the quantitative surveys provided additional information, which helped select participants for further qualitative interviews (Bryman, 1992).

There are six different types of sampling options to choose from: Convenience sampling, where the researcher surveys those who are easiest to access e.g. friends, family, people stopped in the street; Quota Sampling, where the researcher selects a sample, which is proportionate to the relevant population, where the population has first been segmented into subgroups (e.g. gender, race, age); Purposive Sampling, where the researcher selects the sample which is representative of the population being sampled, or within a subcategory relevant to the research; Simple Random Sampling, where the researcher randomly selects a sample from a larger group of people; Stratified Random Sampling, where the researcher divides the population into different subgroups and randomly selects a sample from the subgroup; and Cluster Sampling, where the researcher samples the subset groups of a population, rather than individuals within the population (Brett Davies, 2007). Firstly it was important to choose a sample which was appropriate to the research objectives. This helped define the size of the sample and type of people who will be included in it. Secondly the time schedule and deadlines influenced the amount, and type, of people who were recruited. Thirdly the sample can be affected by access problems, so it was important to choose a sample, which



includes people who will permit this kind of research. Lastly, it was important to consider different ways to improve the quality of the sample so that the sample is of the best quality it can be (Brett Davies, 2007).

The review of literature highlighted several key topics, and sub topics, that were explored further. It also identified the key groups that would be able to provide this information. Therefore, the samples were chosen to correspond with the focus of this research (Brett Davies, 2007). Primarily this research concerns Scottish based publishers, authors, and literary agents because this investigation examines rights awareness in Scotland. However, these three groups also deal with other similar groups outwith Scotland, so these additional groups were also considered during this research. The different groups that were investigated are as follows: Scottish publishers, which includes all Scottish publishers based in Scotland, whether that be indigenous Scottish publishers or larger conglomerates with a Scottish office; Scottish authors, which encompasses authors living in Scotland, whether Scottish or not, Scottish authors living outside Scotland, and authors published by Scottish publishers; Scottish based literary agents; a sample of literary agents based outside Scotland, who represent Scottish authors. A combination of methods was used: questionnaire surveys of both publishers and authors in Scotland; secondary analysis of a survey of authors conducted by The Society of Authors and a survey of publishers conducted by Publishing Scotland and Edinburgh Napier University, and interviews with Scottish literary agencies, and a select number publishers and authors following the surveys. Similar interviews with Irish authors, publishers and agents were

considered, to provide a comparative study, however time constraints restricted this. The rationale behind choosing each of these methods, and their relevance towards this study, is outlined below.

### **4.3. Research Methods**

#### **4.3.1. Interview Method**

The interview method is commonly used in social research and there are several different types of interview method that can be used, such as structured, semi-structured and unstructured (Robson, 2002). Interviews work effectively when combined with other methods, especially quantitative research such as self-completion questionnaire surveys and secondary analysis of data, where there would be no face-to-face contact with the individuals/organisations being questioned (Robson, 2002). Also this use of quantitative research would help validate any relevant information found from any qualitative research, such as information gained from surveys or data analysis (King, 1994). The interview method is very flexible particularly if semi-structured or unstructured interviews are used because no rigid structure is used when conducting this type of interview (Robson, 2002). An outline of each type of interview is detailed below.

The interview method is a very versatile way of searching for answers to research questions and understanding the respondents' behaviour and views in greater depth. The adaptability of this type of interview can provide more scope for learning about the opinions and problems of the interviewees, particularly underlying issues which non-face-to-face methods could not

address (Robson, 2002). Although there can be quantitative closed questions within the interviews, there can also be many qualitative open questions, which can explore different aspects of the issues. The face-to-face contact would allow the investigation to be modified depending on the interviewee's responses. Therefore this type of method has the potential to provide very illustrative and information material (Robson, 2002). Although in-depth interviews can be a good way of getting the respondents perspective, particularly if the interview builds a relationship with the respondent so the process resembles a conversation, the problem lies with the validity of the respondents statements (Bruhn Jensen, 2002). The information the respondent provides during the interview should not be accepted as a true or false representation of what the respondent actually believes, it should be used as data, which can be analysed and interpreted to provide the necessary information for the study (Bruhn Jensen, 2002)

Although the interview method is very flexible, a degree of interviewing expertise is required to benefit from this flexibility (Robson, 2002). Fundamentally it is important to have an extensive, but objective, understanding of the issues being investigated. If the person investigating the issue has any preconceived ideas/opinions it may invalidate their findings (Robson, 2002). Good interviewing skills, such as the ability to listen and ensure the respondent does not digress, are important as well as the ability to understand and interpret the responses correctly. It is also important to be adaptable to different situations because not all interviews will be the same; this helps in anticipating opportunities or threats (Robson, 2002, Brett Davies,

2007). Interviewing can also be very time-consuming, not just the interviews themselves, but also the preparation, travel time, and transcription time (Robson, 2002, Brett Davies, 2007). However, it is unrealistic to have the methodology organised perfectly before the qualitative research begins. It is, therefore, beneficial to have a preparation stage to test interview skills and research questions on someone who will give feedback on the research and thus help to refine any research questions (Brett Davies, 2007). The information gained from this test interview can also be used in the data analysis because there is no strict 'start date' when collecting data from small samples (Brett Davies, 2007).

#### **4.3.1.1. Different types of Interviews**

The structured interview has pre-determined questions, which will be conducted in a pre-arranged order. Although this type of interviewing is very similar to a face-to-face questionnaire, the structured interview usually has open-ended questions, which allows for qualitative responses. This usually results in the data being analysed through content analysis (Robson, 2002).

Although semi-structured interviews have prearranged questions, the order of the interview can be adapted as appropriate and more questions can be added if needed (Robson, 2002). Each interview can focus on a list of key issues and questions that I want the respondent to address. One of the main benefits of using this approach is the opportunity to adapt and develop the investigation based on the interviewee's responses, something that cannot be done with self-completion questionnaire surveys (Robson, 2002). This means

that although there would be pre-arranged questions and topics, these can vary during the interview, depending on the situation. However, the results of this type of interview are really dependent on the skill of the interviewer in listening closely to the answers, identifying key issues and probing them further (Brett Davies, 2007). The aim of a semi-structured interview is to explore the issues in depth (Brett Davies, 2007).

The unstructured interview has often been compared to a lengthy, in-depth conversation. Where there is no pre-arranged order to the questions being asked, and, sometimes, no pre-arranged questions. However, this does not mean that the interview has no direction. The interviewer still undergoes much preparation and research before the interview (Robson, 2002). Unstructured interviews can only be used in flexible design methods because neither the questions nor the answers are predetermined. Therefore the results of this type of interview depend on the way in which the interviewer and interviewee interact (Robson, 2002).

#### **4.3.1.2. Semi-structured Interviews**

In this instance the interview method was chosen because it is very flexible. Although all the interviews were semi-structured, with prearranged questions, the order of the interview was adapted as appropriate and more questions were to be added if necessary (Robson, 2002). Each interview focused on a list of key issues for the respondent to address. One of the main benefits of using this approach is the opportunity to adapt and develop the investigation based on the interviewee's responses, something that cannot be done with

self-completion questionnaire surveys (Robson, 2002). Although all the interviews were semi-structured, and therefore gave more flexibility, the same key questions were asked to all the interviewees. The interview method also allowed a rapport to develop between the interviewer and individual interviewees, which helped the discourse to develop naturally. The importance of developing a one-on-one relationship with the interviewees is one of the reasons that focus groups were not used for this study. Focus groups provide an interactive environment where groups of people can discuss research-guided issues (Krueger, 2009). For the purposes of this study, groups of authors, publishers and literary agents could participate in focus groups to communicate their opinions, perceptions, and attitudes towards the issues being studied and thus give insight into their practices. However, one of the problems of this type of method is the difficulty in scheduling an appropriate date for all participants: another reason that this method was not used. Additionally, the group participation nature of the focus group could inhibit the participants from imparting confidential data. The privacy of the interview method was therefore chosen over the focus group method and the participants were anonymised so that all confidential material could be used for this study. Before the interviews were undertaken it was important to construct a time frame and guidelines for this type of research:

1. Design an interview framework, which includes key issues and questions for discussion
2. Establish the sample size for each group
3. Contact groups to be interviewed

4. Conduct practice interviews to become familiar with the questions, and get feedback
5. Revise questions accordingly
6. Conduct interviews
7. Analyse the information at the end of each day of interviewing

#### **4.3.1.3. Semi-structured Interviews with Scottish Literary Agencies**

The interview method was chosen, over the questionnaire/survey method, when questioning literary agents because there are a smaller number of Scottish literary agents than publishers and authors, so it would be less time-consuming to interview them. These interviews were not in conjunction with an administrative body, such as The Society of Authors or Publishing Scotland, so there was no organisational endorsement, which might help with getting responses from all the literary agencies. At the time of conducting the interviews there were no organisations representing Scottish literary agents; however the Association of Scottish Literary Agents (ASLA) has been formed since. This qualitative method was used to create a triangulated approach to explore the phenomenon of literary agents in depth: the other approaches included interviews with authors and publishers. Triangulation, where two or more methods are used to explore one subject, helped to validate the findings (Brett Davies, 2007). The interviewees were all asked the same key questions, although the semi-structured nature of the interviews allowed flexibility for expansion (A sample of the questions can be found in Appendix One). These questions expanded from the review of literature and were tested within a peer group and revised accordingly. This exploratory study was

undertaken first and therefore provided information for the qualitative research that followed, so any issues raised were included in the surveys (King, 1994). Each respondent contributed additional dimensions to this research with the information they provided, which allowed this research project to develop. All subsequent interviews built upon this information (Brett Davies, 2007).

As outlined in Chapter Three, authors' agents are the primary intermediaries between the rights owners (the author) and the rights exploiters (the publisher). Literary agents play an important role in exploiting an author's work, so these interviews will ascertain the importance of the literary agent in the contemporary publishing industry and the role they play in the process of rights sales. As detailed in Chapter Three, the development of literary agents is a relatively new phenomenon in Scotland, and there is little literature available, so these interviews helped give a greater insight and provide this study with original material (Ward, 2007). According to the Scottish Arts Council's November 2008 list of Literary Agencies, there were eight literary agencies based in Scotland<sup>164</sup> (SAC website, 2008). The original plan was to conduct interviews with at least half of these eight of these literary agencies, to give a broad overview of literary agencies in Scotland and a fair representation of the different sized agencies. All the literary agents were contacted in January 2009, and the interviews started soon afterwards. Primarily, an informal interview was conducted with Agent F, a former London-based literary agent, before the interviews with the Scottish literary agents. This interview helped towards developing and improving interviewing

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<sup>164</sup> This number has not risen since (SAC , 2010). See Appendix Two for a list of all the Scottish literary agents.



techniques by testing the questions and thus revising them if necessary. Agent F also gave feedback on the research and some useful information about London-based literary agents, which proved to be very beneficial. Although this pilot interview was a part of a preparation stage before the interviews with Scottish literary agents, the information gained was so informative that it was used in the final data analysis (Brett Davies, 2007).

Interview requests were sent to the eight Scottish-based literary agents and interviews were conducted with the first four agents who responded: this is a mixture between random and convenience sampling (see Appendix Two for a list of all the Scottish literary agents). A sample of the letter requesting an interview can be found in Appendix Three. Interviews were then conducted with four Scottish-based literary agents. Anonymised profiles for interviewees who participated in this study can be found in Appendix Four.

#### **4.3.1.4. Semi-structured Interviews with Scottish Authors**

Following the surveys to Scottish authors, semi-structured interviews with a small section of authors were undertaken to follow up any issues that emerged from the survey. The key findings from the survey were used to formulate the main questions for the interviews and, as with the other interviews, the same key questions were asked to all interviewees although the semi-structured nature of the interviews allowed flexibility to ask other relevant questions (see Appendix Five for a sample of interview questions). Additionally, these interviews were undertaken to follow up any issues that emerged from the survey. The key questions were evaluated by both the chair

of The Society of Authors and a peer group to ensure that no bias existed and any problems were revised accordingly: this helped to validate the quality and relevance of the questions.

Time constraints meant that it would be too time-consuming to interview all Scottish authors so a sample was chosen to explore the issues raised in depth. According to the Scottish Book trust, there are currently 485 Scottish authors listed on their website. However, forty of these authors are listed as illustrators, eleven are listed as performance poets, forty one are listed as playwrights, 146 are listed a poets, fifty five are listed as storytellers, which leaves 328 listed as writers (Scottish Book Trust, 2008). The sample of authors was a combination of a random and convenience sample. Firstly the authors were narrowed down to authors who lived within the central belt of Scotland so that travelling to participate in the interview would not be inconvenient for either the interviewer or the interviewee. Contact information about the authors was found on the Scottish Book Trust website. Letters were sent to all of the relevant authors and interviews were conducted with the first six authors who responded. An example of the letter requesting an interview can be found in Appendix Six. Interviews were conducted with six Scottish authors and anonymised profiles of the interviewees can be found in Appendix Seven.

#### **4.3.1.5. Semi-structured interviews with London-based Literary Agents**

Semi-structured interviews with London-based literary agents, who represent Scottish authors, were undertaken. As outlined in Chapter Three, literary

agents play a key role in harnessing the author's rights. There is currently little literature available covering these issues, and these interviews, along with the interviews conducted with Scottish literary agents, help to redress this. These interviews were also used to supply any additional information missed by the authors. A list of London-based literary agents who represent Scottish and/or Scottish based authors was derived from an interview with Agent F, who was a successful London-based literary agent (This list can be found in Appendix Eight). Both Scottish and London based literary agents were interviewed to get a wider and fairer representation of agents who represent Scottish, and/or Scottish based authors. This helped to answer numerous questions, including why Scottish, and/or Scottish-based, authors choose a London-based literary agent instead of a Scottish one. The questions were an expansion of the questions asked to the Scottish literary agents, and tailored for the London publishing activity (a sample of the interview questions are found in Appendix Nine). As before, these questions were tested with a peer group and revised accordingly. Additionally, an interview with Robin Robertson, a deputy publisher at Jonathan Cape who has been instrumental in publishing key Scottish authors such as James Kelman and Irvine Welsh, was undertaken after a suggestion by Agent F. This interview was undertaken to learn more about why Scottish authors decide to publish with London publishers (see Appendix Ten for sample questions).

Interviewing all London-based agents, who represent Scottish authors, was impractical, so a sample was chosen to represent different size literary agencies and authors; this will include literary agents who represent bigger-

named authors, so will have experience with exploiting IPR. Agent F also recommended several literary agents to interview and provided contact details. This sample of interviewees is a mixture of snowball, quota and random. Firstly the literary agents of the more successful authors were identified and the size of the agency was also analysed. Literary agents from different agencies, who represented Scottish authors, were contacted and interviews were conducted with the first four agents who responded. A sample of the letter requesting an interview can be found in Appendix Eleven. Interviews were conducted with five London literary agents (including the ex-agent) and anonymised profiles of the interviewees can be found in Appendix Twelve).

For the quota part of the sample, the literary agents were chosen for the following reasons: Agent E is the partner in a medium-sized agency and represents several key Scottish authors, Agent G represents some smaller-named Scottish authors within a medium sized agency and does not have a history of working in the publishing industry; Agent H founded a small literary agency and represents several very commercial successful Scottish authors<sup>165</sup>; Agent I worked as an editor for years and now represents a very commercial successful Scottish author within an established literary agency. The information about these agents was ascertained from both the interview with Agent F, agency websites, and trade press.

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<sup>165</sup> Since choosing this agent, the small agency merged with another medium-sized agency, so this detail was included in the interview questions.

#### **4.3.1.6. Semi-structured Interviews with Scottish Publishers**

Following the surveys to Scottish publishers, semi-structured interviews with a small section of publishers were undertaken to follow up any issues that emerged from the survey (see Appendix Thirteen for sample interview questions). The publishers chosen were representative of the different types of publishers based in Scotland, based on the 2001 survey of Scottish publishing and parts of the 2009 survey used for this project, and will explore the issues raised in depth. The interview method was used to follow up issues raised in the surveys to authors and publishers. This allowed a greater insight into the prevailing issues concerning authors and publishers. In this case the qualitative data was used to explain the meaning of the qualitative study findings (King, 1994). This also helped to ascertain whether, and/or to what extent, the experiences of each publisher or author concur with the qualitative findings. The questions for these interviews evolved from the survey findings and were validated by both the chair of Publishing Scotland and a peer group to examine the quality and then amended accordingly: this helped to ensure that the questions were unbiased and relevant.

Information about Scottish publishers was found in the Publishing Scotland handbook, the 2004 Scottish Arts Council report on publishing, and the partially completed 2009 survey used in this study. According to the Publishing Scotland handbook there are 65 Scottish publishers<sup>166</sup>. A quota sample was required for this study, to gain an insight into how different sized companies exploited rights. The sample is a mixture of quota, to represent the

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<sup>166</sup> These publishers include Publishing Scotland members only. There are additional publishers who are not Publishing Scotland members.

different kinds of publishers in the Scottish publishing industry, and convenience because of the timescale and the delay with the survey. Five publishers were interviewed and an anonymised profile of these publishers can be found in Appendix Fourteen.

These publishers were chosen for the following reasons: Publisher A, although they have a more conservative approach to publishing and more of a Scottish focus than Publisher B, have an emphasis on rights and the potential to exploit this further; Publisher B is a very successful, internationally focused publisher with a strong rights department and a clear emphasis on rights exploitation; Publisher C are an academic/non-fiction publisher who have the potential to exploit rights further because several staff members deal with rights but are not trained properly; Publisher D are, predominantly, a non-fiction charity publisher who have the potential to exploit rights further because several staff members deal with rights but are not trained properly; Publisher E are a very small literary publisher who have the potential to exploit rights further but currently do not have the expertise and no staff trained in selling rights.

#### **4.3.2. Self-Completion Questionnaire Surveys**

The cost of conducting questionnaire surveys is relatively low, particularly when including the diverse range of respondents. A common pitfall of this type of study can be lack of response and often data provided for questionnaires can be careless and unconsidered (Gillham, 2007, Robson, 2002). Therefore it is important to consider many factors because choosing a sample (Brett

Davis, 2007). The survey method is one of the best ways to obtain information from a large sample, and therefore characteristics from a larger group of people, so the results are often statistically significant, even when considering and analysing variables. Using this method is also the quickest way to obtain information from a large sample, although the respondents are left to complete the questions in their own time and are, generally, under less pressure to give their responses immediately (Gillham, 2007, Robson, 2002). Surveys would give the opportunity to get the required information, from a large amount of respondents, in a smaller space of time. This method also guarantees anonymity, which allows the respondent to be more candid with his/her responses. This could be particularly interesting when disclosing confidential information, such as earnings etc. This method also consists of standardised questions – all respondents are asked the same questions – so this eliminates the chance of researcher bias. These standardised closed questions also ensure that the same information/data can be garnered from all respondents; this means that the data is relatively easy to analyse, interpret and compare (Gillham, 2007, Robson, 2002).

However, one of the main challenges of this method is constructing a good-quality questionnaire, with clear, concise, and well-developed questions. It is difficult to decide on the length of the questionnaire and the language used. A pilot questionnaire should help towards creating the optimum survey. If the survey language is ambiguous, or filled with jargon, the likelihood that the questions are misunderstood is high. These misunderstandings cannot be corrected, like in face-to-face interviews. The wording of the questions play a

key role in determining the response, and minor differences can affect the reply, so it is essential to test the questions beforehand (Gillham, 2007, Robson, 2002).

As outlined earlier, questionnaire surveys are cost-effective, particularly when including the diverse range of publishers and authors around the whole of Scotland. Publishing Scotland conduct a survey to Scottish publishers, so it was convenient to integrate any questions relating to this research into their survey. The Society of Authors were also approached because they also send out a national survey to their members; however, as this study focuses on Scottish authors a separate survey will be sent out under the umbrella of The Society of Authors in Scotland. The collaboration with Publishing Scotland and The Society of Authors was chosen to give more gravitas to the study and help towards a better response rate. It was also premised that the collaboration might help improve the quality of the data collected. Often data provided for questionnaires can be careless and unconsidered; however, in theory, it was believed that the respondents involved might be more likely to give honest and thought-out answers to their professional bodies (Gillham, 2007, Robson, 2002). However, this is not always the case because not all organisations or individuals have good relationships with their professional bodies. The recent troubles between publishers and Publishing Scotland (outlined on pages 367-369) are an indication of this. Also, this theory cannot be either proved or disproved because there was no comparison with any other studies done without collaborations with professional bodies. The self-completion questionnaires were chosen over researcher-completion



questionnaires because of the scope of the project and the timescale involved.

The first stage in the survey methodology was to develop research questions, look at the previous surveys, and create an initial draft of the questionnaire. The literature review revealed the prevalent issues in publishing industry and faced by authors, such as the effect of globalisation, media convergence, and electronic publishing on authors and publishers. These issues raised many important questions, which were investigated further in the primary research. The main aim of the survey was to find out the concerns, key issues, attitudes and rights-specific knowledge of authors and publishers through the specific questions. Although the literature review raised many issues, it was important not to assume that these were the only issues faced by the respondents so the surveys gave the respondents the opportunity to confirm, refute, and/or add to the key issues (Gillham, 2007). The questionnaire survey method is particularly proficient at assembling descriptive information, which can give a strong indication of public opinion, or the opinion of a specific group of people. This is especially helpful if used as a precursor to introducing a framework to address some of the shortcomings of the Industry/group being researched (Robson, 2002).

When constructing the questionnaire survey it is important to ensure that the questions are designed to answer the research questions and thus meet the research objectives (Gillham, 2007). Therefore it is essential to connect the survey questions to the initial research question (Robson, 2002). Czaja and

Blair (1996, p. 53) created a useful model (figure 1) to demonstrate how the survey questions fit into the overall survey process:

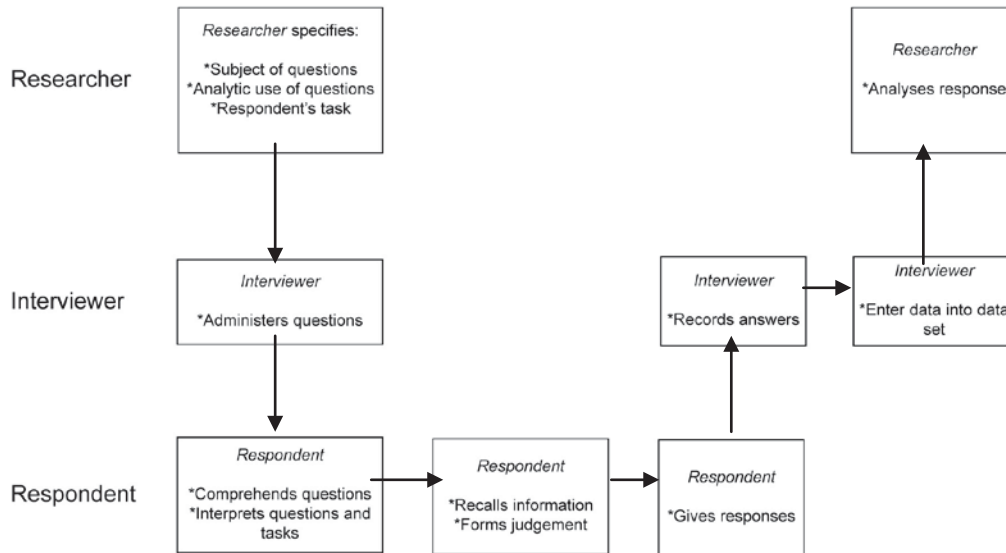


Figure 1. Model of the survey data collection process (Czaja and Blair, 1996).

The model, in figure 1, emphasises the importance of the researcher's role of creating a survey which links to their research and the research questions they want answered. However it also highlights in important role the respondent plays, and how they interpret the questions posed. This shows that a good questionnaire survey should: have a strong link to the research and research questions; enlist collaboration from the respondents; and obtain relevant and authentic information (Robson, 2002).

Before any questions can be constructed, it is essential that the main topic areas are established (Gillham, 2007, Robson, 2002). For the survey to publishers the main topic area for this research project was IPR, with various different topics related to this topic such as: Technology, Electronic

Publishing, Media Convergence, Globalisation, Rights Trading, and Literary Agents. For the survey to authors the main topic was also IPR, with different topics arising from this: Income, Contracts, Literary Agents, Rights Sales, and Media Convergence. Although these key topics were identified it was essential to organise them into the right order, because the layout and the format of the questionnaire is as important as the questions being asked. It was important that the questions were arranged in a logical order so the questionnaire was comprehensive and coherent. The reasoning behind this was to allow the respondent to better understand the questions and therefore easily progress through the survey (Gillham, 2007). However, one of the stipulations of sending out the survey in association with Publishing Scotland was that they could also use the results to analyse the state of Scottish publishing, so additional sections were added to ascertain other information. Both the surveys were evaluated by the respective chairs of each trade organisation and revised and approved before they were sent to the respondents: this process helped to ensure the quality and validity of the questions being asked. A link to each respective survey was emailed to potential respondents by each trade organisation as well as being placed on their password-protected website and their newsletters. Several measures were put into place to ensure survey response: working in conjunction with trade bodies, the survey being advertised on both the trade organisations websites and newsletters, the professional and easy to complete design of the survey, a prize incentive, and the option of sending printed versions of the survey to those with no internet access [for the survey to authors].

The surveys complied with the guidelines suggested by Gillham (2007) so therefore followed eight stages (with the estimated and actual completion time for each stage):

1. Develop research questions, look at previous survey, and create an initial draft of questionnaire (Estimated completion time 2-3 weeks: Actual completion time for survey to authors 2 weeks, Actual completion time for survey to publishers 3 weeks)
2. Informally test the draft questionnaire (Estimated completion time 1 week: Actual completion time for both surveys 1 week)
3. Revise draft questionnaire (Estimated completion time 1 week: Actual completion time for both surveys 2-3 days)
4. Test revised questionnaires by doing interviews (Estimated completion time 1 week: Actual completion time for both surveys 2-3 days)
5. Revise questionnaire (Estimated completion time 1 week: Actual completion time for both surveys 2-3 days)
6. Carry out main data collection and get the results back (Estimated completion time 2 months: Actual completion date for survey of authors 2 months, Actual completion time for survey of publishers 9 months)
7. Code the data and prepare files (Estimated completion time 1-2 weeks: Actual completion time for both surveys 2 weeks)
8. Analyse data and write report (Estimated completion time 3-4 weeks: Actual completion time for both surveys 4 weeks)

In keeping with these guidelines, the estimated projected total project time was five and a quarter months (twenty-one weeks) maximum; however, as a result of Publishing Scotland's delay the actual project time for this was over double that timescale at nearly twelve months (forty-eight weeks). The reason for Publishing Scotland's delay was a busy workload, which included preparations for the London Book Fair. The survey with the Society of Authors was more straightforward and was completed within the timeframe.

#### **4.3.2.1. Self-completion Survey to Scottish Publishers**

Self-completion questionnaire surveys were sent to Scottish publishers in conjunction with Publishing Scotland who are collecting information to build up a profile of the current Scottish publishing industry. The link to the survey was sent to Publishing Scotland members through their electronic newsletter with a covering letter outlining the project (see Appendix Fifteen). The last study, conducted in 2004, had a response rate of 90%. A common pitfall of this type of study can be lack of response and it was thought that the collaboration with Publishing Scotland could reduce this problem, and lend authority to the study. However, as discussed later, this was not the case for this survey.

The survey observed the following structure, with the rights related questions, for this research project, being incorporated into their own section.

- i. Structure (who owns what?)
- ii. Output (what materials are produced?)
- iii. Performance (economic – how much money does it make?)
- iv. How they are sold/how they sell?

- v. Rights earning and rights awareness
- vi. Government support (grants, equity stakes)

This helped to give a greater insight into the current publishing situation in Scotland, with a strong emphasis on rights. This particularly investigation, and the rights section of the survey, helped to find out how different sized publishers exploit their authors' material and how they are optimising their income as a result of the advent of globalisation and the increase in media convergence. These questions were integrated into the larger project about Scottish publishing, outlined above (See Appendix Sixteen for the survey questions). The study included both indigenous Scottish publishers and conglomerate publishers with Scottish offices to give a broad overview of the attitudes and experiences of different sized publishers

One of the challenges faced was deciding which format of questionnaire to use: paper or electronic. A structured questionnaire was created however the decision on whether to send a physical copy of the questionnaire or create an electronic version, which could be accessed securely on the Publishing Scotland website, created many new issues such as ease of use and security risks. Although it was originally believed that publishers might prefer the traditional, physical paper questionnaire, particularly when providing confidential information, a discussion with Marion Sinclair, Chief Executive of Publishing Scotland, resulted in the decision that an online survey might be a more straightforward option. Marion Sinclair decided that an online survey should be used instead of a print survey giving the reason that it would be

more up-to-date and easier for publishers to complete. Also, an online survey can often lead to a shorter response time (Brett Davies, 2007). There are numerous online survey software available, however it was important to consider security about the potentially sensitive and confidential information that the respondents would be supplying. Research was undertaken to find the most suitable, accessible, and secure survey softwares available. An online 'Survey of survey tools' was conducted by Ohio State University concluded that SurveyGizmo was the best all-round survey tool, scoring the highest overall score (Ohio State University, 2008). The survey results for both surveys were anonymous so are presented in aggregated form (see Appendix Seventeen and Eighteen for samples).

Although Brett Davis (2007) asserts that an online survey can result in a quicker response time, this was not the case with this survey. Firstly the survey was delayed as a result of the workload at Publishing Scotland. Although the survey was ready in March 2009 it was not emailed to the publishers until October 2009. The results were not received until January 2010. The response rate to the online survey was very low so it was decided that handwritten surveys would be sent out to try to encourage more publishers to respond: an extra sixteen publishers responded as a result. The number of publishers answering the survey questions was very low in comparison to the number of Publishing Scotland members. There are sixty-four members and only twenty-eight answered the survey. This is a completion rate of approximately forty four percent, less than half its members. As a result the interviews with publishers were delayed because

they were dependant on the data from the survey. Fortunately, access to the completed surveys was permissible on Survey Gizmo, which created the opportunity to partially analyse the data, and thus create questions/topic areas, for the in-depth interviews. Although the original intention was to choose potential interviewees in response to the survey results the delayed survey caused some difficulties and so interviewees were chosen, based on their size, output, income etc., as outlined in the 2004 survey and the partially completed 2009 survey.

Additionally, as outlined above, one of the stipulations of sending out the survey in association with Publishing Scotland was that they could also use the results to analyse the state of Scottish publishing, so additional sections were added to ascertain other information. Although this information did help give an indication on the operational factors of Scottish publishers, especially in comparison to the 2004 survey, it added extra sections making it quite a lengthy survey to complete. The length of the survey could have been one of the reasons for the low response rate. An additional factor could be the divergence on subject matters covered within the one survey: ideally the experts within the publishing company would complete each specific section; however the electronic format rendered this impractical.

#### **4.3.2.2. Self-completion questionnaire survey to Scottish authors**

A self-completion questionnaire survey was sent to individual Scottish authors (that is, authors who are living in Scotland and/or published by Scottish publishers, and all Scottish authors living outside Scotland), in conjunction



with The Society of Authors, to build up a case on how authors earn money and exploit their IPR. This questionnaire survey was in addition to the questionnaire survey to Publishers, and therefore not in conjunction with Publishing Scotland. In 2001 the Scottish Arts Council commissioned a study of the state of authorship in Scotland. 217 writers based in Scotland responded to the questionnaire-based survey of their earnings and attitudes towards funding, details of this are outlined in Chapter Five. This study was recreated to get a more current overview, focusing on media convergence and globalisation, particularly finding out about authors attitudes towards rights, something that was not covered in the 2001 survey. Although some parts of this survey will be compared to the 2001 results, in Chapter Five, the fact that there are additional questions means that a comparison cannot be made throughout. The Society of Authors undertake an annual survey to their authors, however there is not a distinction between different geographic locations, so it would be impossible to gain an overview of Scottish authors from this. Consequently a separate electronic survey, with survey gizmo, was created with the endorsement of The Society of Authors and advertised on their website and newsletter, along with a covering letter detailing this study (Appendix Nineteen). The format was discussed with the Chair of the Society of Authors in Scotland who suggested that an electronic survey would be the most efficient and time-effective way of gaining the information.

#### **4.3.2.3. Survey Gizmo/Online surveys**

Survey gizmo provides many options for formatting the questions and the questions in this survey were mainly tick boxes (where the user could pick

several options), drop down menu choices (where the user could pick one option from a drop down menu), radio buttons (where the user could pick one option from a list), and scale format (where the user could choose an answer based on a scale). There were also several questions with open-ended answer options, which allowed the user to comment specifically. Screen shots of the online survey can be found in Appendix Twenty: this shows that the survey is clear and easy to follow.

The survey of publishers was divided into the following sections. The questions are detailed in Appendix Sixteen and sample statistical results are detailed in Appendix Seventeen. As detailed earlier, the survey to publishers was very lengthy and completing such a long survey in electronic form, in one sitting, could have deterred respondents from participating in this study.

1. Company Information
2. Staff
3. Company Ownership
4. Titles
5. Markets: Home-retails
6. Markets: Exports
7. Distribution
8. Selling rights
9. Selling rights 2
10. Media and electronic rights
11. Selling rights 3

12. Web
13. Financial and sales information
14. Company finance
15. Financial reporting
16. Publishing and sustainability
17. Company Aims
18. Future Planning
19. Future Vision
20. Authors
21. Publishing Scotland services

They survey of authors observed the following structure. The questions are detailed in Appendix Twenty One and sample statistical results are detailed in Appendix Eighteen. This survey was smaller and elicited a higher response.

1. Author information
2. Income
3. Literary Agents
4. Rights
5. Contracts
6. Media and electronic rights

#### **4.3.3. Secondary Analysis of Data**

Data collected by government or administrative bodies are the most common sources of secondary data (Schutt, 2008). Secondary data is data that has been collected prior to the secondary analysis and by another researcher, to

answer different research questions (Schutt, 2008). The secondary data analysis method is an inexpensive and time saving way of collecting relevant information (Schutt, 2008). Research can be an expensive and time-consuming process, so using this secondary data helps to reduce the time and costs. The planning, preparation and creation of the method has already been done, and the information is therefore ready to access and analyse (Schutt, 2008). This means that I would not have to face any of the potential problems of collecting the data. The reliability and the quality of the data can be questioned. Therefore it is extremely important to explore and answer several questions before the analysing the secondary data, and then to develop these answers as the analysis progresses (Schutt, 2008). Firstly it is crucial to reflect on what the organisation's goals in collecting the data were. The organisation's goals reflect every process of their research project and the subsequent results, so it is important that their goals have similarities with my own (Schutt, 2008). The other questions to answer are: What data was collected and what is it supposed to measure?; When was the data collected?; What methods were used?; Who was responsible and are they available for questions?; How is the data organised; What information is known about the success of that data collection?; How consistent is the data with data from other sources? (Schutt, 2008).

Data collected by government or administrative bodies (such as Publishing Scotland and the Scottish Arts Council) are the most common sources of secondary data (Schutt, 2008). Secondary data is data that has been collected prior to the secondary analysis and by another researcher, to

answer different research questions (Schutt, 2008). Firstly a previous study of the Scottish publishing industry was analysed to evaluate how the Scottish publishing industry has developed over the last seven years. The Scottish Arts Council report, conducted by Edinburgh Napier University, was based on survey conducted with Scottish publishers, similar to the survey undertaken for this research, so was used as a comparative study. Information collected by the Scottish Arts Council and the answers from the joint survey between Publishing Scotland and Edinburgh Napier were used to answer some research questions, further this investigation, and build up a small profile of both Scottish authors and publishers to show how both have developed over the years. The combination of the secondary data, collected by the Scottish Arts Council and Publishing Scotland, and the primary data, collected through the methods above, will highlight the similarities and the differences between the practices of both publishers and authors over the years.

The secondary data analysis method is an inexpensive and time saving way of collecting relevant information (Schutt, 2008). The industry being studied is in a different country so it would be an expensive and time-consuming process for me to undertake the study myself. The planning, preparation and creation of the method has already been done, and the information is therefore ready to access and analyse (Schutt, 2008). This means none of the potential problems of collecting the data will be faced. Although the reliability and the quality of the data can be question, because there was no opportunity to see the methodological process, the data in questioned is being collected by a longstanding organisation, who undertakes frequent primary research.

This suggests that the secondary data is authentic and pertinent. However, it is extremely important to explore and answer several questions before the analysing the secondary data, and then to develop these answers as the analysis progresses (Schutt, 2008).

## **4.5. Analysis of the Data**

### **4.5.1. Reliability and Validity**

Qualitative data uses words rather than numbers and, as a result, there are several threats to the validity and the reliability of the findings (Robson, 2002). Maxwell (2002) suggested classifications for the main types of understandings and threats involved in qualitative research: These are description, interpretation and theory (Maxwell, 2002). The first main threat to the validity of the findings is the validity of the way the data is described. If the data has been recorded incorrectly or partially it could lead to the results being unreliable. The solution to this was to record the interview by audio or video and also take written notes during the interview (Maxwell, 2002). During the course of this research all interviews were recorded and fully transcribed for data analysis: this allowed the data to be cross-referenced to ensure no mistakes were made. The second main threat to the validity of the findings is the way in which the data is interpreted. Problems can occur when the researcher applies a prior framework or meaning to the data instead of letting this occur after the being involved with the research situation. The solution here was to remain flexible and let any interpretations develop during the course of the research (Maxwell, 2002). As discussed earlier, the interviews were semi-structured, which allowed interpretations to develop organically

throughout each interview. The third main threat to the validity of the finding occurs when the researcher does not consider alternative insights and descriptions, which may differ from their own, about the phenomenon under investigation. The solution to this was to diligently research other, potentially conflicting, explanations and understandings and include them in the study (Maxwell, 2002). There are several other procedures to help towards increasing the validity of the findings, these include: Prolonged involvement, where the researcher spends an extended period of time researching the phenomenon. This can help develop the relationship between the researcher and the respondent and can lead to decrease of bias in the case of the respondent. However, it can equally create bias, positive or negative, in the case of the researcher. This was not relevant during this research; Triangulation, which was discussed earlier in the chapter, where multiple methods can be used to ensure the investigation is thorough. Although triangulation can help increase the validity of the findings, it can also result in conflicting data, where different sources have differing opinions. For this research triangulation was used through the different methods used and the range of subjects investigated; peer support, where peer groups of researchers in similar situations, who are also undertaking flexible design research, can support each other and help reduce researcher bias by creating a forum for discussion. Peer support was particularly useful during this research because it acted as a forum to test interview and survey questions; member checking, which involves revealing the transcripts and the subsequent interpretations to the respondents. This can help to decrease researcher bias, however there is also the threat that the respondent will not

be happy with the results, could challenge the interpretations, and even try to withhold the information provided. Extending communication with the respondents after their interviews helped to build a relationship and fill in any gaps; negative case analysis, where the researcher searches for theories and cases which would disprove their theory, and to help stop researcher bias. This also helps give a broader picture of the phenomenon being studied. The review of literature, outlined in previous chapters, allowed negative case analysis; and audit trail, where a full documentation of research activities are kept to record how the research has developed. This includes a research diary, raw data, notes, data analysis, coding etc., all of which were kept for the purposes of this study. In flexible research design, any threats to the validity of the findings are managed once the research is developing. Therefore the audit trail can provide evidence collected during the course of the primary research (Robson, 2002). In addition, the majority of the results of this study were anonymised, which allowed the respondents to answer freely and confidentially. Although this does not automatically make the data reliable and valid, it does mean that a relationship of trust developed between the respondent and the researcher.

#### **4.5.2. Analysis of Surveys**

One of the benefits of using Survey Gizmo was that an Excel spreadsheet of the survey results was available for download and thus the data was already coded and assigned under question numbers, descriptive headers etc. This meant that time-consuming manual inputting of data was unnecessary. However, because of the large number of questions involved in both surveys,



particularly the Publishing Scotland survey, the worksheet was printed out and the answers were manually checked for any inaccuracies. Additionally, PivotTables were used to electronically determine if there were any inaccuracies<sup>167</sup>. Using both manual and electronic techniques to find inaccuracies helped to validate the data.

The majority of the questions in the survey were closed and thus analysed statistically. Firstly, the frequency and percentage of the data were deciphered (e.g. How many authors were women), which determined how many of the respondents fit into certain categories (Fink, 1995). Additionally, the general, or 'average', findings were categorised to highlight the "measures of central tendency" (Fink, 1995, p.3). Cross tabulation in Excel was used to compare the results of two survey questions (e.g. finding out if the sex of the author has any influence on their earnings by comparing the gender and income questions). Although there were not very many open-ended questions, the data ascertained from these questions was analysed by putting the answers into specific groups, categories and then summarised. This data could then be compared to the statistical data, and linked to any of the categories (e.g. gender, or income). The survey results were anonymous so are presented in an anonymised, aggregated form (see Appendices Seventeen and Eighteen for sample results).

The procedure for analysis was as follows:

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<sup>167</sup> Pivot Table is a tool within Excel that tallies and categorises the data and enables it to become summarised.

1. Checked the data, both manually and electronically, for inaccuracies
2. Created formulas to produce statistics
3. Determined the frequency/percentage of each category
4. Determined the frequency/percentage for a number of questions
5. Used cross-tabulation to compare questions
6. Compiled information and linked it to specific themes
7. Linked the information to the results of the surveys
8. Linked information and quotations to answer research questions
9. Wrote a report of the data (Chapters Five and Six)
10. Linked the information to the results of the interviews
11. Linked statistical information to answer research questions
12. Wrote a report of the data (Chapters Five and Six)

#### **4.5.3. Analysis of Semi-structured Interviews**

Bryman (2004) asserts that transcription is a lengthy process and that the transcription of a one hour interview can take around five and six hours (Bryman, 2004). May (2001) contends that this length of interview can take between eight and nine hours to transcribe (May, 2001). As interviews for this study were undertaken with twenty interviewees and each interview was at least an hour long, most of the interviews were longer than an hour, the time for full transcription would be, at least, around 100 and 120 hours according to Bryman (2004) and between 160 and 180 hours according to May (2001). As such, the interviews, which were recorded on a digital dictaphone, were partially transcribed in accordance to the key issues being discussed. Despite being lengthy, transcription helped to recall the importance elements of each

interview and helped to build a picture of the groups being studied. Additionally, the digital files were kept on file and referred to whenever necessary.

The systematic manual analysis of the raw data was embarked upon, which involved thematic coding and analysis. Although a short, afternoon course, was attended to learn about the qualitative software Nvivo it transpired that the investment of time required to become proficient in this computer-aided analysis technique was greater than the benefits that would be yielded for such a small study. Additionally, as not enough sufficient experience in this software was gained the concern was that this programme could guide the results in a particular direction, without paying close attention to the text being analysed (Seidel, 1991). In order to build a relationship between the themes being explored it is necessary to analyse each individual theme in depth, which is difficult to do with qualitative software, especially as an inexperienced user. Furthermore, the printed transcripts were easier than the digital versions to read for longer periods of time and thus easier to analyse and track commonalities between each interview.

The method used to analyse the interview data was qualitative content analysis, which Gillham (2005) describes as 'mainly involves transcribed speech and is textual in that sense but quite different from conventional written text' (Gillham, 2005, p.136). This method was used to analyse all the qualitative interviews. The procedure for this analysis is as follows:

1. Read through each interview and picked out key elements
2. Used colour coding to pick out key themes, common narratives and discourses, which answered research questions
3. Important quotations were underlined
4. Read through transcriptions again and made notes, which included information the interviewee provided that does not fall into specific research theme but is still important (these were colour coded too)
5. Linked the key themes in each interview
6. Compiled information and important quotes for each theme (each linking back to the transcribed interviews for future reference and to check sources)
7. Linked the information to the results of the surveys
8. Linked information and quotations to answer research questions
9. Wrote a report of the data (Chapter Five and Six)

#### **4.6. Conclusion**

A diligent yet flexible methodological strategy ensured that sufficient data was collected and analysed within a suitable timescale. The flexibility of this methodological approach assured that problems, such as the delay in the publishers' survey, did not result in the project coming to a standstill. The multi-method approach allowed the methods to work in conjunction with one another and help inform the methods that followed. This approach also allowed the data to be triangulated, which increased its validity (for example both authors and publishers were questioned over rights control, as well as various other issues). Additionally a comprehensive audit trail and a supportive peer group helped the ideas evolve from the start of this research

project and develop into an organised evaluation of the subject area. Finally, good communication and interview skills helped to ensure that a productive relationship developed between the researcher and the respondents, who all responded positively to the research questions and overall study. All of the interview-respondents were eager to contribute after their interviews, which proved to be helpful for any follow-up information. The key findings of this research are detailed in the following two chapters, Chapter Five and Six.

## **Chapter Five: Authors and Agents discussion**

### **5.1. Chapter summary**

This chapter gives a detailed overview of authorship and agenting in the twenty-first century through the analysis of interviews with Scottish authors and both Scottish and London-based agents who represent Scottish authors, alongside a survey of Scottish authors. These results are compared to previous studies to highlight the changing nature of authorship over the years. Both the survey and interview results paint a pessimistic picture of authorship in the twenty-first century, with the majority of authors earning very little from their writing and depending on alternative methods to improve their income. Additionally, Scottish authors are not benefiting from the numerous new platforms to exploit their work through, which could help to enhance their income. This is partly because many Scottish authors still have a traditional view of publishing and do not think about their work commercially, and partly because, in many cases, their rights are controlled by their publishers and not exploited. This survey also found that Scottish authors with London literary agents earned more income than their counterparts with Scottish agents; however, this was mainly because they were more likely to be published with London publishers. This shows that Scottish publishers are failing their authors by not fostering their rights efficiently and effectively.

## 5.2. Contemporary Issues for Authors

It was difficult for a relatively unknown author to earn a substantial living in the eighteenth century and many had to look at alternative routes to earn money. Even Samuel Johnson contemplated both teaching and the legal profession as an alternative way of earning money (Collins, 1927). This situation is prevalent in today's publishing industry where the majority of authors earn below minimum wage while brand-name authors tend to be the top-earners (Ward, 2007, Clark, 2008). The publishing industry is becoming a more commercial arena; consequently this means culturally important works are often overlooked for more commercially successful ones (Garret, 1996). Publishers are under increased pressure to produce best-selling books and thus play less of a nurturing role to authors. Additionally, authors are often expected to have immediate market success, instead of being given the flexibility and time to develop, as Baker (1996) asserts, "An author who lacks the instant recognizability of a star name is only as good as his or her last book" (Baker, 1996, p. 43). One must consider the implications of this and realise that slow-burning writers like Ernest Hemingway and William Faulkner might not be published in the current publishing industry and thus critically acclaimed and influential works such as *For Whom the Bells Toll* and *As I Lay Dying* might remain unpublished (Baker, 1996). Legat (1991) confirms that publishers nowadays are searching for profit-making books and surmises that while once publishing was "an occupation for gentlemen" it is now "an occupation for businessmen" and, as such, publishers are taking on less authors each year (Legat, 1991, p.67). Despite poor sales performance in 2009, it has been predicted that celebrity memoirs will have resurgence in the

coming years with up-coming celebrity authors, such as actor Michael Caine and comedian Michael McIntyre, rumoured to be earning £1.5 million and £2.2 million, respectively, in advanced payments (Page and Stone, 2010). This means that lesser-name authors will have to compete in a publishing environment where publishers have less money and are taking on fewer titles and a market saturated by big-name and celebrity authors. As discussed in Chapter Three, literary agents are now instrumental in the publishing process; however, literary agents, particularly the bigger agencies, are now taking on fewer authors each year, and this puts first-time and aspiring authors in a difficult and disadvantaged position (Clark, 2008). As discussed in Chapter Three collaborative authorship is becoming increasingly common, especially with online writing and distribution: this threatens the notion of the author as an original genius. Additionally, the digital environment is proving to be a threat to traditional notions of authorship and intellectual property. Information online is often circulated, disseminated, and remixed without any regard for copyright laws or the original author and this both angers and threatens content creators and providers (Garlick, 2009). However, research has found that “domestic” piracy can often help boost the sales of lesser-name authors, which highlights the need to re-evaluate current business models.

### **5.3. Contemporary Issues for Literary Agents**

The development and expansion of the media in the twentieth century has provided authors with multifarious new avenues to exploit their literary work through for financial gain: resulting in the development of subsidiary rights, now regarded as the author’s principal source of income (Ward, 2007).



Important advancements arose in 1886 and 1891 when international copyright agreements were established. This meant that an author's work was now protected in Europe and America, and increased the amount of subsidiary rights in existence, including book, serial, dramatic, foreign and translation. Each right could be sold individually, a negotiation that the literary agent usually undertook<sup>168</sup> (Ward, 2007). The elevation of the literary agent has prevented the multi-media conglomerates from having complete control of the author's rights (Squires, 2007). Authors' agents now manage the business of rights and, instead of giving the multi-media conglomerates full control of all the rights, prefer to separate the rights into different categories and licence them out to different publishers to maximise profit (Squires, 2007). However, some literary agencies are now developing their companies to retain as many rights as possible. For example, Carole Blake, the first rights manager at Michael Joseph who subsequently opened her own literary agency, merged her agency with Julian Friedman's media agency in 1982. This allowed the agency to offer the authors a range of services across different media such as print, television, radio and film, and thereby exploit the work as widely as possible (De Bellaigue, 2008). Curtis Brown, now one of the largest literary agencies in the UK, also has a strong emphasis on different media with its object "to look for additional exploitation of a writer's work beyond books" (De Bellaigue, 2008, p.114). The agency, which also represents actors, scriptwriters, TV presenters, and playwrights, introduction of a film production company in 2004 helped towards adapting literary works into film (De

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<sup>168</sup> The end of the Second World War saw the recommencement of international trade, and a successful author could benefit from this by selling numerous translation and paperback rights. Other rights possibilities included film, television, audiocassette and serial rights (Greenfield, 1993).

Bellaigue, 2008). This business model means that one single media agency could represent the author who wrote the original novel, the screen writer who adapts the novel for the film, the producer of the film, and even the actors who star in the film (Greenfield, 1993). Although this model of business means that the literary agency does not need to share commission with sub-contracted agencies, it is often the procedure of sub-contracting the sales of certain media, or geographical, rights and licences that give the literary agent operational flexibility, without large financial commitments (De Bellaigue, 2008)<sup>169</sup>. This shows that not all agencies follow the same business paradigm, for example agents at A.P Watt sell translation rights directly to overseas publishers, while Rogers Coleridge & White employ a US agent, who sells many book from their list in the US (De Bellaigue, 2008). Although retaining translation rights and world volume right enables the literary agency to control as many of the rights as possible, it can also be beneficial to sell or licence these rights because it gives the company instant capital and cuts the costs of selling these multiple rights individually (De Bellaigue, 2008). The Digital Economy Act (discussed on pages 86-87) could affect literary agents and the way their licence their authors' content (Page, 2009d). According to a firm of copyright lawyers, literary agencies may be required to register with the government, and pay annual fees, because they act as copyright licencing bodies (Page, 2009d). This would affect medium to large agencies with many clients rather than smaller agencies (Page, 2009d).

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<sup>169</sup> This model means that one single media agency could represent the author who wrote the original novel, the screen writer who adapts the novel for the film, the producer of the film, and even the actors who star in the film (Greenfield, 1993).

Literary agents are now predominantly based in London so they have access to their main customers: trade publishers and other media companies<sup>170</sup> (Clark, 2001). As such, agenting is a relatively new phenomenon in Scotland, with only one literary agent listed in the Directory of Publishing in Scotland in 1989: this rose to three in 2004 (Ward, 2007). However, Giles Gordon moved back to Edinburgh to set up a branch of Curtis Brown literary agency, which acted as a stimulus to Scottish Publishing at that time (Ward, 2007). Giles Gordon was a popular Scottish literary agent, who had worked in London since the 1960s. During his career he managed to secure some of the largest advances for his authors, and proved that the negotiating skills of a literary agent were important for an author - without them the author would receive much-limited sums (Ward, 2007). Since the Scottish branch of Curtis Brown was opened, and subsequently closed after Giles Gordon's death, there have been many Scottish literary agencies established, which shows that agents do not have to be London-centric.

#### **5.4. A picture of Scottish Authors**

This report is a presentation of the results of interviews with six Scottish authors and an online questionnaire sent to Society of Authors in Scotland members to ascertain authors' earnings and their attitude towards copyright<sup>171</sup>. The questionnaire was closely based on a survey used by the Society of Authors in 2001 and so the results of this 2009 survey will be

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<sup>170</sup> The number of literary agencies in London has increased from ten in 1910 to 161 in 2003.

<sup>171</sup> The questionnaire was distributed, through the Society of Authors' website, to the 413 Scottish authors registered with the SOA, who have Internet access. Forty-six members responded, which gives a return rate of approximately nine percent. The 2001 survey had a response rate of forty-three percent. No printed version was sent.

compared to the results of the 2001 survey; however, additional questions were added to this study so not all sections can be compared.

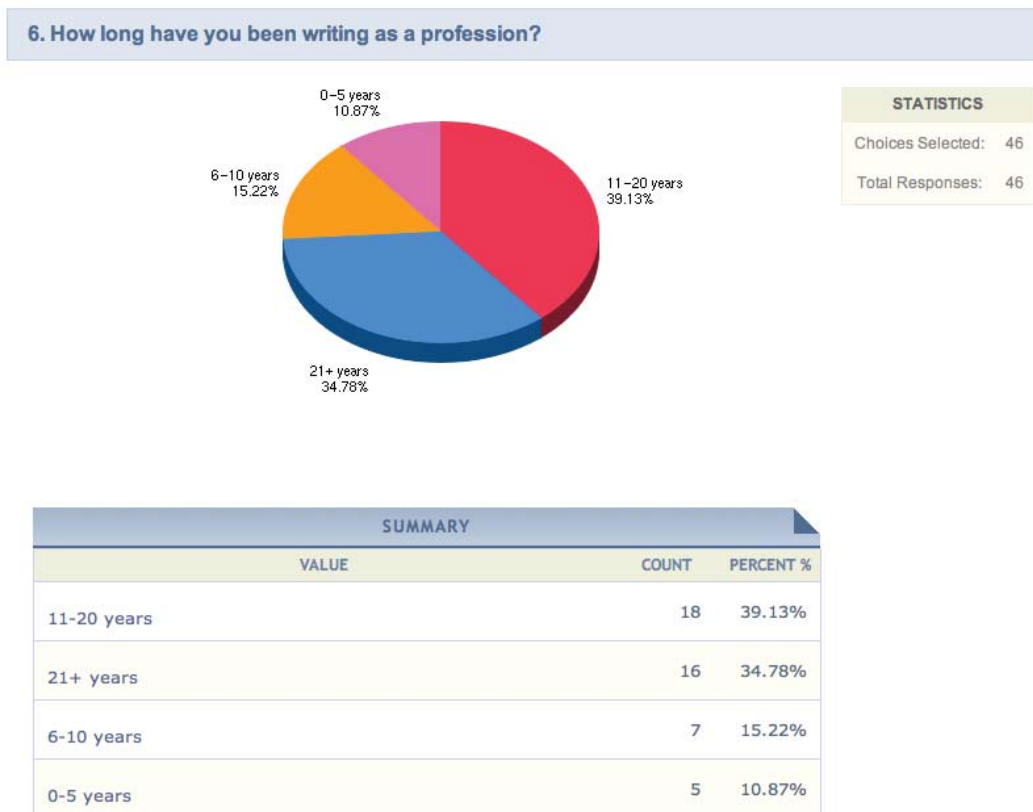


Figure 2. Length of time the respondents had been writing professionally

Analysis of the questionnaires revealed that over seventy percent of the respondents have been writing professionally, for money, for over ten years. In fact just over a third (34.8%) had been writing professionally for over twenty-one years. The largest group within this category were authors who had been writing for between eleven and twenty years (39.1%). Out of the interviewees: Author A has been writing full-time for over fifteen years, Author B wrote for twenty one years before becoming a full-time author and has been a full-time author now for eight years, Author C has been writing full-time for the last ten years, Author D is a full-time author for over fifteen years, Author

E has been writing for fourteen years but has been writing full-time since 2000, Author F is a part-time author but has been writing for over twenty years. This indicates that the majority of the authors involved in this study are accomplished authors and have experienced the changing nature of the publishing industry for at least ten years.

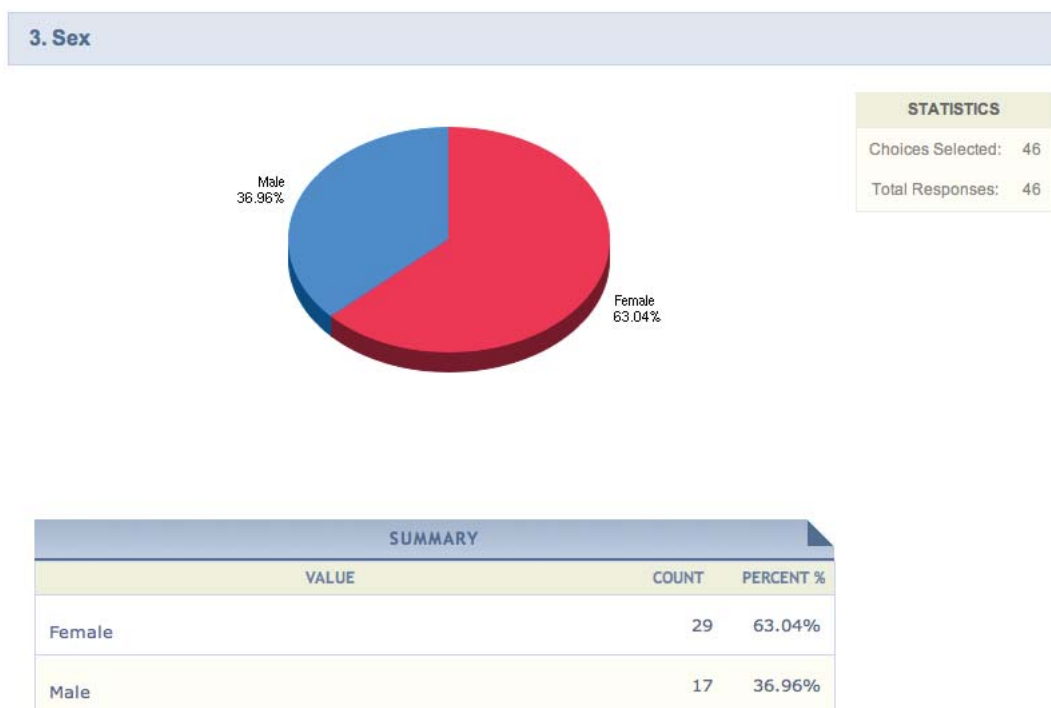


Figure 3. Sex of the respondents.

Out of the survey respondents nearly two thirds (63%) were women and nearly two fifths (37.9%) of these women wrote full-time. Nearly the same percentage, four of the six interviewees (two thirds), were women, which reinforces the idea that the majority of Scottish writers are women. Author B's theory on why, seemingly, less men write than women was because men are traditionally bread-winners and so go into more stable professions. However, this theory can neither be proved nor disproved by this study. Additionally, the

2001 study showed that nearly three fifths (58.1%) of their respondents were men so perhaps this reversal in numbers is to do with the response rate. The 2001 survey suggested that gender does not particularly affect the earnings of Scottish writer and this study reinforced this idea by finding that over half (55.6%) of Scottish women writers earned less than £4999 from their writing in comparison to approximately the same (52.9%) amount of male writers.

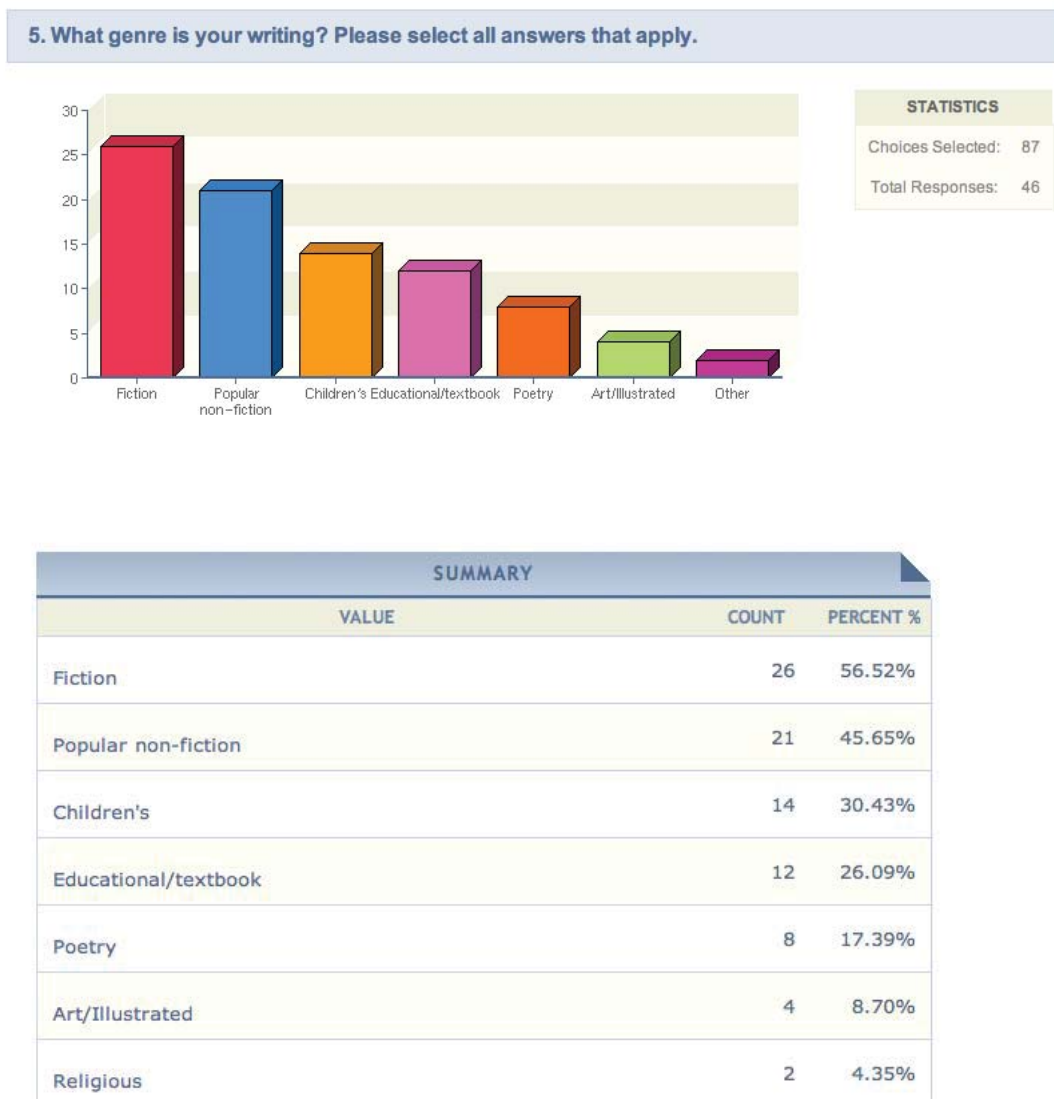


Figure 4. Selection of genres the respondents write within.

Analysis of the survey showed that over half (56.5%) of the respondents wrote fiction, less than a fifth (17.4%) wrote poetry, just over three tenths (30.4%) wrote children's books, just under half (45.6%) wrote popular non-fiction, just over a quarter (26.1%) wrote educational or textbooks, just under five percent wrote religious works and just under a tenth (8.7%) wrote Art or Illustrated books<sup>172</sup>. This shows that many Scottish do not stick to the one genre and cross over a variety of genres. Out of the authors that were interviewed: two mainly wrote fiction for children and teenagers, one mainly wrote historical fiction, one mainly wrote literary fiction, and two mainly wrote crime fiction. However, all of the authors interviewed, like many of the surveyed authors, were involved in other forms of writing in some way or another. Although Legat (1991) asserts that publishers prefer to deal with authors who concentrate on one genre, it is clear, from these findings, that crossing over genres allows authors to earn necessary additional income (Legat, 1991).

The majority of the surveyed authors earned their writing income through traditional print media with nearly four fifths (78.4%) of authors earning their income through books and just under a fifth (19.6%) earned their income through magazines. Additionally, just under a fifth (19.6%) had earned income from adaptations of their work into audiobooks. Electronic and web-based media showed little effect on an author's earnings with no authors saying that this was their main source of income and less than a tenth (6.5%) saying they have adapted their work into e-books and the same amount saying they have

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<sup>172</sup> The respondents were allowed to choose more than one answer for this particular question and the answers showed that many respondents wrote in more than one genre.

adapted their work into web-based applications. Additionally, most of the interviewed authors had not exploited their work through e-books and mainly relied on print media for their income. These findings show that the digital publishing revolution, which is debated in Chapter Two, has not yet affected most Scottish authors.

### 5.4.1. Scottish Writers and their Income

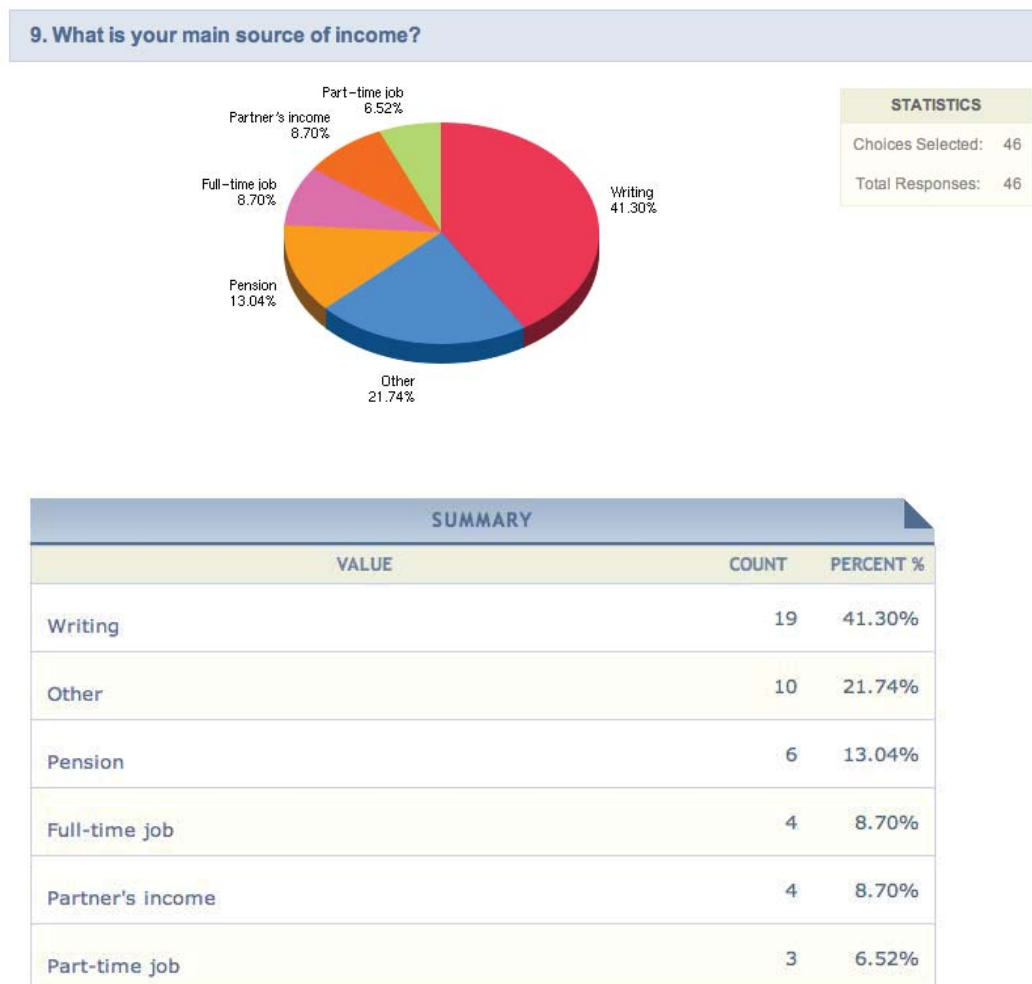


Figure 5. Respondents' main sources of income.

Writing is the main source of income for almost half (41.3%) of the respondents with books being the main source of income for the majority

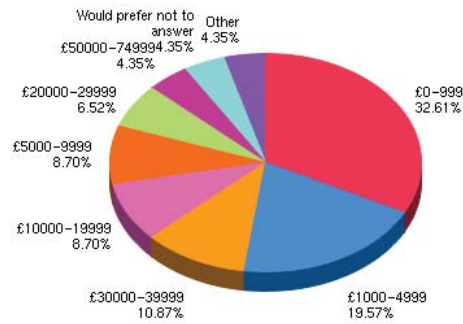


(78.3%). However nearly eighty-five percent (84.8%) supplement their writing with another source of income and over half of the respondents listed themselves as part-time authors rather than full-time (54.4%). It is clear that writing books does not provide adequate income for the majority of the Scottish authors questioned and most have to supplement their income through a variety of ways such as: pensions, partner's income, full and part time jobs, arts council grants, and other forms of writing, which includes journalism and reviewing. Although the main source of income was writing for just over two fifths (41.3%) of the respondents, less than a quarter (23.6%) of those who said writing was their main income earned less than £9999, and less than a fifth (17.7%) earned less than £5000, which is below the minimum wage<sup>173</sup>. However two thirds of the authors that earned less than £5000 were part-time and supplemented their income from various other ways such as their partner's income and teaching. The majority (82.1%) of those who earned their main income through writing were full-time authors and over half (57.9%) of the authors who earned their main income from writing had literary agents. Of the remaining (42.1%) authors who did not have agents, 28.6% earned under £5000 in comparison to ten percent of authors with agents.

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<sup>173</sup> This is discounting the two respondents who refused to disclose their annual wage. The minimum wage in the UK, in 2009, was £5.80 an hour (DirectGov, 2010).

19. How much did you earn this tax year (2008-2009) from your writing?



STATISTICS	
Choices Selected:	46
Total Responses:	46

SUMMARY		
VALUE	COUNT	PERCENT %
£0-999	15	32.61%
£1000-4999	9	19.57%
£30000-39999	5	10.87%
£10000-19999	4	8.70%
£5000-9999	4	8.70%
£20000-29999	3	6.52%
£50000-74999	2	4.35%
Would prefer not to answer	2	4.35%
£40000-49999	1	2.17%
£75000-99999	1	2.17%

Figure 6. Respondents' earnings in 2008-2009.

In keeping with the 2001 survey: the 2009 respondents were divided into three subgroups: those who earned less than £999 in the last tax year (32.6%), those who earned between £1000-4999 (19.6%), and those who more than £5000 (47.8%). The results for the 2001 survey were: 30.8% earned less than £999; 27.2% earned between £1000-4999 and 39.6% earned more than £5000. This shows that there are now more authors

earning under £999 and over £5000 but less within the £1000-4999 bracket. Of the lowest earners, those who earned under £999, sixty percent of the respondents were the main breadwinners in their family, although eighty percent said they were part-time authors. A fifth of the lowest earning authors have been writing for less than five years; and two-thirds of the lowest paid authors had been writing for over eleven years. What is interesting is that eighty percent of the lowest earning authors do not have a literary agent. Not surprisingly, over three-quarters (76.1%) of all the respondents said that they were not happy with the amount they earned from writing.

Author C voiced concerns about the differences between the amounts authors are selling; they are either selling a lot or not much at all. Author C believes that it is the middle ground that is necessary for authors to move on to selling more. As outlined above there is an increase of authors who earn over £5000 and those earning under £999, which seems to be a reflection of the current publishing industry that Author C is describing, where the focus is on big name authors: this reinforces the debate in pages 143-145. Agent A thinks first-time writers are put under pressure to perform well immediately and said:

“Even if they [publishers] find a new writer, they want that first book to perform very, very well first time around, whereas previously they might say well it is going to take us three, four or five books for this writer to get really well-known, now they really want a writer to become well known after the first couple of books and if they do not they tend to get dropped”. [Agent A]

This indicates that authors tend to be discharged if they do not perform well, which could be the reason that there are so many authors who earn less than

£5000 and also less authors in the middle bracket. Author C agrees that initial sales are now very important and if an author is not an automatic success, selling lots of books, then it is difficult for them to continue writing professionally. Author C observes that:

“Publishers now have less of a nurturing role and want success from their authors quickly. So it is difficult for authors to write full-time, for money, without this success.” [Author C]

This could be the reason that over half (54.3%) of the writers surveyed wrote part-time instead of full-time. Although Author B is a full-time author, they do not write full-time because they spend a lot of time doing other writing related activities such as workshops to supplement their income. Author F said:

“It is really difficult, at the moment, for midlist authors, and I am in category of being a writer who is quite established, I get good reviews, I get reasonable sales but just do not set the world on fire. Never really has big breakthrough novel, or won a prize, or had a film made; the kind of things that just tip the balance.” [Author F]

Author F continues by saying the publishing industry was not like this twenty years ago:

“Midlist authors could go on the way they were, without so much pressure.” [Author F]

These sentiments support the argument in pages 143-145, and the implications of this new phenomenon are conveyed on page 213, at the start of this chapter, where it is revealed seminal works that might not be published in today’s publishing environment. Author F believes that the solution to this is

for publishers to use the earnings of big name authors to support the small and midlist authors, instead of putting the money back into “promoting the big name authors, and giving the money to the shareholders”.

However, Author E said that although there are so many big names at their London publisher Author E believes the sales of these big name authors help fund Author E’s editor’s decision to nurture their career, and the career of other mid-list authors. Footnote 135 on page 145 supports this idea, and Agent H confirms this (discussed later in this chapter on page 284).

Fiction seems to be the most lucrative genre of writing, with sixty five percent of the authors who earned over £5000 writing within this genre. Over half (53.8%) of the fiction writers who earned over £5000 actually earned over £20000 and the same amount wrote solely fiction. While fiction appears to be the most well paid genre, Author A did not earn anything for their fiction until their second novel. Although Author A has been writing full-time for over fifteen years they said:

“It is only in the last four or five years that I’ve been able to make a living from my writing”. [Author A]

Before that Author A had to supplement their income by other means: teaching creative writing, proofreading for newspapers, abridgement work for radio, book reviewing for the papers, and as part time sales rep for a publisher. Although fiction seems to be the most well-paid genre, Agent A thinks it is particularly difficult for fiction writers to get published:

“There are so many authors out there writing novels, most publishers are quite conservative creatures: they want to publish books that make money [by in large]. And so if they are offered the choice of a novel written by a celebrity as opposed to a novel, that might be quite challenging or difficult, written by an unknown person – they go for the celebrities. You only need to look at this bookshop to see how many novels are out there”. [Agent A]

Author A believes:

“I think trying to get published and earn a living now, as an unknown writer, would be very difficult. I am lucky in a sense that I’ve got a couple of books that have sold well so I’ve got a track record and therefore publishers are interested in me. I have a literary agent who is able to promote me and sell me. If I did not have that it would be really difficult.” [Author A]

Additionally, Author F feels that the output of a publishing company is dictated by the marketing department and has experienced this first hand. Author F’s last novel received good reviews and feedback from publishers but the marketing department did not want to procure the book because sales cannot be guaranteed. Author F surmises:

“The balance of power has shifted from the powerful editor to the money people”. [Author F]

This opinion is supported by the experience of Agent I, who left their editorial role to become an agent for this reason (see page 266, further in this chapter, for more details). Legat (1991) confirms this by asserting that the role of the editor has “become subjugated to that of the money man” (Legat, 1991). Although Author E does write fiction full-time they said:

“Being a writer is my main source of income, not writing. It is not the book sales that pay the mortgage; it is actually the fluff around the outside”. [Author E]

By “fluff around the outside” Author E means the talks, events, workshops and other writing related activities. Additionally, Author E is supported by their partner’s income. Despite this Author E feels that they have been very lucky because their editor at their London publisher saw them as a long-term investment rather than a short term one, something Author E believes is happening less frequently these days.

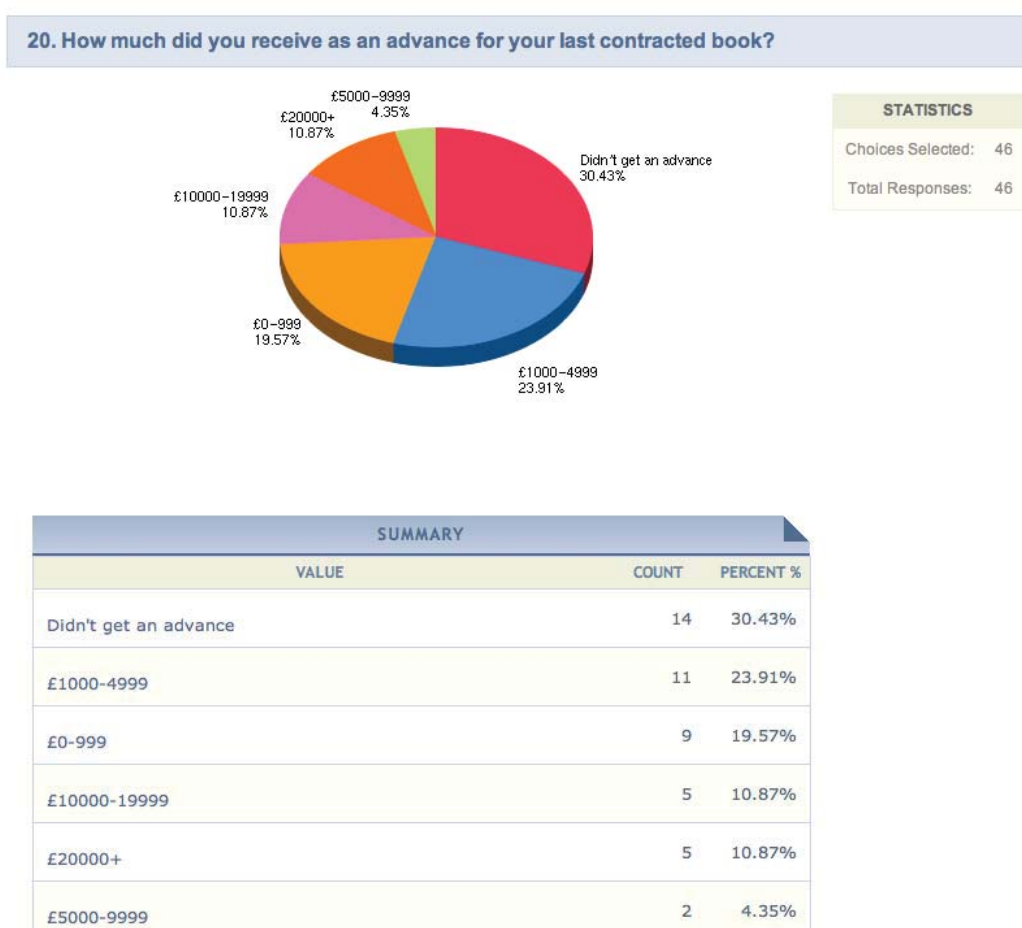


Figure 7. Size of advance payments the respondents earned

Just over three quarters (73.9%) of the authors surveyed earned under £5000 advance. For those who earn under £5000, just over two fifths (41.2%) took less than six months to complete their last work. This means that their less-than-£5000 advances did not need to last for a significant period. However, just under two fifths (38.2%) of those who earned below £5000<sup>174</sup> took longer than a year to complete their work, with just over a fifth (20.6%) taking longer than nineteen months. When asked about advances Author B said:

“I think it is pathetic: I want to be a novelist and my advance for writing a novel is £5000. You cannot write more than one a year, so where is that going to get you?” [Author B]

In fact Author B's advance was cut in half because the US publisher did not want to buy the rights. This demonstrates how important rights exploitation is in relation to the size of an author's advance. In general when asked if the advance for their last book had increased, decreased or remained the same just over a quarter (28.1%) of all the respondents said the amount had decreased while under half (43.8%) said it remained the same: this supports the author-advance issues discussed on pages 145-146. Only just over a fifth of authors had seen an increase in their advances. This is in contrast to the 2001 survey where just under nine tenths of the authors surveyed reported that their advances had remained steady or risen. This suggests that authors are in a worse position now than they were in 2001. Just over three tenths (30.4%) of the authors surveyed did not earn any advances from their writing in comparison to just under a quarter (23%) in 2001; however, over three quarters (78.6%) of these authors earned less than £999 from their writing in

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<sup>174</sup> This included authors who did not receive an advance



2008-2009. In fact, just under two thirds (63.6%) of the authors who earned below £4999 in advanced payments earned less than £9999 in 2008-2009. So the level of advance varies both in accordance to the level of earnings and through the level of rights exploitation. Author E doesn't think the advance system is fair, especially when celebrities earn very large advances. As discussed in pages 143-147, other authors share this sentiment.

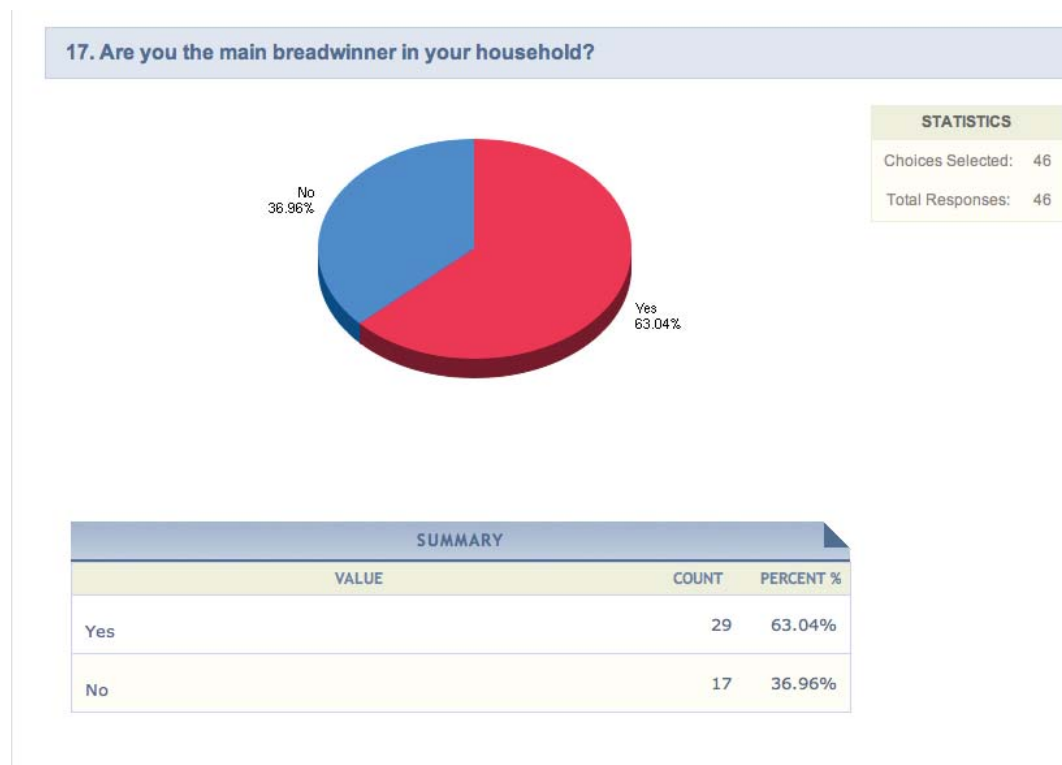


Figure 8. Number of authors who are breadwinners in their families

Nearly two thirds (63%) of all the survey respondents were the breadwinners in their family and writing is the main source of income for under half (44.8%) of the breadwinners. Fortunately just under a fifth (16.7%), of these breadwinners who rely on their writing for their main source of income, earn under £5000 for their writing. However, just over three fifths (61.5%) of the

breadwinners, who depend on their writing for their income, earned less than £5000 in advance payments, so have to rely on this money to support themselves and, in some cases, their families, while they write. This highlights the financial struggle of authors. Author B said that they would find it difficult to write without their partner's income and that they would not be able to support a family with their wages alone. Over half of the writers surveyed (52.2%) did not pay money into a pension. Of these writers half earned less than £4999 from their writing a year; however just over three tenths (30.8%) of these authors rely on writing as their main source of income, while the same amount do not pay into a pension because they already receive a pension and rely on that for their main income. However, over half (53.9%) of the writers who earn less than £4999 from their writing and do not pay into a pension are the main breadwinners in their families. This shows that many writers will not have financial provision, beyond state pension, when they reach retirement age.

15. Did you have a profession before writing?

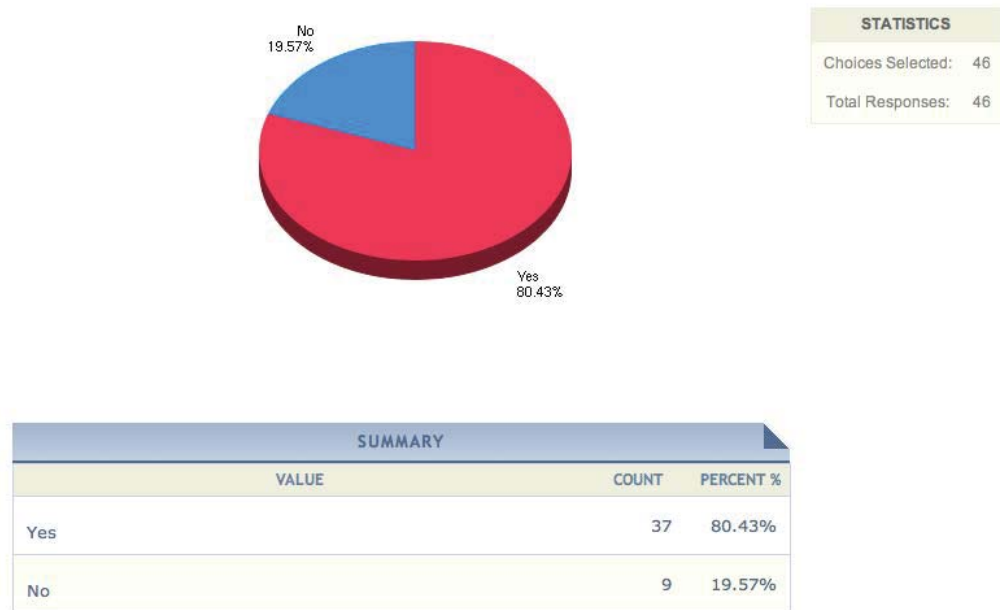


Figure 9. The number of respondent who had a career before writing.

Over four fifths (80.4%) of all respondents had a career before they started writing. Of this majority only less than a fifth (18.2%) were happy with the amount that they earned from writing in comparison to the just over two fifths (44.4%) of authors who did not have a career before they started writing. The reason behind this could be that the writers who did not have a career before they started writing do not have a point of reference for earnings. However, Author D, who had a career before writing, is actually quite happy with the amount they earn because they know how difficult it is to get your work published and how little other authors earn. Author D did concede that they would find it difficult to live on the amount that they earn because their partner's earnings support them. Author D also worked out that there have

only been a couple of years where they has earned more than they would have if they had remained in their previous career. Author A said:

“People do have a strange understanding of how much money you can make from being an author and people are surprised at how little money there is in it”. [Author A]

While Author B said:

“Sometimes I feel ashamed by how little I earn from my writing”. [Author B]

Over half (54%) of the authors who had a career before they started writing gave up that career to pursue authorship as a profession. Author B said that many authors are not “commercially-minded” indicating that writing is not a profession that people enter into for financial gain. Author B adds that authors do not know how to exploit their work correctly as a result of this. This reinforces the importance of literary agents: something that will be discussed later in this chapter.

Both the survey and interview results show that the majority of authors have to supplement their income to live. For years Author F did a small amount of teaching and mainly focused on their writing but now they are doing more teaching than writing. Author F surmises that this affects their writing because they do not have the time to write now and their concentration level is not the same. Author F has written full time in the past; however, Author F enjoys teaching and enjoys having a bit of her life where they are in contact with

people, and also that extra structure and regular income. Author F's main source of income is through their teaching creative writing position but in the past Author F found that their income through writing, and a small income through a part-time teaching post was enough to live on; however, Author F concedes that this income was in conjunction with their partner's income. Author C supplements their income by other writing activities such as copywriting, workshops and ghostwriting. Author C said that ghostwriting, in particular, has been a very productive way to earn money because this allowed them to develop the editorial skills and the craft skills, and then apply these skills to their own work. Author C said that their last book took eight years to write so the income from ghostwriting helped to support them during that time. However, Author C said that other authors could be quite disdainful of ghostwriting because:

“Some authors have big egos and think it is beneath them to write for other things such as ghostwriting or advertising etc.” [Author C]

Additionally, Squires (2008) observes that some people within the industry see ghostwriting as “indicative of a decline in literary standards” (Squires, 2008, p.89). However, Author C learns from all their writing experiences and has worked with some of the top editors in the business, from ghostwriting days, and has learned so much from them<sup>175</sup>. The disdain for different types of commercial writing, that Author C has experienced, is reminiscent of the position authors found themselves in during the seventeenth and eighteenth

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<sup>175</sup> Additionally, Squires (2008) asserts that ghostwriting is “an editorial function” because it involves many editorial processes from proofreading to copy-editing (Squires, 2008). As such, it can be an excellent opportunity for writers to develop their craft.

centuries and shows that a stigma against commercial writing is still in existence today. Additionally, while ghostwriting can be a lucrative extra source of income for authors, it undermines the notion of the author as an original creator because the work is attributed to someone who did not write the book. Instead the brand name of the “celebrity” the book is about is used to sell the book and copyright is used as an economic incentive. In the cases of ghostwritten books either the ghostwriter or the subject can own the copyright of the work: it depends on the contract negotiations (Ward, 2007b). Author C who said they usually control the work they ghostwrite confirms this.

Author D thinks:

“People have a romantic notion of authorship where authors earn a lot of money, like the top-selling authors such as J.K. Rowling and Ian Rankin etc.” [Author D]

However, Author D asserts that it is not the case for most authors: They surmise:

“People think that once you have your first book published everything else will follow automatically”. [Author D]

Author D continues:

“I am not sure how practical authors are until they are actually professional. Once you’re professional, things change”. [Author D]

Author E supports this by saying that they are conflicted about seeing their writing as a business but is coming round to the idea. It is clear that authors must be realistic about their earning potential and these results show that this does not happen until they write professionally. Author F is also beginning to think more commercially as a result of the pressures of the publishing industry. Author F is writing books, that “perhaps aren’t from the heart” but ones they know will be commercially successful. Author F surmises:

“I am going to have to find myself a job and carry on with the writing that I want to do, that might not get published or only by small publishers – and not publicised properly and therefore will not sell, and do a job to support myself doing that, or else find another form of writing to support myself writing the work that I want to write”. [Author F]

This shows that some authors are beginning to respond to commercial pressures, which is important if they want to earn a living from their writing. However, it also indicates the extent to which publishers drive cultural output based on their commercial pressures. Although thinking commercially is very practical in the current economic climate it undermines the notion of originality in authorship and shows that writing is often a craft based on market demand rather than an act of genius.

## 5.4.2. Scottish Authors and Literary Agents

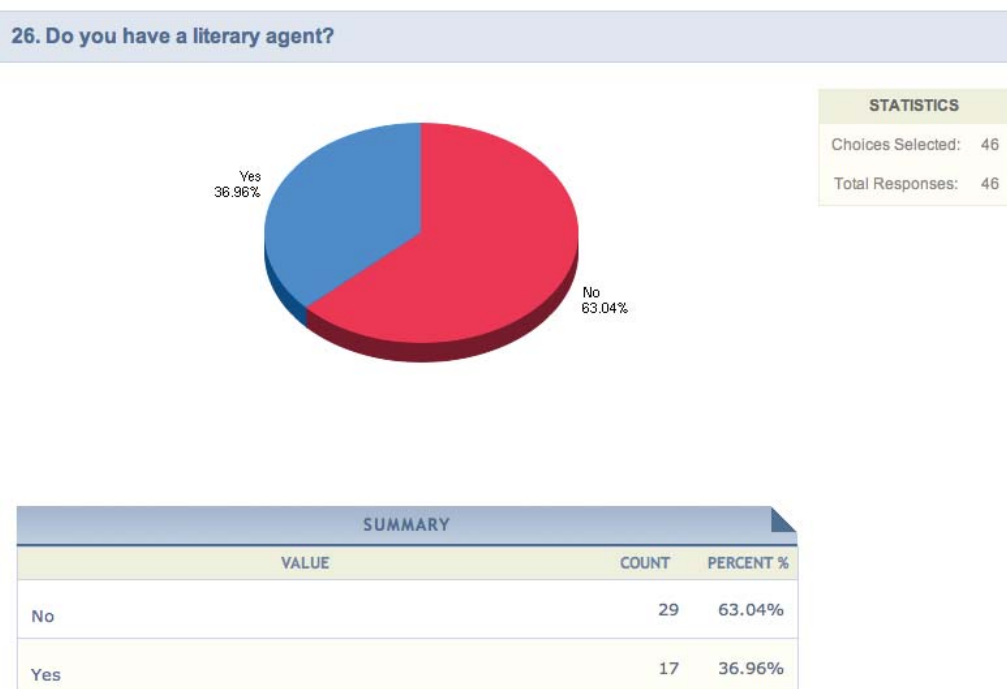


Figure 10. Appointment of literary agents

Despite there being a rise in literary agencies in Scotland since 2001, nearly two thirds (63%) of the respondents did not have a literary agent in comparison to just over half (51.2%) of the respondents in 2001. This could be as a result of literary agencies taking on fewer authors a year (see page 214 earlier in the chapter and pages 267-270 later in this chapter). However, of these unagented authors nearly two thirds (65.5%) were part-time. Also just over half (55.2%) wrote popular non-fiction, just over a third (34.5%) wrote educational books, and just over a tenth (13.8%) wrote poetry: these are three genres of publishing that do not generally require literary agents, so the fact that the majority of Scottish authors do not have literary agents could be because it is not necessary for these authors to have an agent rather than it being too difficult for them to get one. In fact just over a third (37.9%) of unagented authors did not feel it was necessary to hire a literary agent in



comparison to just over a fifth (20.7%) who said they could find a suitable agent and the small percentage (6.9%) who did not realise there were agents in Scotland. Less than two fifths (37.9%) of unagented authors wrote fiction and less than a third (27.6%) of unagented authors wrote children's books. At this juncture it is important to note that all of the interviewees have literary agents. However, all of the interviewees mostly write fiction and all of them, except one, write full time. Author A did not have an agent for years because they were publishing Scottish content for Scottish publishers, so Author A never felt they were going to get a better deal with an agent. Just over a quarter (27.6%) of unagented authors felt that they had such a good relationship with their publisher that they did not need to hire an agent, while just under a fifth (17.2%) relied on information from The Society of Authors<sup>176</sup>. Out of the interviewees only one author, Author A, agree with this sentiment. Author A said that if they did not have an agent, they would be able to run their contract through the Society of Authors (SOA) because joining them was the best thing Author A has done. However, Author A feels that it is actually unpublished authors who need the most guidance and protection and you cannot become a member of the SOA without a published book. Additionally, when Author A started writing novels they tried to get an agent but was unsuccessful for their first novel; however, because that book did quite well they were able to get an agent. Author A surmises:

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<sup>176</sup> Other reasons given: Terminated with previous agent because did not work well and will look for another; I have yet to find an agent willing to represent me; I am a literary agent; Because it is not cost effective on the contract I signed; Agents do not usually take poets on; Still seeking an agent; Actively looking for an agent, preferably Scottish; Cannot afford to and do not know how to find one; Not the type of work that an agent would agree to take on; Agents are closing their lists

“Until you are reasonably well known agents do not really want to take you on, but you need an agent to become reasonably well known”.  
[Author A]

This highlights the difficulties new authors face in both hiring an agent and getting their work published. Also, over three quarters (79.3%) of unagented authors had been writing for over ten years and over two fifths (41.4%) had been writing for over twenty-one years, and have thus been writing before the advent of literary agents in Scotland.

The results of the survey show that of the respondents that have agents, just over two thirds (68.8%) earned over £5000 in comparison to just under a third (32.1%) of unagented authors, who earned over £5000. In fact just over two fifths (42.9%) of unagented authors earned under £999 for their writing in comparison to just under a fifth (18.8%) of agented authors. These figures are mirrored in the size of advances that agented authors receive in comparison to non-agented authors with sixty percent of agented authors earning over £5000 advance in comparison to nine percent of non-agented authors. In fact the majority (65.5%) of non-agented authors earned under £999 for their advances. Author C decided to employ an agent because they did not know anything about the publishing business, so Author C knew that their agent would be able to get more money for Author C than they would be able to get themselves. Author C thinks lots of authors do not want to deal with the business aspects of their work so that is why they employ agents. This supports the notion that authors are not usually commercially minded. Of the respondents who had agents, over two thirds (68.8%) of them had agents who were based in London rather than Scotland. Of these London-agented

authors under a quarter (27.3%) of them earn below £5000, while the same amount earn over £30,000, in comparison to authors who are represented by Scottish agents where half of the respondents earned less than £5000 (in fact half earned less than £1000) and half earned over £30,000. However, when comparing advanced payments three quarters of authors represented by Scottish agents earned over £5000 in advances in comparison to just over half (54.5%) of authors represented by London-based agents. Scottish authors with Scottish agents seem to earn higher advances than their counterparts with London agents, despite earning less annually: this could be because they give us their lucrative rights in exchange for advanced payments. As outlined in pages Chapter Six, Scottish publishers are more likely than the author to control subsidiary rights and thus might offer larger advances for this privilege. Additionally, both Author D and Author E believe that advances are more important than rights sales and said they would be more likely to sell their rights upfront for higher advanced payments (see pages 261-62): Publisher B confirms these practices (see page 365). Although Scottish authors earn less with Scottish-based agents this could be because three fifths (60%) of authors with Scottish agents are published by Scottish-based publishers in comparison to just under half (45.5%) of the authors with London-based agents, so it may be related to the amount Scottish publishers can pay rather than the negotiating skills of the literary agent. All the authors with Scottish agents paid between zero and ten percent in commission in comparison to those with London based agents where half of the authors paid between zero and ten percent and the remaining half paid

between eleven and fifteen percent<sup>177</sup>. So although authors with London-based agents tend to earn more, they pay their agents a higher commission rate.

Out of the survey respondents who did have literary agents less than third (29.4%) had agents who were based in Scotland. This corresponds to the interviewees where a third of the authors (Authors C and E) have Edinburgh based agents. The remaining agents had English agents, with half of all the interviewees (Authors A, D and F) represented by London agencies. However, Author B chose an England-based literary agent because there were no literary agents based in Scotland when Agent B published their first book and Agent F did say that they were considering hiring a specialist Scottish literary agent, in addition to their London agent, if they crossed over into another genre. Consequently, authors writing cross genre and hiring several literary agents that specialise within that genre could be a future trend. Eighty percent of the surveyed authors said that the reason they chose their Scottish-based agents was proximity to them. Both of the interviewed authors also said that this was an important factor in their decision to hire a Scottish agent. Author C, in particular, said that after years of being represented by a large London-based literary agency:

“It is refreshing to discuss any problems regularly, either face-to-face or over the phone, with someone who is author, rather than overhead, focused”<sup>178</sup>. [Author C]

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<sup>177</sup> This is discounting the respondent who chose ‘variable’ as their answer.

<sup>178</sup> Author C was with a big London agency but left when that agency merged with another big agency to become a conglomerate cross-media agency.

None of the surveyed authors with Scottish agents chose their agents because they were close to the London-based publishing activity but two fifths (40%) chose their agent because they were close to the Scottish publishing industry. Does this show that authors with Scottish agents mainly hope to publish their work with Scottish publishers? Three fifths (60%) of the authors with Scottish literary agents are published by Scottish publishers; London based publishers publish the remaining two fifths. However, two of the interviewed authors (Author C and E) are represented by Scottish agents and are mainly published by big London-based publishing houses. Author C said that their agent goes to London regularly, so Author C does not feel that they are missing out on contact with the publishing activity in London (more information about Scottish literary agents' engagement with the London publishing activity can be found on pages 272-276).

Of the authors with Scottish agents who are published by London-based publishers: all of them said that they chose London publishers because they offer larger advances and marketing budgets; half of them said the London publishers have better links with overseas publishers; half of them said they had better rights potential; and half of them said a reason they chose the London publisher because that is what their agent advised. As discussed earlier in this chapter, of the authors represented by Scottish agents half earned under £1000 and half earned over £30000. Four fifths of these authors said their last advance was less than previously in comparison to just over a quarter (28.6%) of the authors who were represented by London-based agents. In fact, of the authors represented by London-based agents: just over

two fifths (42.9%) of authors said their advances had remained the same and just over a quarter (28.6%) said it had actually increased. Three fifths of authors with London-based agents are published in London and this could indicate that Scottish publishers are lowering their advances in comparison to London publishers who are either keeping the advances the same or raising them. However, this situation may not just be reflective of the Scottish publishing industry but also of other regional publishers outwith London. Author F was published by a large London based publisher but is now published by a smaller independent publisher who is based in England but not London. Although Author F now has more support and contact with the publishing staff, their advance has been cut by a tenth. Author A did try and publish their books with a Scottish publisher however they could not offer Agent A a decent enough advance, and Author A needed the advance to live on while writing. Author A said:

“If you want to write the next book, you need to have a good enough income from the previous book to do that”. [Author A]

This situation is by no means isolated. For example, after the success of his first novel *Lanark*, published by Canongate, Alasdair Gray offered his second novel *Janine* to Canongate for an advance of £1000, which he needed to live on while completing the book (Gray, 2008a). Unfortunately, due to a “low and sporadic” budget, Canongate could not afford to pay Gray a large enough advance for his second novel so it was published in London. Canongate did try to get the advance for Gray by selling the American copyright; however the American publisher did not want to publish the book (Gray, 2008a). Again, this

illustrates how important rights sales are for author advances and shows how difficult it is for authors to earn a living from their writing.

This situation is reflected in the interview results where all the interviewees were published by London publishers at some point in their career, with only three of the authors (Authors A, C and E) also published in Scotland. Author A is mainly published in London but has also been published by Scottish publishers. Author A said:

“The first publisher that said yes was a London publisher so that’s where I’ve ended up”. [Author A]

Authors B and D are published by a London publisher. Both London and Edinburgh publishers publish Author E. Author C is published by a big London publisher because:

“It is where the money is, Scottish publishers do not have a lot of money”. [Author C]

Author C did publish one book with a Scottish publisher but would not publish with them again because the advance was so low that they could not live on that amount of money. Author A said:

“In an ideal world I would like to be published by a Scottish publisher but, with the exception of Canongate, nobody is in a position to compete with the London publishers, and even Canongate couldn’t compete until very recently”. [Author A]

Advances are not the only concern for authors, Author C believes that distribution is important and London publishers have much better distribution networks. Author C's last book was sold in Tesco, which Author C believes "is one the most influential and important book retailers in the UK market." Author C continues:

"No Scottish publisher really have their books in Tesco so I would not want to limit potential readers by publishing with them". [Author C]

Author C thinks that writing is a business and so wants their work to be sold in supermarkets because "that's where lots of people buy their books", however, Author C believes that there is a certain snobbery that exists and many writers would not want their books sold there. This reaffirms the idea that many authors do not see their writing as commercial.

Additionally, Author A believes that selling their books overseas can be difficult because the language used is very Scottish. Author A said this might be subconsciously affecting their writing. Author A said:

"I am aware that the less diluted the Scots is, the less problems that is going to cause, and although I am writing about Scotland and I am writing about Scottish issues, I want it to go further". [Author A]

Author A does not want to alienate their potential audience but also does not want to lose the essence of his writing. Having an international audience is clearly important to Author A and they also believe that Scottish publishers



should have a more international outlook and not just focus on the domestic market. Author A said:

“I wish Scottish publishers were able or willing to take on more that is not Scottish content, again the trouble is that most of them do not have enough capital to compete with the bigger publishers. Until that happens I am afraid Scottish publishing is going to remain a small player”. [Author A]

This opinion is supported by the majority of the interviewed agents, as discussed on pages 276-282, and is also discussed further in Chapter Six.

It is interesting to discover the motivations behind hiring an agent, as this practice becomes more commonplace. Over two fifths (41.2%) of agented authors believe that publishers only accept authors with agents and so that was one of the reasons that they chose to hire an agent. Accordingly, nearly three fifths (58.8%) of agented authors believe that an agent will help find them a suitable publisher. Nearly all (94.1%) of agented authors hired an agent to negotiate better royalties within their contract, and just under nine tenths (88.2%) of authors hired an agent to negotiate better rights deals within their contracts. Just over seven tenths (70.5%) of agented authors chose an agent to handle the business aspects of writing and just under two thirds (64.7%) of authors hired an agent to act as a personal advocate<sup>179</sup>. Just under two thirds (64.7%) of agented authors said they had better contracts as a result of hiring an agent, just under half (47.1%) of agented authors said they had better royalty deals as a result, and just over two fifths (41.2%) of

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<sup>179</sup> Other reasons for hiring an agent include: To have a presence in London since the author is based in Scotland, and editorial value.

agented authors said they had better rights deals as a result. These results show the multitude of benefits hiring a literary agent brings to authors. Author D hired an agent because:

“They definitely do get more money for you than you would get if you’re on your own”. [Author D]

However Author D describes their agent as “scatty with things like rights she also expects you to know rather than her”, which is not a good indication of the expertise of certain literary agents. Author B also voices this concern, and worries that:

“Authors are taking on unscrupulous agents because good literary agencies are taking on less authors”. [Author B]

Inexperienced agents, and their implications for the publishing industry, are also concerns shared by many literary agents and will be discussed further in this chapter. Just under two thirds (64.7%) of agented authors said they had higher advances as a result of hiring an agent; this sentiment is validated by the results of this survey, which shows authors with agents earn higher advances than those without agents. Just under a fifth (17.7%) of agented authors said that having an agent brought them no benefit. Just under half (47.1%) of agented authors said their agent had been a source of valuable career advice and guidance. Just under a fifth (17.7%) of agented authors said that having an agent resulted in them having more titles in print. Author E’s first agent, of fourteen years, was based in London but was a one-woman

organisation; however, Author E recently moved to an Edinburgh based agency. Author E felt very complacent with their first agent:

“I was ticking along without going anywhere, and I realised I wanted to take my career a step further so I moved to a different agent who could make this happen. I needed somebody who would be a bit more proactive”. [Author E]

Author E chose a relatively new Scottish agent because they [Agent E] thought their Scottish agent would be more proactive because they were still building their list.

### 5.4.3. Scottish Authors and the Importance of Rights

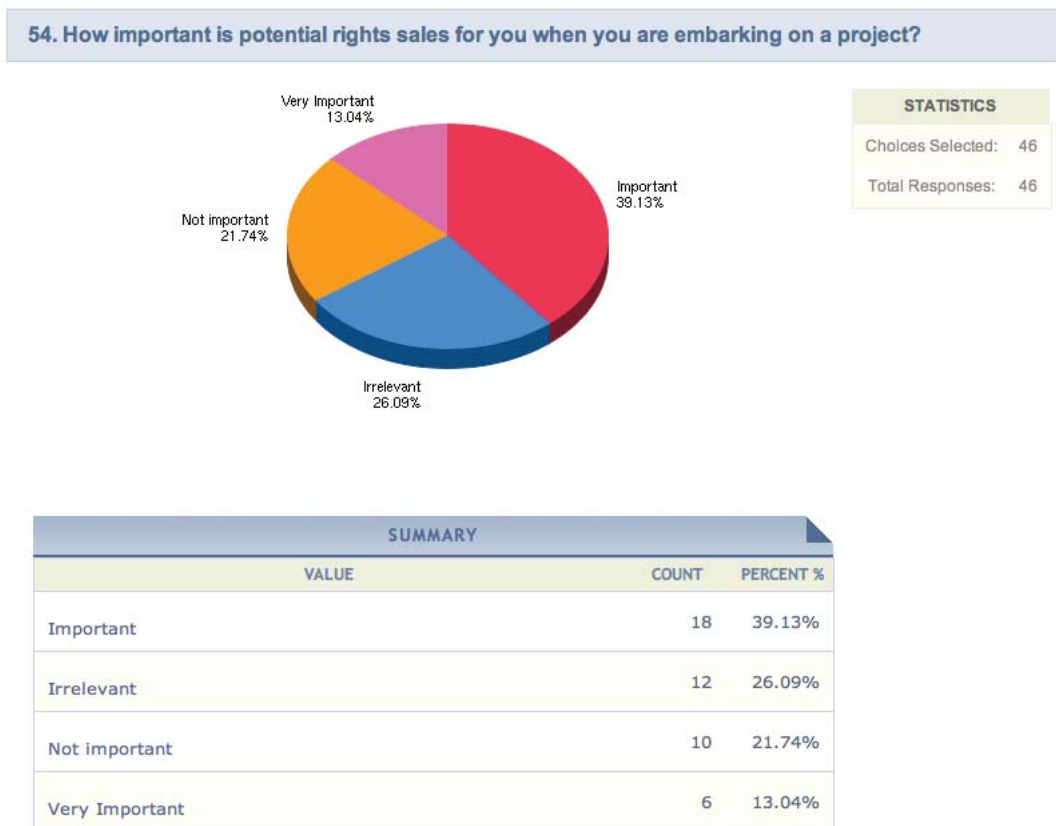


Figure 11. The importance of rights sales

When asked how important rights potential was when embarking on a project; thirteen percent said very important, thirty nine percent said important, twenty-two percent said not important, and twenty-six percent said irrelevant. So fifty-two percent thought that rights potential was either very important or important, and forty-eight percent that it was not important or irrelevant. Of the fifty-two percent that said it was either important or very important, 47.8% earned under £999 and 30.4% earned over £5000 in comparison to the forty-eight percent, who thought it was not important or irrelevant, where 61.9% earned over £5000. There is no way of interpreting this finding completely accurately – it could be that authors with literary agents are less likely to think about rights - but the implication would be that thinking about rights, and thus thinking commercially, does not mean that you will earn more money from your writing. Over three quarters (76.5%) of agented authors hired an agent to sell rights such as foreign and film and TV, this shows that while these authors do think about exploiting their rights, it is something that they expect their agents to deal with. Although it is not necessary for authors to be overly concerned about rights deals, if this is relevant to their work, it is important that they think commercially enough to hire an agent or publisher who can exploit these rights correctly. Author A believes employing an agent has made a huge difference because they [the author] do not need to deal with contracts or foreign rights sales. Before Author A had an agent they read the contract and signed it, but did not negotiate anything so Author A believes they now have better deals as a result. In fact Author E recognises the importance of rights and said:

“One of the reasons that I got a new agent was my old agent gave all rights to my publisher: TV, film, translation, she gave everything to the publisher, but by doing that she got me a higher advance. One of the reasons that I moved my Edinburgh agent is that they wanted to hold onto the rights and exploit them within the agency”. [Author E]

Author A said that rights potential is not that important to them:

“I try not to think about rights, I try to write what I want to write”. [Author A]

However, this does come into play because Author A uses the Scots language a lot. Author A’s literary agent advised them that the reason overseas publishers did not buy Author A’s first two novels was because foreign markets would not be able to cope with the Scots language. Author A said:

“I try not to think about TV rights or film rights when I am writing. I try to write the book and then see what happens”. [Author A]

However, Author A has found themselves modifying language to appeal to a wider audience. This suggests that while authors do not like to see themselves as commercially minded, they do see the value in exploiting their work through different markets and platforms, and understand that copyright engenders this.

Three of the interviewees did let rights potential influence the way they wrote. Author B thinks about rights potential more now than at the beginning of their career. When Author B is discussing a new idea with her editor and agent

Agent B will bring up the rights potential, such a foreign rights and then work with the idea with that in mind. Author B said:

“I think quite consciously, possibly in quite a contrived way, about what the potential rights possibilities are”. [Author B]

Although Author F does not think about rights potential when writing their normal genre of books they have started to be a bit more savvy with regards to extending in the children’s book market: Author F is thinking more commercially, and is conscious about developing a series, that could cross over to different media. Although this is not how Author F normally writes, Author F is conscious about the expectations of the publishers, who look for more commercial work. Author C usually writes with film and television rights in mind. Author C says:

“The modern novel very often is written with film in mind because it is where part of your money comes from. And also, visual media is huge; when you think of how most people listen to stories nowadays it is on the television or on film much more than by book. And people become accustomed to that way of thinking of a story, so you want to let them do that, you want to let them imagine it that way”. [Author C]

As a result, Author C’s work has been optioned for both film and television.

55. Would you benefit from rights training/seminars?

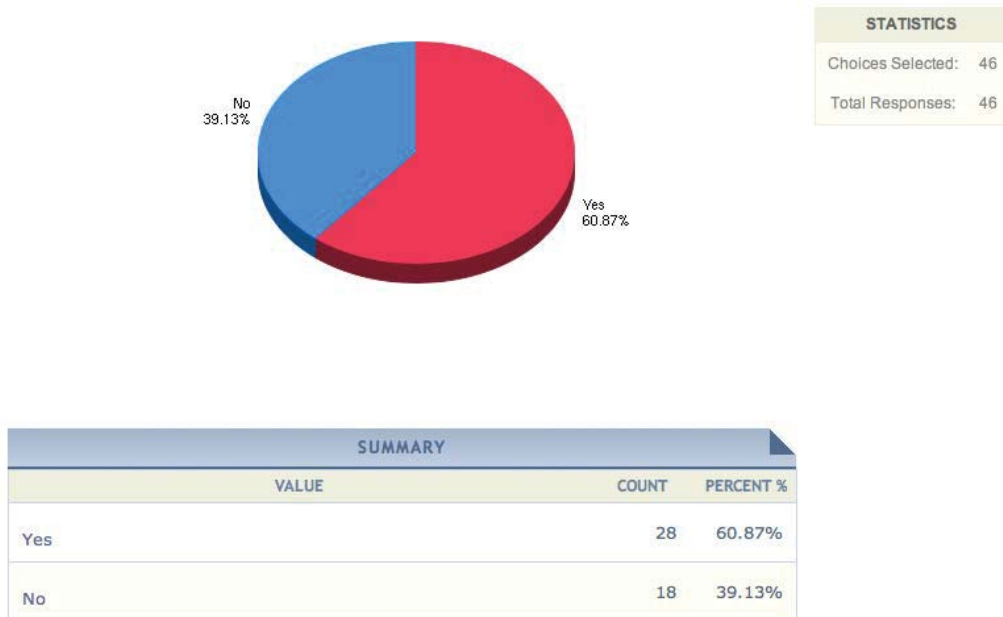


Figure 12. Rights training

Just over three fifths (60.9%) of all surveyed respondents did say they would benefit from some sort of rights training. Author D expressed a keen interest in the progressions of authorship, especially rights issues, and relies a lot on the Society of Authors and their quarterly journal, *The Author*, for information and updates with what is going on. This pro-active attitude is mirrored by both Author B and C, who are both committed to learning as much as they can about rights. In fact, Author B thinks that authors should make the effort to learn more about copyright:

“Because there are two sides of the coin: protecting your own rights and earning the correct money from them and then making sure you do not abuse someone else’s rights and you will get into huge trouble, possibly expensive trouble, if you do not clear permission for any quotes you might use”. [Author B]

However, Author B thinks that publishers should take some of the responsibility for educating authors: something this study found that Publisher D does (outlined further on page 349).

To find out how important copyright was to Scottish authors, the interviewees were asked if they would write without copyright protection; the responses were mixed. Author E said:

“I’d still write, because of the way I am: I do not think about copyright, or I do not think about translation rights. It is hugely important for me, as a writer, to be linked to my work. I think it is hugely important to be recognised as the creator of your work. For me, it is a moral thing rather than a financial thing”. [Author E]

This shows that some authors see copyright as a business, as a law to protect financial gain, rather than protecting culture/moral rights (more of an economic right than a moral authorial right, as discussed in both chapters one and two), which it also does. Author A believes that being “linked” to the work is important but without moral rights the work might be subject to derogatory treatment. Author F agrees and said:

“The reason I write is nothing to do with what happens in the outside world; I need to write. I cannot imagine not doing it”. [Author F]

Author F believes that they might have found alternative methods to earn money if copyright did not exist, again believing that it is predominantly to protect income; however, Author F has to earn additional income anyway because they do not earn enough from their writing even with copyright protection. Author A said:



“I probably would but I am very aware how important that [copyright] is for my livelihood: I do not think it would stop me wanting to be creative with words, if copyright did not exist, but absolutely think it is a crucial part of my ability to make a living from what I do and the reason copyright laws exist is that people were ripped off in the past”. [Author A]

This, again, reinforces the idea that authors believe copyright is in existence solely to protect financial reward and challenges the utilitarian view that incentive to create would not exist without copyright. Author D agrees with this sentiment by saying:

“Certainly, if there were no financial reward, I would not spend the time I do. I certainly have a drive to write but quite honestly, if there had been no money in it, I would have done other things, like teaching, because there’s something about respect for your work, which is monetary. It is recognition as much as anything because that shows it is serious. Whereas if it is a hobby, which it is if it is not paid, it is not the same, I would not feel the same about it”. [Author D]

Author B continues this discussion and thinks that, initially, authors just want to write, regardless of copyright laws. However, Author B is the only interviewee who has brought up the issue of moral rights and said:

“Cannot imagine what it would be like trying to write knowing that there were no controls over the work”. [Author B]

Author C is the only author that said they would not write without protective copyright legislation, saying:

“No. And there have been times when I have asked myself ‘Should I still be doing this’ because I can earn more from doing other things”.  
[Author C]

So, with the exception of Author C, the interviewed authors would continue writing even if copyright protection did not exist, because they have an intrinsic need to write. Although this perpetuates the Romantic notion of authorship it is clear that the majority of the interviewees associate copyright with the financial protection of their work rather than the moral protection. So while the emphasis is on the intrinsic need to write, and thus promotes Romantic authorship, the majority of the authors said they would write without copyright protection and did not mention natural authorial rights or the labour value placed in their work: the majority of authors believed that copyright was an economic right rather than a moral one. Additionally, it is clear that creative activity would exist without copyright, which challenges the utilitarian incentive justifications of copyright.

To discover more about their attitude towards copyright, the interviewees were asked about their opinion on the length of protection. Many of the interviewed authors thought that the current copyright term is too long and believed that fifty years was sufficient. Author A cannot see the reason behind the seventy year term and believes it only seems to protect publishers, the estates of authors, and big corporations. Additionally, Author A also believes the problem with seventy years after the author’s death is that many authors can fall into oblivion after that length of time and can be forgotten about. Author A said:

“What I’d rather see is a reduction in the term of copyright after your death and a strengthening of some of your protection when you’re alive, that would seem to me to make more sense and I would certainly trade that”. [Author A]

Author E, who is happy with the current copyright laws and actually thought fifty years was reasonable, agrees with Author A’s concerns because:

“My books are very contemporary so I do not think they’ll be popular in seventy years or more”. [Author E]

This confirms the argument of Gordon (2002) on pages 26-27 of Chapter One, who argues that authors earn most of their money, through copyrighted works, in the first few years subsequent to publication and that very little financial recompense is gained in later years. While, Author B thinks the current copyright term is too long and thinks it should go back to the fifty-year term, Author D thinks the current copyright term is very reasonable but should not be longer than it is now. However, Author C subscribes to the labour-based justifications of copyright discussed on pages 32-38, and believes:

“Copyright should be extended to about 100 years because we are all living longer and I think the seventy year mark is not enough. So I would say that 100 years is better because you want to be able to leave it to your children. If you had built up a factory, or a business, you would have that capacity to leave it behind, and I think because so many writers, nowadays, are women that’s quite important too”. [Author C]

This sentiment echoes the opinion of Mark Helprin, which is outlined on page 82 of Chapter Two, and shows that the distinction between IP and physical property is still blurred.

The battle for rights control has been documented in earlier chapters. The survey and interview results have established many conflicting practices in the Scottish publishing industry. Publishers owned both the foreign rights and the, very lucrative, film and television for just over three fifths (62%) of unagented authors, with just over a tenth (13.8%) of authors owning their own foreign rights and around a tenth (10.4%) owning their own film and TV rights<sup>180</sup>. However, where publishers owned the foreign rights only just over a half (52.9%) of the authors' works were sold overseas, so just under half (47.1%) of unagented authors whose publishers owned these rights had foreign rights that were lying dormant. Of the authors' whose publishers owned their lucrative film and TV rights only 5.9% had exploited their work through film and none had exploited their work through television. Publishers owned the electronic rights for just over the fifths (44.8%) of unagented authors (authors owned just over two fifths – 20.7%); however, of this less than a fifth (15.4%) of the authors, whose rights publishers controlled, had exploited their works through e-books, revealing that electronic rights were unused. In situations like this it would be interesting to know whether this would be the case had the author hired an agent.

In comparison to authors without agents, nearly half (47.1%) of authors retained their foreign rights, and nearly a quarter (23.5%) of agented authors sold the rights to their publishers<sup>181</sup>. Over seventy percent (70.6%) of agented

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<sup>180</sup> The remaining percentage is made up of authors who do not know who owns the rights and authors answered not applicable.

<sup>181</sup> The remaining percentage is comprised of 'do not know' and 'n/a'

authors had sold their work overseas in comparison to just over half (52.9%) of unagented authors. Is this as a result of agents having control of the rights? The majority (88.2%) of agented authors wrote works of fiction, and this could explain a. why they have an agent in the first place and b. why they try to hold on to lucrative rights such as foreign and film and TV. For example, nearly three fifths (58.8%) of agented authors retained their lucrative Film and TV rights in comparison to around a tenth (10.4%) of unagented authors, and nearly half (47.1%) of agented authors had exploited their work through film or television in comparison to 5.9% of unagented authors. In fact, Author C has a separate film agent based in London, and has insisted that this agent deals with any film deals rather than giving the rights to another agent or the publisher. Author C wanted their film agent to sell their rights for them instead of someone else, which is a sensible option since exploiting cinematographic film rights is particularly complicated (Owen, 2010). Additionally, one of the reasons Author A chose their literary agency was because they have a very good foreign rights department so the rights for his latest novel have been sold worldwide. The rights for Author A's previous novel were difficult to sell and Author A suspects that it might be because of the Scottish subject area because the book was critically acclaimed. Again, this reinforces the idea that while authors might not see themselves as rights-oriented, the very fact that they hire an agent to fully exploit their rights shows that they believe these rights are important and not worth disregarding.

Although over a quarter (25.5%) of agented authors retained their e-rights, more authors (35.4%) sold them on to their publishers. However, none of the

agented author-respondents had exploited their work through e-book format, which contradicts the predicted ebook revolution discussed on pages 52-55 in Chapter Two. Although Author A did not have an agent for their first novel they still own the e-rights because it wasn't written into the contracts then, so they automatically revert to Author A. Author A's first book of short stories has been turned into an ebook: It was out of print and then Author A's friends, who owned a small ebook company, turned it into an ebook; however "they only sell about three copies a year". There were no digital rights in the contracts that Author E signed with their old agent, because they were a while ago, so Author E will have control of these; however, their work has not been exploited through this medium yet. Contrary to the findings that literary agents now controlled the majority of the author's rights, Author D's rights are mainly controlled by their publisher. Author D took this decision because they can get more money from their publisher selling the rights than their agent because they have a very good rights department. Author D's publisher also put more pressure on them to sign over the rights in exchange for higher advances, an experience that Author E also vocalised, which indicates that large upfront advanced payments are more important to some authors than potential rights income. This is confirmed by Publisher B, discussed further on pages 351, who are able to pay their authors a larger advance as a result of rights exploitation. Publisher B would not be able to do this without control of the rights. Author E said that these advanced payments were vital for the completion of the books, which is also one of the reasons authors used to sell their copyright outright in the past. Author D is the only interviewed author to have a determined electronic publishing schedule and has just signed a

contract for e-books and their publisher is planning create and sell these products.

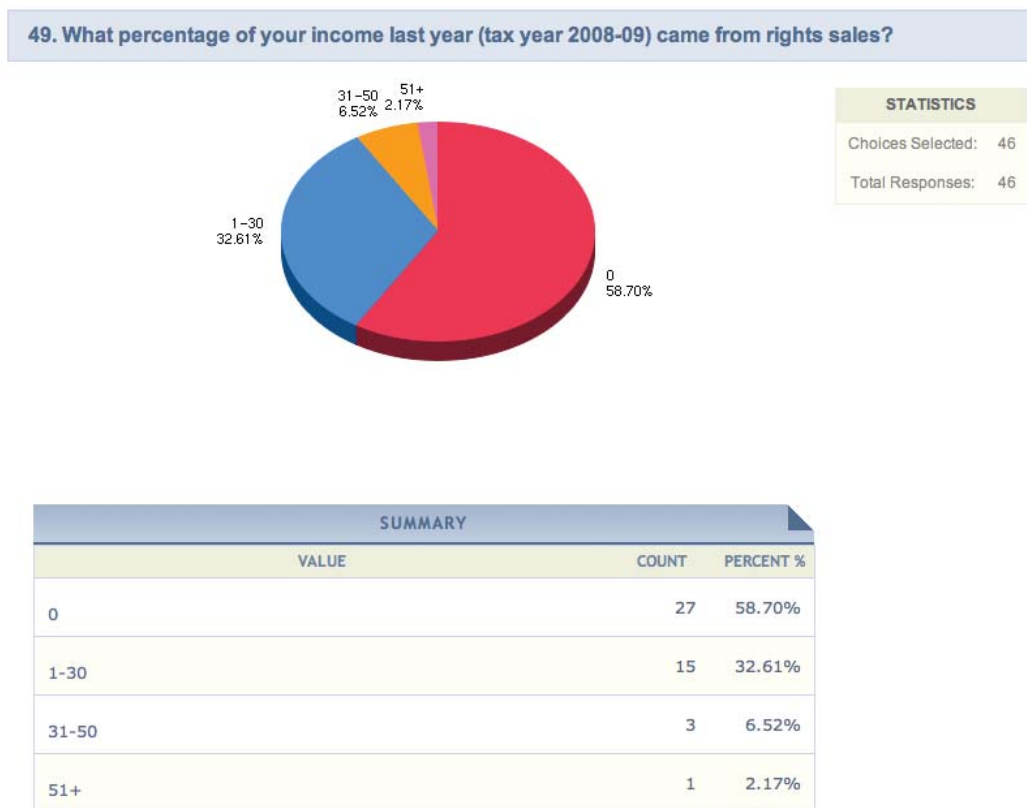


Figure 13. Income through rights sales.

As outlined in previous chapters, the UK’s economy is now knowledge-driven, with an emphasis on income derived from IPR exploitation. When looking at how much the authors earned from rights sales that year, over half (58.7%) of the respondents earned no income from rights sales, while almost a third of authors (32.6%) said between ten and thirty percent of their income came from rights sales. Less than a tenth (6.5%) of authors earned between thirty-one and fifty percent of their earning through rights sales, and 2.2% earning over fifty-one percent or their earnings through rights sales. This reveals that

rights sales are not always lucrative to authors and could be the reason why authors are willing to forgo rights control in favour of larger advances. However, the lack of income through rights sales could also be attributed to inefficient rights practices. Additionally, the survey of publishers, discussed in Chapter Six, found that just less than three quarters (74%) of Scottish publishers do not split the rights income equally with their authors, which means that giving publishers rights control in favour of a higher advance can often be a sensible option. Interestingly sixty-nine percent of non-agented authors earned no income from rights sales in comparison to forty-one percent of agented authors. Author E relies on their agent for earning more money through rights, and for the business aspects. However, Author E is conscious that the more control they have over their rights, and the less control the publisher has, then the less advance they will get and they need that to live on: a concern also vocalised by Author D. Translation/foreign rights are particularly lucrative for Author E. However, Author E had to change parts of their new book so it had more of an international appeal. Author E's books usually have a very British setting so Author E amended this for international sales. Some of Author E's previous books were set around the British system, so America did not pick it up. This shows that Author E is, in some part, commercially motivated because they are thinking about international sales. This contradicts Author E's previous statement that they were not commercially minded, and could have something to do with the appointment of a new literary agent.



Over half (58.7%) the respondents had not sold their work to be adapted through different media. For the respondents who had, over half had adapted their work into audiobooks, while just under a third had adapted their work through film, and just under a third had adapted their work through the radio. Only sixteen percent had adapted their work into e-books. When looking at the authors who had employed literary agents seventy-one percent of them had adapted their work through different media, in comparison to the twenty-four percent of non-agented authors who had adapted their work. Although Author C's books have not been turned into e-books as yet, Author C said they would rather control the digital/electronic rights to their work them because it is another medium for them and might be lucrative in the future; however, Author C is concerned about how this work is digitised and how it is put onto the reader, especially with strict DRM software, which does not allow users to share because Author C believes in free access once the initial payment is made. Although Author C does disapprove of illegal downloading, because it encroaches on their income stream, they do not disapprove of someone buying an ebook and then passing it on to a friend in the same way as they would with a printed book. This shows that although authors are not using this platform yet, it is something that they are aware of and hope to exploit their work through in the future. Additionally it is interesting to see that while Author C values the labour theory of property, and has made the comparison with physical property, Author C does understand that IP is intangible and that copies can be shared without diminishing the value.

## 5.5. A Picture of Literary Agents

Out of the eight practising literary agents who were interviewed for this study, half were based in London and half were based in Scotland: all of the agents represented at least one Scottish author<sup>182</sup>. All the Scottish literary agents charged 12.5% commission, while all the London-based agents charged fifteen percent. The difference between the commission rates of Scottish and London agents is reflective of the survey answers, although the commission rates given by the literary agents are higher than those given by the surveyed authors<sup>183</sup>. All of the interviewed agents said that their commission was ten percent but they raised it in response to the rest of the industry. London Agent F, who is now retired, left agenting in 2003 and at that point commission was generally ten percent, as it had been since the days of A.P. Watt (discussed on pages 153-154). However Agent F said that even then:

“There was already a lot of pressure on agents to push up commission to 12.5%. By pressure, I mean pressure from the people who owned the agencies. I think now it is fairly accepted to charge fifteen percent”.  
[Agent F]

Agent F doesn't understand why the commission has risen because “the job has not changed”. So Agent F believes:

“It is a response to all sorts of commercial pressures. If authors are willing to pay it, then that's what agents will take”. [Agent F]

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<sup>182</sup> One of interviewees is an ex London-based literary agent so the total of interviewees was actually nine.

<sup>183</sup> All the surveyed authors, with Scottish agents, said the commission for Scottish literary agents was between zero and ten percent, while half the authors with London agents said the commission for London literary agents was between zero and ten percent, while the other half said it was between eleven and fifteen percent (page 232). This, at least, shows that Scottish literary agents have increased their commission by at least 2.5% since the survey.

London based Agent I changed their commission to fifteen about four to five years ago because other London agencies were doing so. However, all Agent I's authors, who have been with the agency for a long time, who were on ten percent remain on ten percent. This is the same situation for all the London-based agents; however, Agent G was happy with ten percent because it had lasted successfully for so many years. The only reason Agent G's agency put their commission up to fifteen percent was because they were the last agency to do so. Agent H, disagreeing with Agent F, who said the job has not changed, believes that:

“The industry norm has shifted upwards but I think that reflects the fact that in today's publishing environment the agent is doing an awful lot more work than they used to do between ten and fifteen years ago. I mean, we do an awful lot of editing; the publishers nowadays do not like to see scripts that they have to do much work on. This puts the emphasis, and the pressure, back on us to really work with the authors and get the material into as good a shape as it can be before it is submitted and, of course, that takes time. And since we do not charge for our time, unlike lawyers or accountants, so in order to make the business model work we have to strike a balance between the time that we put in and the costs, if you like”. [Agent H]

Agent H asserts because all London literary agencies now adhere to the fifteen percent standard, and so an author cannot get a lesser commission elsewhere, it actually takes the commission element of having/being an agent out of the equation. However, authors can get a lesser commission elsewhere: in Scotland. Scottish-based Agent B's commission is 12.5%, it used to be ten percent but they changed after the other agencies raised their price. Agent B knows agencies that charge higher but said they “do not want

to charge higher than 12.5% at the moment” because the market is so competitive and they want to maintain a good relationship with their authors. It is clear, from this answer, that keeping their commission lower than the industry standard of fifteen percent allows Scottish literary agents to compete with their London counter-parts because they offer a cheaper service to their authors.

The majority of the London literary agents had worked in publishing before becoming agents. Both Agents H and I were editors who became disenfranchised with working for publishing companies. Agent I said:

“I suppose I was beginning to get a bit disheartened by the sway that the marketing people had, not so much sales because sales tend to be sales but it’s very dispiriting if you’ve been an editor for more than a decade to have your opinions on what you think you should be publishing over-ridden by somebody who is twenty four and works in marketing, because they are in marketing”. [Agent I]

This experience is confirmed by Epstein (2002) who asserts that marketing is now “the essential function and editors at paperback houses were its servants, an inversion of the traditional relationship” (Epstein, 2002, p.106). Agent E works in the rights department of a London publisher before using that experience to become an agent, and both Agent F and Agent G went straight into agenting and learned “on the job”. In contrast, while all of the Scottish agents had worked in the book trade in some capacity: only Agent D left a career as an editor at a London publisher to become an agent.

Agent E believes that:

“An agents’ job is to find the most appropriate publisher and editor, and if you’ve done your job properly then the agent, in theory, is redundant, but in practice is not. The agent takes out of the relationship between author and editor, any nastiness, and agents negotiate so authors do not have to talk about money”. [Agent E]

Although Agent D enjoys being an agent, Agent D believes that this is not the best time for agents because of the recession and the implications on the publishing industry: publishers have cut their lists and are taking on fewer books as a result. Agent D also believes that publishers have cut their advances “so radically” that Agent D believes it will be difficult for agents to get back to the position that they once were. Agent D believes that this is affecting agents:

“Across the board, no matter how big [in size] they are”. [Agent D]

Agent D believes that the reason for this is because “the balance of power has shifted” from the agent to the publisher. Agent D believes that publishers are now powerful and thus try to take control of the rights and unless the agents have a good bargaining counter (e.g. if it is a famous author) then the publisher has the power to take away their offer. In a market, which it is increasingly difficult to publish within, the publishers often have more power than authors and their agents and demand that certain rights are included in their package: withholding these rights could result in the publisher turning down the deal (Owen, 2010). Publishers are taking on fewer books and thus agents do not have a choice, so Agent D believes that:

“It is not a sellers’ market anymore; it is a buyers’ market”. [Agent D]

This has given rise to many agents closing their lists; something that will be discussed further in this chapter.

All of the London-based literary agents said they would probably not enlist any new authors in the coming year due to their already large list of clients: this shows how difficult it is for new authors to get an agent and ultimately get their work published. Agent G does not take on many new authors, although tries to take on a new one every two years, because they have so many existing authors they concentrate on the existing authors and given them full attention. Agent G adds that:

“It is not a market to be taking on new things anyway; however I would take on something new if it was a great opportunity”. [Agent G]

Agent G states that:

“I am there for my existing clients; I am not there for new clients”. [Agent G]

Agent E agrees with this idea and said they rarely takes on new authors nowadays because they already have a long list of existing clients and wants to ensure that their time is spent on them. Agent E believes that new authors need more time and concentration. If Agent E finds something good then they are now more inclined to share it with the other agents in the agency, particularly the newer ones. Agent I, who also rarely takes on new authors,

agreed with this sentiment and said that it is mainly the new agents, who are still building their lists, who are taking on new authors. Although Agent H and their agency do take on first time authors, Agent H actually takes on much fewer than they used to, particularly because their list is so full now. Agent H's colleague takes on a lot of first timers because they are still building their list. Agent H's agency likes taking on first timers, and Agent H asserts that there is nothing more satisfying than getting a first time author their first contract. Half of the Scottish agents did not take on new authors that frequently anymore. Confirming the opinion of the London agents, Agent A does not take on very many new authors each year because:

“You already have a commitment to the authors that you represent and so it is sometimes difficult to find the time for new authors”. [Agent A]

Agent A believes this can be difficult for new authors to understand but “priorities lie with existing authors”. Agent D does not take on many new authors because they want to concentrate on existing authors. Agent D believes this is a reflection of the publishing industry in general. These attitudes, of both the Scottish and London-based agents, reinforce and confirm the fiduciary and nurturing role of the agent, discussed on pages 155-158 in Chapter Three, and show that most agents would rather focus on a few authors and develop their careers than take on numerous authors and not give them enough time and focus. This also supports the concerns of authors (as discussed on pages 238-240) that literary agents are taking on fewer clients and thus it is more difficult for new authors to get published. However, Agent D believes that agents are now taking on fewer authors because, like

publishers, they are thinking about long-term risk. This also supports the opinion of Agent D, expressed above, that publishers are publishing fewer authors. The two agents who did take on new authors were both quite new to agenting, confirming the opinions of Agents E, I, and H that it is mainly agents who are building their lists that take on new authors. Agent B still takes on new authors because they feel they can build and nurture their career from the beginning instead and Agent C is in the process of developing their list so still signs up suitable authors. Does this mean that authors need to look to regional agencies to find an agent because they are more likely to take on new authors than the London-based agencies? As outlined above, most (60%) of the Scottish authors who hired Scottish agents published their work with Scottish publishers who, for the most part, do not require literary agents (see page 318 in Chapter Six for more details). Perhaps a way for Scottish literary agents to widen their scope and visibility is to enlist authors who are not based in Scotland, and also publish the works of their authors outwith the Scottish industry. London-based Agent E agrees with this sentiment and said that Scottish literary agents can be successful by representing a range of authors: not just Scottish authors. In fact, all of the Scottish agents interviewed did work with non-Scottish based authors and publishers. Agent A does not only represent Scottish authors, although “approximately sixty percent” of the agency’s authors are Scottish-based. Agent B also does not solely represent Scottish authors; because they mainly works with children’s authors Agent B publishes their work predominantly with London based publishers because “there is very little children’s publishing in Scotland” Agent B believes it is important to remain “in the loop” with London publishers and



agents, and attend networking and events to keep up-to-date with the latest news because this could help agents sell work in the future. Agent B believes it is important to have a visibility in London something that all the Scottish based literary agents (Agents A, C and D) agreed with.

Selling rights appears to be a more professional and organised process for London literary agents as all of them belonged to agencies that had customised electronic rights databases that were designed in-house and thus tailored towards their business models. Agent H argues that a comprehensive rights database is a very important part of the rights selling process, saying that:

“You need to be able to track them because it is very easy to overlook certain rights, simply because they are certain rights that are not often asked for. And with so many rights for so many different authors, it can become extremely complicated. So remembering that you’ve got them and being able to track down where they are is, obviously, vitally important”. [Agent H]

This is confirmed by Owen (2010) who asserts that an organised rights strategy leads to financial growth and stability and that an electronic rights database plays an important role in this (Owen, 2010). None of the Scottish agents had an electronic rights database, instead using a manual record system. Although this does show some degree of organisation it is a less efficient process and is not practical for multi-user purposes. The reason behind Scottish agents not adopting electronic databases could be that they have fewer authors than the London agents and thus do not need such a comprehensive record of rights transactions.

### **5.5.1. Scotland vs. England: Agents**

As discussed earlier, there were no Scottish-based literary agents until 1993. Agent A realised there was a gap in the market for Scottish-based literary agents because she was in contact with numerous authors who wanted such agents. Agent A believes that Scottish-based authors are now in a better position than ever as a result of the advent of Scottish-based literary agents; however the results of the survey of authors on pages 240-242 reveal that although authors with agents are in a better position than those without agents, authors with London-based agents earn more, and exploit their rights more effectively, than those with Scottish-based agents. Does this mean that Scottish authors are better placed with London-based agents? On the contrary, Scottish-based Agent A has found that more Scottish authors have left London-based agencies to come to them rather than the other way around because the authors prefer being close to their agents. Agent A did have an author leave to go to a London-based agency but this was because that author wanted to write for film and television and the London-based agency specialised in this area. Equally, London-based Agent I has lost one author to a Scottish based literary agency as well as gaining an author from a Scottish agency and believes that “it works both ways”. However, Agent I believes that Scottish authors want to be represented by London agents because they are nearer, and have closer relationships with, the London publishers. Agent I believes that agenting is:

“A very personal business, and being in Scotland, I would think, or anywhere outside London, is a bit of a disadvantage”. [Agent I]

However, Agent I does know successful agents outwith London and surmises that “you can do it, but I’d say it is harder”. London-based Agent E believes that:

“As an agent, you are as good as the books you represent; it doesn’t matter where you’re operating out of”. [Agent E]

London-based Agent G believes that, unlike Scottish publishers (this area is discussed in depth further in this chapter); Scottish literary agents can compete in the publishing arena, surmising, “Giles Gordon proved it could be done”. Scottish-based Agent C agrees with this and believes that Scottish literary agents can compete with London-based agents because agents can work from anywhere and do not have the same overheads as publishers, thus Agent C believes it is easier for Scottish agents than Scottish publishers. However, Scottish-based Agent D believes that while, theoretically, it should not matter where you are based as an agent because it has moved from face-to-face contact to email correspondence and thus being based in Scotland should not be a disadvantage. However, Agent D believes that Scottish-based agents can miss out on the socialising, which is mainly done in London, and the “gossip”, which can help with future sales. Retired London-based Agent F believes it is important for agents to be ubiquitous and so must “attend the right parties, lunches and launches” so although Agent F believes that most Scottish agents probably have good contacts, like Agent D, Agent F believes that Scottish agents can miss out on important “gossip” because they do not get the chance to attend every lunch, or launch party, dinner etc. Agent F, who now lives in Scotland, decided not to continue being an agent in Scotland because:

“There still is not a competitive publishing culture in Scotland, therefore the benefits of operating as an agent here are limited”. [Agent F]

However, at the time Agent F moved to Scotland there were not many practicing Scottish-based literary agents. Agent F continues:

“Giles Gordon was in Scotland a few times a month, he had a Scottish office, but there weren’t any Scottish literary agents. There were people who called themselves agents, but they were amateur enthusiasts, who were slush pile readers for small independent publishing houses”. [Agent F]

This situation has changed over the last few years and now there are eight established literary agencies in Scotland (SAC, 2009).

Engagement with the London-publishing activity appears to be the key to success for Scottish literary agents. Agent G praises the Scottish agents that go down to London regularly:

“They are frequently in London and understand which publishers would suit their authors, and that London-based publishers might be better suited. They understand that Scottish publishers do not have the money”. [Agent G]

In defence of Scottish agents, Agent C thinks that being based in Scotland is an advantage because “you can stand out from the crowd”. Agent C believes that there are so many agents from small-medium sized agencies that being Scottish means that publishers recognise the agents and differentiate them from the others. Also, Agent C believes that this enables the agent to see

everyone during one visit to London. Scotland-based Agent D agrees with this opinion and said:

“There are a lot of agents in London, of all sizes – across the board masses of them. The only advantage we have is there is so few of us and we’re Scottish, so they’ll always know us. If you were just another tiny agent in London then you might get mixed up with all the other agents”. [Agent D]

Additionally, Agent C believes that Scottish-based authors also like their agent within close proximity to them, in fact Agent C continues by saying “I think most authors would rather be closer to their agents than their publishers”, which shows how the dynamics of the publishing relationship have shifted in favour of the agent. Although most of Agent C’s authors are Scottish, this is not a requirement and Agent C represents authors from elsewhere, which concurs with the opinion that to be successful Scottish agents must not only represent Scottish authors. Agent H thinks that:

“It is a tough proposition for agents in Scotland. I think many ambitious authors feel instinctively, whether they are right to do so or not, that if they can find the right agent in London, then a London agent will turn out to be more helpful to them”. [Agent H]

However, Agent D believes that Scottish-based agents could represent big-name Scottish authors and it is a lack of confidence, on the part of the Scottish agents, that prevents this. Agent D then gives the example of a well-known bestselling Scottish author who is represented by a very small London-based literary agency, saying that:

“The size of the agency doesn’t always control the size of the authors they attract”. [Agent D]

Agent B thinks on of the advantages of being based in Scotland is that there is such a close-knit publishing community that can help and advise each other. The Association of Scottish Literary Agents (ASLA) was created in response to the burgeoning literary agenting community in Scotland. Agent D believes that the ASLA is of “great benefit” to Scottish agents because of the training and support it provides. Agent D believes that there is a skills gap in the Scottish publishing industry so believes that the formation of this association will help develop the skills needed to compete with London agents. The majority of the Scottish agents were not fully involved in exploiting their authors’ rights and could therefore not augment the necessary skills through experience: developing these skills, through the ASLA training, could make the agents more self-sufficient and less reliant on outside specialist agencies.

### **5.5.2. Scotland Vs. England: Publishers**

As outlined in Chapter Three, Scottish authors have left Scotland to be published in London since the slow demise of the once prosperous Scottish print and publishing industry. This trend is now prevalent in the contemporary publishing industry because London is the clear publishing hub for the United Kingdom. Agent G believes that many Scottish publishers do not have the means to compete with the London publishers, so that is why Agent G’s authors are mainly published in London. Scottish Agent D can understand

why the big name Scottish authors do not publish with Scottish publishers because there is:

“A lack of money for marketing and advances, and not good distribution”. [Agent D]

This opinion is corroborated with the views of the authors on pages 244-247 of this chapter. Regarding Scottish authors leaving to be published by London-based publishers Agent G believes that “It is like saying Gabriel Garcia Marquez should only be published by a Colombian publisher” and asserts that “Robin Robertson has done more for Scottish writing by having it published in London, and being taken seriously on an international stage” (this will be discussed further in Chapter Six). Agent G believes that some Scottish publishers have “a sort of cultural chip” and “small-mindedness”, which makes this trend an issue. Agent G also states that an author leaving to go to different publishing companies is something that happens frequently and it is not representative of Scotland. Agent H believes that:

“I think it is quite difficult for authors to resist the pull. Now that’s not to say that there are not instances, and more that I am even aware of, where an author has been very successfully outside London. But I think there’s a certain inevitability, there’s a certain momentum, behind the situation the way that it currently is, which will not be easily reversed”. [Agent H]

Consequently, Agent H believes that it is difficult for Scottish publishers to compete in the global market; however, Agent H believes it is equally difficult for Canadian and Australian publishers. Agent H said:

“A lot of it is to do with purchasing power: Obviously the great power of a larger publishing company to throw more money at an author but equally the purchasing power they have in terms of print, distribution, advertising and marketing – all those things without which it is very difficult to have a genuinely successful publication”. [Agent H]

Agent H continues to say:

“I think the problem is not with the ability of the people involved, the problem is, quite interestingly, that size dictates that certain things will be beyond their reach in certain situations”. [Agent H]

However, Agent B has found that Scottish publishers can be less professional than London publishers and prefers to work with London publishers as a result. Agent D agrees with this and believes the staff at London publishers are better trained than those based in Scotland. Agent B adds that:

“There is a kind of cultural dominance with London dominating the publishing industry and that makes it difficult for us to work with publishers outside London”. [Agent B]

All of the agents interviewed said they preferred to work with London publishers; however Agent G believes that:

“Authors should be published by the publisher best suited to their work”. [Agent G]

Agent H agrees and said:

“It more important to see the author published with the right publisher rather than the one who is offering the most money”. [Agent H]



Agent G does not work frequently with Scottish publishers because they do not believe that Scottish publishers, with the exception of Canongate, can compete in the global market. Additionally, Agent G believes that Canongate are so successful because they are “half-based in London now”. Agent H, like Agent G, also believes that Canongate are so successful because:

“They maintain an office in Scotland, an important part of their operation’s up there, they do still have a very strong editorial office here in London, so they obviously recognise that they need to be at the heart of literary life, if you like, and the fact is London has a very large literary life with different literary circles. And Canongate, very wisely, felt they needed to be closer to where a lot of things were going on”.  
[Agent H]

The lack Scottish publishers’ engagement with London’s “literary life” is something exasperates Agent G, who berates that Scottish publishers never contact their agency to see if they have anything suitable to buy:

“We’ve not had a Scottish publisher in this building for at least fifteen years”. [Agent G]

This shows a lack of dynamism on the part of Scottish publishers and an unwillingness to engage. Agent G continues by saying that although the Scottish publishers do attend the London Book Fair, they do not make appointments to speak to agents. Agent G continues by saying that small, independent, regional publishers like Tindal Street Press are very pro-active and always keep in touch with Agent G’s agency, and other agencies, to see if there is anything suitable for them to publish. Agent G believes that Scottish publishers might not contact their agency because they are intimidated by

London publishers, however, Agent G said the agency always likes to make contacts so would be:

“Happy to speak to Scottish publishers because I support diversity in the publishing industry so does support Scottish publishers”. [Agent G]

Conversely, Agent E has always had a good relationship with Scottish publishers and a few of Agent E’s Scottish authors are published successfully with Scottish publishers. In fact Agent E sold the backlist of one of her Scottish authors to a Scottish publisher. The books in the backlist were overlooked so the Scottish published successfully published the books and got them back into the shops. Agent I also works with both London and Scottish publishers:

“We’re happy to sell our authors work to whoever we can sell it to”. [Agent I]

Agent E thinks that talent is of paramount importance to the success of Scottish publishers and cites Jamie Byng as an example. This mirrors the view of Agent D who believes the success of London publishers is down to their talented staff, who Agent D believes are better trained than their Scottish counterparts. However, Agent E believes that:

“I do not think you’ll find that the indigenous Scottish publishers will look at Canongate with much charity.” [Agent E]

Agent E believes that Canongate’s success comes from not solely publishing Scottish authors or Scottish interest books and for building a relationship with

London agents and publishers: this is something other Scottish publishers can learn from. Agent E believes:

“In short, Scottish publishers need to raise their game if they want to achieve the type of success that Canongate has”. [Agent E]

This is also reflected in the opinion that Scottish literary agents would be more successful if they represented authors outwith Scotland: the wider the scope of authors, the wider the potential market.

Agent F believes that Scottish publishers are “Plan B for literary agents” and “that was what you did in London when everyone turned your client down”.

Agent D agrees with this and sells mainly to London publishers saying:

“You would not sell to Scottish publishers if you had a choice, purely because of the money, and secondly because of their distribution and marketing. The level of attention and service they would get would not be as good”. [Agent D]

This opinion is shared by Agent H, who mainly works with London publishers:

“That is, to some degree, to do with my own ambitions for the writer. A small publisher, it doesn't matter if they're in Scotland, or Cornwall, or Manchester, if you feel an author is deserving of a certain level of advance and all the rest of it, the fact is that that money is only present in London really. It is not remotely being dismissive of Scottish or regional English publishers, again it is to do with the economics of the business and I think a writer who had a book of sufficient quality offered a choice between Penguin and a small publisher in Dundee, I think it would be tough to expect an author to forgo the opportunity of being published with Penguin with all that that might lead to for them in terms of international sales, in terms of American sales, and just in

terms of the sheer economic muscle that Penguin has as a leading publisher”. [Agent H]

Additionally, Agent C mainly works with London publishers because of the genre Agent C represents and there are no genre-appropriate publishers in Scotland. Agent F believes the problem with the Scottish publishing industry is that many Scottish publishers do not require that an author has an agent so the author signs all their rights away with their contract and many rights then lie dormant because Scottish publishers do not know how to exploit them correctly (this issue will be discussed further in Chapter Six). It is clear that the agents interviewed want to best service for their authors, and, unfortunately, the majority of Scottish publishers cannot provide this. However, Agent D believes that agents always work in the interest of their authors not for purely altruistic interests but because they get a percentage of their earnings.

### **5.5.3. Literary Agents and their Authors**

Chapter Three highlighted that the literary agent is an increasingly important part of both the publishing process and the author’s life. In contrast to the information on pages 155-158 in Chapter Three, Agent I respects the editor-author relationship: once they have placed an author with a publisher and editor, Agent I thinks it is important to step back and let that relationship develop. Agent A believes the nurturing role of an agent is very important because:

“Writing is a very lonely occupation and some authors need a lot of support and encouragement”. [Agent A]

Agent G believes that although their agency does have a very nurturing role, it is not unique to their agency and this is clear by the responses of the other interviewed agents. Agent H thinks nurturing authors, with the view of sustaining them for the long-term, is key to their agency's ethos. Additionally Agent H agrees with Agent A and said:

“Writing, as a profession, is not an easy job, and it has many ups and downs so an agent gives the author a sense of where their career is going long-term etc.” [Agent H]

Agent H actually left a large literary agency to found their own agency because Agent H wanted to work in a smaller environment. Agent H believes in nurturing authors and that is one of the reasons that they left the big literary agencies because they had different priorities:

“Any large company had its priorities and there are times when you feel that a priority for the people you represent doesn't necessarily join with the need of a big company”. [Agent H]

One of the reasons that Agent H's agency recently merged with another agency was because of their shared ethos because Agent H believes that not all agents think about their authors in the long-term. Agent I believes that the nurturing role is core to their agency's ethos:

“Our aim is to build a writing career for somebody. I mean taking what seems a less good deal, but perhaps with a better publisher, at the beginning, because we think they will build a better relationship with them”. [Agent I]

However, Agent I counters this argument by saying:

“However, I think if you had an on the table from Penguin and an offer on the table from Quercus, I think on balance you’d go for the Penguin one unless there was a very good reason not to”. [Agent I]

Agent C believes the relationship between the author and the agent is crucial and thus likes to be in close proximity to them, and to be able to see them often. Consequently, Agent C believes that this is the real value of Scottish based literary agents. This could also be true for other regional (non-London based) agents.

Agent I believes that authors, particularly new authors, have an unrealistic idea of how much they will earn through writing. Agent I thinks there is far too much emphasis on the bestseller and large advances and believes that this can lead to authors becoming a bit fixated on their advance payments and on the idea that they will start earning money straight away. Agent B agreed and said that the majority of authors get “pitiful” advances, confirmed earlier in this chapter, that do not live up to their expectations. Agent H believes that:

“People at the start of their careers, on the whole, are not earning large advances. It is fair to say that the time/work you put in for your new authors is being subsidised by your more successful authors”. [Agent H]

Agent H continues:

“That is a naturally evolving process. People who are achieving success in their careers have almost certainly been the babies on somebody’s list and, in a sense, they also benefited from a system, really it is a process of cross subsidy”. [Agent H]

This opinion is key to the argument of pages 222-231 of this chapter, where authors have conflicting views on how higher earning authors contribute to the publishing process.

Agent B believes that not all authors need agents and believes that The Society of Authors is a great alternative because they can help with contracts and other business dealings. Agent G agreed that not all authors need agents, especially if they are not writing commercial work. However, Agent G also gives the example of Irvine Welsh, who does not need an agent because Robin Robertson does such a good job of looking after his interests. Agent E thinks that it is very difficult for new authors to find agents. Agent E continues that:

“It is very, very difficult to get a good London agent, we’re inundated, no day passed without all of us getting stuff sent to us and we take on very little really”. [Agent E]

Despite the convention that new authors are finding it difficult to employ agents, and thus get published, Agent G believes that there are too many agents in existence, probably as a result of too many authors. Additionally, Agent G said:

“Publishers are now slimming down their lists and focusing on making certain books bigger so they will take on less authors each year, as will agents”. [Agent G]

However, Agent G believes that there are too many literary agents and this can be detrimental to authors because many of these agents who “do not know what they are doing”. Agent G believes that this “lulls the authors into a false sense of security”; this verifies the fears of Author B, which were expressed on page 248 earlier in this chapter.

Agent I believes that being Scottish can actually benefit an author because it is a way of distinguishing themselves. Many of the Scottish agents believe this reasoning helps them stand out amongst the numerous agents (as discussed on page 274-275). Agent I also believes that London agents and publishers would not reject an author because they were too regional, in fact that might encourage an agent/publisher to take them on:

“I think people want those individual voices, that’s absolutely what you’re looking for”. [Agent I]

Agent G doesn’t “make any differentiation that they [his authors] are Scottish, or Welsh or Irish”. Agent G does not like the pigeonholing of authors into nationalities. One thing that particularly annoyed Agent G was looking for a Scottish author in Waterstones and they weren’t under the normal fiction heading but filed in the Scottish fiction section. Agent G believes this is a “sort of ghettoisation”. Agent H represents Scottish authors, in particular four well-known novelists; however, Agent H doesn’t “set out to represent authors from particular parts of the country”. Agent H said:

“It never crosses my mind to consider that an author’s success or any difficulty you might be having in placing their work is down to their



Scottishness or otherwise. I think that's a bogus distinction in my view. I mean, clearly if they are writing about Scotland and the book is difficult to sell, I think that is more to do with Scotland than the author's Scottishness". [Agent H]

As such all none of the interviewed agents had any difficulty with selling the rights of Scottish authors. Agent A does not have any difficulty selling the rights of Scottish authors in comparison to other authors because:

"Everything depends on quality of writing and whether subject matter travels" Agent I does not have any difficulty selling the rights of Scottish authors although "you might if there was a lot of strong Scots dialect or something, but that's true for any regional accent really". [Agent A]

Agent H does not represent a specific genre of writing because Agent H believes that:

"No sensible agent sticks to one type of book because the market does shift in all sorts of ways and as an agent you have to anticipate what publishers might be looking for. Obviously you have to advise the existing clients but you also have to be alive to new trends and new writers. So most agents will cover a wide range of different categories of books". [Agent H]

In some respects this is what many authors do when they cross over various genres. However, Agent F believes that "most agents are guided by an element of personal taste" and Agent B only takes on books that they like because:

"I feel if you are an agent and you want to sell a book on to publishers it shows if you are enthusiastic about a book." [Agent F]

However, Agent F believes that Robin Robertson remade:

“The relationship between Scottish writing and London publishing – Scottish writing became a sexy, marketable commodity in London, again, and this altered the view of author-agent relationships from a Scottish point of view”. [Agent F]

So being a Scottish writer can be used to their advantage (this will be discussed further in Chapter Six).

#### **5.5.4. Rights Exploitation**

All of the London-based literary agents believe that selling the author’s rights was an integral part of being an agent; however, none of the London-based agents had been on any rights training courses: they are all autodidacts, having learned on the job and from other literary agents. In contrast the majority of the Scottish agents had little or no experience, and were not as actively involved in rights exploitation to the same extent as their London counterparts. This contradicts Klebanoff (2002) who proclaims that “Agents try very hard to sell as many rights as they can, in as many creative (and remunerative) ways as they can”, and Clark (2008) who asserts that agents’ business is “selling and licencing rights to a variety of media (not just book publishers) at home and abroad on behalf of their client authors” (Klebanoff, 2002, p.1, Clark, 2008, p. 92). Although all the Scottish agents recognised the importance of rights as part of their business model the majority felt ill-equipped to handle these rights and believed it was something they needed to develop. Scottish Agent A attended a couple of rights training courses, in London, before becoming an agent. Although Agent A also received some

informal rights mentoring from an established agent, Agent A found it difficult to get an actual literary agent to agree to work-shadowing: in fact Agent A found that publishers were more forthcoming and several let Agent A shadow their rights meetings at Frankfurt. This shows that agents and publishers can work together to learn from each other and strengthen their skills. Agent A believes that although they have been agenting for several years now they are still learning every day. Agent B has never been on a rights training course, although they believe they would benefit from some training, and actually finds that getting any training at all is very difficult. As a result Agent B has learned everything from the job and has people to consult with if they have any problems. Agent D learned a lot from other agents; however, is hoping to develop their skills through workshops and training provided by ASLA. All of the Scottish agents bemoaned a lack of funding from the Arts Council for things like book fair attendance and training courses. The majority of the London agents did not have this problem because they were part of established agencies. Agent H believes that medium sized literary agents are in the best position in this current publishing environment because:

“These medium agencies are still very focused. Bigger agencies focus more on overheads – how to pay staff etc. so there is less focus on authors. These agencies also put pressure on agents/authors to accept the top offers, even if they’re not with the most suitable publishers and so the authors’ interests begin to slide down the scale. Also small agencies often do not have the budget or reputation to make an impression”. [Agent H]

Additionally, Agent D believes that the downside of being in a small agency is that:

“You have to do everything yourself so a lot of time is spent doing admin rather than agenting and as such thinking about and selling rights always comes second to necessary admin.” [Agent D]

As a result, Agent D works in association with a London based literary agent, who deals with their translation, US, and film and television rights.

Agent I believes that if agents do not know how to exploit rights correctly then it is better that they grant the rights to the publisher. Agent I believes that there are many agents who do not have “the capacity or know-how to deal with all these rights” so that’s why they grant the rights to the publisher instead of reserving them for the author. However, Agent I voices concerns about the attitude and capabilities of inexperienced agents with regards to selling rights:

“The assumption that the publishers will know better than they do, which they do not necessarily. Publishers are not good at negotiating film and TV rights, which are very complicated”. [Agent I]

This reinforces the concerns of Author B on page 238, that some agents are not fully qualified in selling rights to the detriment of their authors; however, the results of the publishers survey, revealed in Chapter Five, show that many publishers are also not adequately equipped at rights exploitation, which confirms Agent I’s fears and indicates that rights training is necessary for both publishers and agents. Agent E believes that:

“Agents are there really to sell rights in books and I do not like publishers having more rights than you have to give them”. [Agent E]

However, the majority of Scottish agents, who do not usually control the authors’ rights, do not share this sentiment.

Agent G believes that rights potential is important; however, Agent G would only take on a work that they knew they could sell. In spite of this, Agent G does not always think specifically about foreign markets when they take on a project because their work is not too commercial and so Agent G understands that this might not sell in every market. Agent H also believes that rights potential is important; however, Agent H needs to like the work before proceeding any further:

“Once you’d identified that you like the work, then you start thinking strategically: who might publish the book, whether it is a book purely for the UK or whether you can see the possibility of international sales. Once you’ve gone through that process then you begin to get a sense of what the possible rewards might be for the writer and the agent and whether the amount of work to be put into the work is justified”. [Agent H]

This confirms the opinion of Agents H and G, who believe that personal taste, rather than commercial potential, is the primary motivation behind employing authors. Additionally, Agent B said that it is usually the publisher who issues the contract and then the agents will go through it and try to negotiate terms. This is in contrast to the London agents, who create their contracts within their agencies. For example, Agent E’s agency creates their contracts in-house and has different boilerplate contracts for different London publishers. Agent A

states that the negotiation with the publishers is more time-consuming than the contract negotiation because the Society of Authors has already negotiated most contracts. This shows that London agents are more likely to drive rights negotiations than Scottish agents, and place greater importance on the publishing contract.

Out of the Scottish agents, only one of the agents was thoroughly engaged in selling rights and this could be the reason that Scottish agents have not invested in electronic rights databases. Agent A said most of their agency's income through rights sales comes from UK based sales (i.e. volume rights); however they have now set up a foreign rights department so their income through international rights sales is increasing. In addition Agent A works with rights agents in Scandinavia and Holland, Brazil, France, Spain, Eastern Europe, Korea, China and Taiwan, Japan. Agent A states that they always try to hold on to translation, US, film and television rights because they are the most lucrative. In contrast, Agent D tries to retain as many rights as possible but concedes that it is not easy. Agent D continues by saying:

“When you start out it is easier to sell the world rights to publishers because they have the expertise. You have to build up your expertise”.  
[Agent D]

Agent D is not really involved with selling rights because:

“You've got to offer as good a service as the author would get in London and that might mean getting a specialist to do these things”.  
[Agent D]

This reflects the practices of Agents G and E who use specialist agencies to exploit film and TV rights. Agent B's agency use an external agency to sell their foreign rights. Agent B believes these relationships are important and hopes to develop relationships with other agencies in the future (they are currently trying to negotiate with another agency who deals with film and TV rights) because they do not have the expertise to do certain things and so would prefer if experts did them. Agent B believes that:

“Even if you're slightly losing income, the investment in becoming good at that is higher”. [Agent B]

The agency actually approached Agent B's agency and Agent B thinks the agency has really benefited from using people with “experience in the field” because they have forged relationships with overseas publishers. Because Agent B works for a very small agency they would not have the time and money to do this themselves. Agent B does try to hold on to whatever rights they can, specifically film and TV. However, Agent B believes that it is so difficult to get authors published these days, because publishers are taking on less, that they have to concede and part with more rights than intended because the agents do not want to publishers to remove their offer. This confirms the situation on page 241 where some authors sign over their rights in order to get better advances. Agent B believes that:

“Authors, especially new authors, do not care about the negotiations they just want to see their book in print”. [Agent B]

At the moment Agent C sells most of the rights to the publishers due to lack of experience; however is hoping to build up experiences of selling rights so Agent C can sell these rights directly in the future. Agent C believes that selling the rights within the agency will be more profitable for Agent C and their authors. Agent C does not sell foreign rights although Agent C's agency has a foreign rights department and also has good relationships with subagents. Agent B said that the publishers "almost always" wants world rights for new authors, and this "tends to be non-negotiable" and believes this is because publishers want to protect investment. Agent B believes that if the publisher does not exploit the rights correctly then the agents should be able to go back in five years to re-negotiate. However, Agent B has had some difficulty writing this into the contracts, although they have managed to do this with merchandising rights. Several of the interviewed agents believe the solution to this would be to start using limited term licences. Agent D thinks it is:

"Good to get some capital upfront when it might be more difficult, time consuming to sell the rights yourself, especially for smaller agencies".  
[Agent D]

This confirms the situation on pages 213-21, which highlights the restrictions of a big, cross-media, agency. Agent D believes that publishers are now trying to control as much as possible to add value to their book deals and protect their investment in "such an uncertain market". Agent D also uses a London-based specialist agency to deal with their contracts and foreign rights and deals with a US subagent because they prefer to concentrate on markets that they are familiar with. Although this shows that some agents sacrifice potential rights income so that their authors get the best service possible, even if it is



not them that provide it, it means that the agents are not getting the valuable on-the-job experience needed to develop their rights expertise.

In contrast, the London agents all believe that the collection of rights is very important and try to exploit them as much as they can. Agent I said:

“Our approach is to grant the least amount of rights possible when we do a contract and reserve everything else for the authors”. [Agent I]

Agent A tries to hold on to world rights, including US rights, for most of her authors and as such usually sells these rights directly to US publishers<sup>184</sup>. Agent G’s agency has a specialised Foreign rights department, with four staff, so they sell the rights directly to Scandinavia, Brazil, Spain, Portugal, France and the Netherlands and use sub-agents in Germany, Italy, most of Eastern Europe, and the Far East. Agent I thinks rights potential is very important and considers potential avenues for exploitation when they are taking on a new author. In fact, if Agent I is unsure whether a new work has the potential to sell well in overseas markets then Agent I consults with the foreign rights department. Agent E also thinks that the rights potential of a book is very important. However, the book does not necessarily need to be a commercial success but Agent E does want the book to sell overseas because territorial rights can be very lucrative and can help expand readership. Agent E believes their agency has an excellent foreign rights department, something they are very proud of, so Agent E believes their agency takes on books that the foreign rights department can really exploit. Agent E prefers the agent to hold

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<sup>184</sup> Agent A and their agency are currently also piloting a relationship with a US agent.

on to translation rights; however it can be a costly procedure so Agent E can understand why smaller agencies sell these rights to publishers instead of exploiting them themselves. Additionally, Agent F believes that it is not always the wrong thing to sell world rights to the publisher<sup>185</sup>. However, Agent F concedes that the way you maximise the authors income is by holding on to as many rights as possible and sell them separately to the highest individual advance. Agent F continues:

“I would have sold world rights in a situation where I felt the publisher was best-placed to exploit those rights, and where the advance was at a level I couldn't guarantee to match by selling individual rights separately. Generally, this would be for mass-market non-fiction”.  
[Agent F]

Agent E backs this up by saying that:

“You tailor the rights to the subject in question”. [Agent E]

Although Agent H's agency is a very small one, they have a foreign rights department; however, they use subagents for film and TV rights because:

“These rights tend to be more complicated”. [Agent H]

This practice is mirrored by both Agent G and Agent E, whose agencies do not handle film and television rights. However, both Agent G and E use a specialist agency and do not sell these rights to publishers. Additionally Agent

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<sup>185</sup> At Agent F's last agency they had a foreign rights department so predominantly sold the rights directly to overseas publishers, although they did have subagents in more difficult territories, such as Japan.

F believes always tried to hold on to lucrative rights such as film and TV and translation, although also used separate agencies to exploit them. Agent C said that most literary agents use sub-agents to sell the complicated film and TV rights. In contrast, Agent I's agency has a specialist film and television rights department, developed in response to the trend of exploiting books through different mediums. This research has found that experienced individuals should undertake rights exploitation: It is evident that literary agents acknowledge this, and, consequently, use external sources where necessary when they do not have the experience or expertise to do this themselves.

Agent G sometimes sells Canadian rights separately from US rights but this is dependent on the author and publisher involved. Big name authors are usually sold separately in Canada. Agent G usually sells English language world rights or British Commonwealth rights, excluding Canada. Agent E said that many UK publishers still expect the Commonwealth rights and often get these rights. This reflects the traditional attitudes of British publishers as outlined in pages 106-113. However, Agent E frequently holds on to Canadian rights separate from the Commonwealth rights and would rather sell these rights along with the US rights because Agent E believes the US publishers often publish better Canadian versions. Agent H tries to hold on to translation rights, American rights, film rights, dramatic rights, merchandising. Basically what they want to give to the UK publisher is the right to publish in the UK and certain territories – normally that would include Australia and India. They

would try to hold onto Canadian rights and either sell them to the US publisher, or indeed the Canadian publisher. Agent H said:

“We have not got to the stage yet where we’re separating Scottish rights. But I am sure it’ll come. If Alex Salmond has his way, I am sure it’ll come”. [Agent H]

Agent H uses subagents in the US and tries to retain Canadian rights. Agent F said that selling rights to English-speaking territories such as the US or Canada is quite straightforward, so the use of subagents is decreasing.

Most of the London based agents said that they did not face any problems when it came to selling rights. Although Agent G felt comfortable selling rights, and did not face any problems, they believe that electronic rights would cause the most problems for agents in the future, particularly if publishers continue to expect them within volume rights. As outlined earlier, the majority of the Scottish publishers do not actively sell rights so do not face any problems because they licence them to other companies. However, Agent A, who does sell rights, believes the main problems selling rights is the current state of the publishing industry. Agent A believes that publishers are ‘risk averse’ and this is especially detrimental to debut writers. This opinion is echoed by Agent H, who said the main difficulty with selling rights is the state of the publishing economy:

“Publishers are much more cautious now than they were, say, two years ago. They’re playing safe; they’re taking fewer risks, so of course that has a knock-on on the kinds of books and the level of advances”. [Agent H]

As discussed on page 113-117, electronic rights are becoming more complex, with publishers and agents fighting for control of them. All of the agents questioned recognised the increasing importance of electronic rights and felt that it could cause contention between agents and publishers in the future. Agent D believes the use of limited licences may be the best way to protect the authors long-term, especially with all the uncertainties that come with digital/electronic rights. Agent D believes that this “gives agents and authors an element of control over the contracts” and would prevent problems such as the RosettaBooks case, as discussed on pages 114-115. All of the London agents admitted that electronic rights have caused them some problems over the years. Agent F said that electronic right were problematic when Agent F was agenting, especially the difference between electronic version and electronic edition (explained fully in pages 115-116). Agent F believes that this is even more contentious in today’s publishing environment. Agent F believes the problem lies with the publishers desire to include electronic version rights in the bundle of rights they receive in the contract. Agent C who does not sell electronic rights confirms this; instead Agent C normally includes these rights in the contract with the publisher. While electronic edition rights are straightforward, they are just the verbatim electronic copy of the book; electronic version encompasses a whole range of potential exploitation opportunities, with rights that are not even in existence yet. Agent F believes that electronic version rights can merge into dramatic rights (e.g. for an online dramatisation), so it could radically change the format of the work.

Agreeing with the other agents, Agent I said that e-book rights has been quite a contentious issue because many publishers argue that they should automatically receive the rights under volume rights; however, Agent I and the agency have done deals with publishers who have agreed to the terms the agency stipulated so hopes that this will continue in the future. Agent E believes that although originally agents think they would hold on to electronic rights, they are increasingly offering them to publishers because publishers want control of the electronic verbatim rights. Agent E doesn't mind the publisher controlling these rights because they often work closely together. Agent G has the e-rights for authors' backlists, who they have represented for years; however the publishers often licence the e-rights for newer authors because they are normally sold within the volume rights. However, if the publisher wants to exploit the electronic version of the book through a new platform then they have to seek permission from the rights holder. Agent G finds this situation "frustrating" because more often than not the rights are left unexploited "while the popularity of the book is at its highest". Agent D thinks the solution to this problem would be to sell rights directly to e-book publishers, which Agent G believes will start forming in the next few years. This is confirmed by the discussion on pages 53-55, which reveals that several specialist e-publishers have been formed. Agent D states that electronic rights, and e-book rights, have caused difficulties within their contracts and the negotiating stage because publishers want to retain them under volume rights. However, Agent D said:

"If it is enhanced that's the get-out-clause". [Agent D]

While e-books are just books, and thus a competing edition, enhanced e-books are something else entirely and Agent D does not believe they should be sold within the volume rights.

### **5.5.5. Electronic Publishing**

Agent G believes that technology is changing the nature of publishers:

“The amount of money and the speed in which the technology is growing means that bigger corporate publishers are going to be able to do more with this [e-publishing/e-books etc] and that will again leave smaller publishers, regardless of whether they’re in Scotland or Wales or Ireland, or Czechoslovakia, behind because they will not be able to keep up”. [Agent G]

Agent G believes Scottish publishers should be thinking of ways to keep up and compete or else “they will be left behind and struggle to compete”. As a solution to this Agent G suggests that Scottish publishers “overhaul their staff and bring in people with new skills”. Although there is a skills gap in the Scottish publishing industry, this is reflective of the creative industries as a whole. Skillset highlighted that the biggest skills gap in the creative industries was the ability to work with and exploit the advances in digital technology (Skillset, 2010). This shows that while there is a problem in the Scottish publishing industry, it also affects other regions and creative industries.

Agent E believes the problem with e-books is the different formats available:

“No-one can agree on the format. The Kindle uses one format and the Sony reader uses another, and if you are publisher you do not have the money to produce electronic versions in both formats”. [Agent E]

This confirms Breede's (2008) concern about the "lack of a universal standard", which does not allow "interoperability between different electronic devices", which was discussed on page 48 (Breede, 2008, p. 15). Agent H thinks the issue for agents is:

"Is the publisher the right person to control the rights and are we simply creating a different kind of edition. We're not actually creating a different work here; we're just providing a different edition for readers to access". [Agent H]

However, Agent H believes that the digital/electronic revolution is a positive thing:

"Publishers have always struggled to find ways of putting work in people's hands and so long as the publisher remains fundamentally in control of the process of distribution, whatever edition they are disseminating seems to me beside the point". [Agent H]

None of the agents interviewed said their clients had been affected by piracy as a result of the advent of digital publishing. However, many of the agents believe it is something that could arise in the future. Agent I believes that it could be a problem in the future "especially if you look what happened to the music industry". Agent I states that authors cannot make money from touring, like musicians do, so will suffer as a result of illegal downloading/free content. Agent H says that a way to combat piracy would be:

"Lowering the cost of e-books and offering the consumers something of value, which might happen with these new enhanced editions". [Agent H]



Agents G, H and I all agree that by digitising the authors backlist and making as much work available in digital form, and at a reasonable price, could limit the availability of unauthorised copies. However, Agent H observes that there is currently formatting problems within the publishing industry which is preventing the growth of e-books. There is presently not one standard format for e-books and Agent H believes that:

“This is stopping publishers, especially the smaller ones, from making that investment”. [Agent H]

Although the majority of the agents did not know very much about Google Book Search, they thought it would have negative implications for digital publishing and e-books. This lack of knowledge could be attributed to the lack of resolution to this ongoing case, as discussed in pages 62-69. All of the agents had advised their authors to opt out of the deal with Google, particularly since the issue had not been resolved. Agent E, who was most knowledgeable about the Google Book Search, was particularly against the ‘opt-out’ option, believing that it gave Google too much control over the electronic form of orphan works, which made it difficult for other companies to compete. Many of the agents, particularly the Scottish agents, were not engaged with electronic publishing, opting to sign the rights over to the publishers, so it is not surprising that they had so little knowledge about Google Book Search. This shows that, despite being a landmark case in publishing history, it does not play an important role for the literary agents. Additionally, Owen (2010) argues that the GBS has highlighted the issue of

electronic rights control, showing publishers should not assume automatic control of these rights unless it is explicitly spelled out within their contract (Owen, 2010). Although this study has found that many authors and their agents may not be knowledgeable about electronic publishing at the moment, this could change in the future as digital publishing becomes more commonplace. As such, it is important for them to have control over the rights instead of granting them to publishers, particularly as this research has found that publishers are also often ill-equipped to exploit these rights fully (see Chapter Six for further detail).

## **5.6. Conclusion**

It is clear from the survey results that the majority of the author respondents cannot earn a living from writing alone, and the general consensus from both authors and agents is that this is a result of the changing nature of the publishing industry with the larger publishing houses focusing on big name authors. This confirms both WIPO's (2003) description of the 'typical' artist and their demonstration that only a few artists earn large incomes from their work (WIPO, 2003). As advances increase for big-name and celebrity authors; it is often the midlist authors who are overlooked and this could account for the fact that there is an increase of authors earning below £999 and above £5000. Although authors with London-based literary agents earn more money than their counterparts with Scottish-based agents they tend to pay a higher commission for this service. However, the amount that the author earns is not always dependent on the skill of the literary agent and the reason that authors with Scottish-based agents earn less could be because they tend to publish with Scottish publishers who offer less lucrative deals (this will be outlined

further in Chapter Six). Additionally, Scottish authors are earning lower advances now than they were in 2001, which does not reflect well on the Scottish publishing industry. So, is exploiting the authors' rights through different platforms, and taking advantage of the development of new media, the way to increase the author's income? It is evident that authors' who employ literary agents earn larger advances, and more income through their writing, than non-agented authors, and are also more likely to exploit their work through new platforms and earn more income from rights sales. Although the development and expansion of the media in the twentieth century has provided authors with a multitude of new avenues to exploit their literary work through for financial gain, with many subsidiary rights developing as a result; It is clear that traditional print media are by far still the primary source of income for the Scottish authors and new media, such as e-books, have had little impact in their earnings. Will this change as publishers concentrate more on digital products? The results of survey of Scottish publishers, outlined in Chapter Six, shows that electronic publishing is not high on their agenda and electronic rights are frequently left dormant. The survey reveals that Scottish authors are not benefiting from the digital revolution because publishers are not exploiting their rights, yet the publishers are still controlling them. Additionally, this study found that many Scottish agents were signing over the rights to publishers, in exchange for larger advances for their authors, so no one is currently equipped to exploit the rights correctly. However, a couple of the Scottish agents used external rights specialists, which shows that rights exploitation is still a priority, even with the skills deficit. However, hiring freelance specialists is only the short-term

solution to this problem. It is clear the solution to this is developing the suitable skills and experience needed to rights exploitation, which seems to be lacking in the Scottish publishing industry. This study has found that various literary agents have learned their skills on-the-job and through working with other agents and that the ASLA has been set up as a support network for Scottish agents. As such, a community of practice could be set up for experiences and skills to be shared<sup>186</sup>.

The Romantic notion of authorship is problematic in contemporary publishing. Not only because it helps to strengthen and extend copyright legislation but also because it gives new authors an unrealistic idea of the money that can be earned from writing. Additionally, this study found that authors are not commercially minded and that being commercially-minded/rights focused does not guarantee a higher income. However, the fact that some authors hire agents means they must have some commercial motivation. Also, the more commercially-minded and ambitious authors tend to gravitate towards the London publishing activity because of larger advances, marketing budgets and better access to markets. This highlights the importance of the literary agent in the contemporary publishing industry. Authors with agents, specifically powerful London-based agents, have more influence in the saturated contemporary publishing industry: this situation reflects the literary patronage system where mainly authors with powerful representation enjoyed

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<sup>186</sup> Lave and Wenger (1991) describe a community of practice as “a set of relations among persons, activity, and world, over time and in relation with other tangential and overlapping communities of practice” (Lave and Wenger, 1991, p. 98). Wenger (1998) expands this concept by describing communities of practices as groups of professionals, connected by a common goal or interest, sharing skills to solve organisational problems (Wenger, 1998).

the biggest successes. Where does this leave lesser known authors or authors without literary agents? The exploitation of the author's work through different mediums could provide alternative revenue streams for authors, especially in light of reduced advances; however, the author would need to be represented by someone with the experience of selling and licensing these rights. It is clear that authors need literary agents to succeed in the contemporary trade publishing industry, not just because trade publishers are increasingly not accepting unsolicited manuscripts, but also because the agents usually have the skill to sell and licence rights across different territories and media. However, literary agencies, particularly some of the more well-known London-based agencies, are taking on fewer clients each year, which could account for the fact that over a third of the unagented survey respondents found it difficult to find a suitable agent. This puts new, and small, literary agencies, like the majority of the Scottish agencies, in a good position because they are able to offer representation to authors who are rejected from London agencies. However, as outlined above, it is clear that these agencies need to offer the same kind of service as the London agencies in order to compete equally. This research has found that the majority of Scottish literary agents are ill-equipped at selling rights and either outsource this to external agencies or sign over the rights to publishers. If literary agents want to offer the same kind of service as London agents then they must build the same level of expertise: this can be done through training and knowledge transfer.

## **Chapter Six: The Scottish Publishing Industry**

### **6.1. Chapter Outline**

This chapter provides an outline of the current shape of the Scottish publishing industry through the analysis of interviews and a survey with Scottish publishers. These results are compared to previous studies to highlight the changing nature of Scottish publishing over the years. Issues such as globalisation, rights exploitation, and digital publishing are investigated to ascertain Scottish publishers' engagement in the contemporary publishing industry. A short examination of the independent publisher Canongate is used to illustrate how small Scottish publishers can compete in the global and digital environment. Both the surveys and interviews with Scottish publishers showed that the majority of Scottish publishers were not actively involved in rights exploitation, despite controlling the majority of the authors' rights. As such, these rights are lying dormant and no-one is profiting from them. Additionally, the study found that the Scottish publishers were not actively engaged in digital publishing, so were in danger of being left behind in the digital publishing environment. The reason for this lack of engagement in both rights exploitation and the digital publishing environment is partly because of failing to invest in a rights department, or staff trained in selling rights, and new technology, and partly because many of the Scottish publishers concentrate on the domestic Scottish market and, as such, publish cultural Scottish content that may not translate well to overseas markets or onto new technologies. Additionally, this Scottish content is important in maintaining diversity in the UK publishing industry. However, it

does show that the Scottish publishing industry is inward looking and thus will not be able to compete in the global market if publishers continue with their current business models.

## **6.2. The Current Shape of the Scottish Publishing Industry**

The UK publishing industry has become increasingly concentrated in the last couple of decades and can be divided into “a small number of very large, cross-media global conglomerates and large number of smaller companies operating at national and/or niche level” (McCleery, 2008, p. 87). There are now over 15,000 publishers in existence in the UK: 2700 of these publish regularly. The five largest companies in the British publishing industry account for fifty-five percent of sales, while Bertelsmann, News Corporation, and Pearson, the three largest publishers, account for forty-five percent of the consumer market between them. The Scottish publishing industry, in comparison, operates on a far smaller scale with ninety publishers in 2008 and seventy in 2010<sup>187</sup> (McCleery, 2008). The 2010 survey also found that there is the same number of relatively new companies, established since 2000, as there are older companies, established before 1960. The largest percentage of publishers were established between 1981 and 2000, which could be as a result of the rejuvenation of Scottish literature in the 1970s and 80s and/or in response to the growing nature of the UK publishing industry during this

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<sup>187</sup> Of these ninety publishers in just over half have less than 100 titles in print (McCleery, 2008).

period<sup>188</sup> (Feather, 2006). When asked why the 1980s and 1990s were so prolific for Scottish writing, Robin Robertson<sup>189</sup> said:

“Well, one can have theories, and I suppose my theory would be partly political. Scotland, at that point, was being used as a testing ground for Thatcher’s vile economic and social experiments. Scotland, of course, hadn’t voted for Thatcher, firmly voted against, but “fastened to a dying animal” as Yeats said, we had to go along with the majority of what the British Isles wanted politically. So there was a great deal of frustration, which quite often manifests itself either in violence or creativity”<sup>190</sup>

It is evident that this period was one of great innovation on the part of Scottish writers and London publishers capitalised on this boom. Robertson contends that he did not set out to specifically publish the works of Scottish authors; however, it happened that there was a very buoyant period of great Scottish writing at that time. Robertson had already established a relationship with James Kelman and once Kelman decided to publish with Robertson at Secker and Warburg, many other Scottish writers followed. Robertson asserts that there were, and still are to an extent, no other alternative for Scottish authors other than to be published in London. At this point Canongate was a very small house (with no great rights department), as were Polygon and Mainstream, and London offered distribution opportunities, advances and financial support that Scottish publishers could not.

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<sup>188</sup> In 1989 there were 61,196 published titles in the UK, this figure rose to 110,155 in 1999 (Feather, 2003).

<sup>189</sup> Robin Robertson is a Scottish poet who worked as an editor at Penguin and Secker and Warburg before he became deputy-publishing director at Jonathan Cape in London. Robertson launched the careers of many Scottish authors such as James Kelman, A.L. Kennedy, Irvine Welsh and Janice Galloway as well as many others. Robertson was interviewed as part of this research and all quotes come from the interview.

<sup>190</sup> During this period Robin Robertson published James Kelman, Janice Galloway, Duncan MacLean, A.L. Kennedy, Irvine Welsh, and Jeff Torrington at Secker.

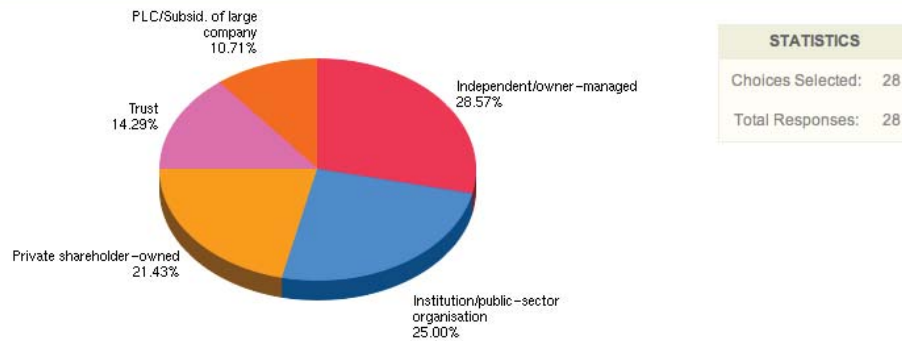


In 2003, Edinburgh Napier University and PriceWaterhouseCoopers undertook a review of the Scottish publishing industry, as requested by the Scottish Arts Council. The review found that the Scottish publishing industry was disjointed and functioned in very competitive markets, and mainly comprised of small and medium enterprises (SMEs) that were owner-managed and predominantly located in the Central Belt of Scotland. The 2010 survey, undertaken with Publishing Scotland, upholds these findings, revealing that nearly four fifths (78.6%) of the publishers surveyed have less than ten employees, and the same amount are based in the Central Belt, although a couple of publishers, namely Two Ravens Press and Grace Notes publications, have been established outside of the Central Belt this area since the previous study<sup>191</sup>. Over a quarter (28.6%) of the publishers, from the 2010 survey, are independently owned and managed in comparison to just over a tenth (10.7%) who are the subsidiary of a larger company, which shows that ownership has not changed much since the 2003 survey. Additionally, a quarter of the surveyed publishers were an institution and/or public sector organisation (see figure 14 for more information).

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<sup>191</sup> The 2010 study found that a seventh (14.3%) of the surveyed publishers had between eleven and twenty-five staff and only 3.6% had between twenty-six and fifty staff and 3.6% had over fifty-one staff.

### 15. How is the company owned?



SUMMARY		
VALUE	COUNT	PERCENT %
Independent/owner-managed	8	28.57%
Institution/public-sector organisation	7	25.00%
Private shareholder-owned	6	21.43%
Trust	4	14.29%
PLC/Subsid. of large company	3	10.71%

Figure 14. Company ownership

The English-language publishing industry is very strong globally; however, a few large, multi-media conglomerates dominate it, which makes it difficult for small and medium publishers to compete. English is the most dominant international language in business therefore books in the English language can be sold worldwide<sup>192</sup>. While this offers a lot of opportunities it requires strong investments in technology and advertising and links with agents and publishers overseas. This can prove difficult and costly for small to medium sized publishers (Sinclair et al, 2004). To compete, and flourish, in this global market small to medium sized publishers must appeal to more customer

<sup>192</sup> This is as a result of the combination of historic colonisation and internationally merged multimedia companies (Sinclair et al, 2004)

markets (e.g. film, television, computer games), gain access to new and emerging distribution routes, exploit IPR internationally and across all formats/media, create partnerships with television, film, media and other publishing businesses so works can be exploited effectively through this chain. Although book publishing is often the source for other media it is no longer seen as a mass form of communication and therefore has less of an economic contribution. This is because it lacks the immediacy of other media, such as television, and no longer has the political impact it once had (McCleery, 2001). At present, most multi-media conglomerates can exploit rights across different media very easily and at little cost because of the shared ownership; however, the same cannot be said for smaller publishers (Sinclair et al, 2004, Owen, 2006). Both the 2003 and 2010 surveys revealed that a number of Scottish publishers are the imprints of a larger UK-based or international company, so they have a more international outlook and interest in other media. However, in 2010 this type of publisher accounted for just over a tenth (10.2%) of Scottish publishers, so the remaining publishers did not have such easy and automatic access to different markets and the financial backing of a larger company.

Both the 2003 and 2010 surveys found that the Scottish Publishing Industry is disjointed with a strong focus on creating indigenous, cultural products. As a result it is not Scottish publishers that dominate, in sales, but a few global companies based outside Scotland. Although English-language publishing is very strong, Scotland faces fierce competition from other English-language publishers such as London publishers (Sinclair et al, 2004). Although Scottish

publishing is connected to the British publishing industry it has a clear and strong identity of its own (McCleery, 2001). Even though they share the same language, it would be a generalisation to think that the England and Scotland have a collective, homogenised, market (Coll, 2006). As discussed in Chapter Two, technology is now the driving force of the publishing industry, so it is clear that Scotland must invest in new technology if they want to compete in the ever-changing global market. Additionally, the proximity of London to Scotland has proved to be a bit of hindrance because successful Scottish authors are often lured to London publishers as a result of better marketing deals and larger advances, and consequently many of Scotland's most successful authors were published outside Scotland, this will be discussed further on pages 320-324 (Sinclair et al, 2004)<sup>193</sup>. This is akin to the situation of successful small-medium publishers: the more successful they become the more attention they attract and the more likely they are to be acquired by large conglomerates (McCleery, 2001) It is now commonplace for small to medium size companies to be taken over by conglomerates when they become successful and thus potential competitors for the conglomerates. This situation is occurring in the UK publishing industry as a whole and has resulted in the industry being dominated by a small number of large conglomerates, with Harper Collins being the dominant company in Scotland. The 2003 survey found that over eighty percent of publishers based in Scotland have their headquarters elsewhere (Sinclair et al, 2004). Although the Scottish publishing industry does also consist of a large number of small,

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<sup>193</sup> However, pages 165-166, in Chapter Four, show that this is not solely a contemporary issue because Scottish authors have been leaving to be published in London since the decline of the Scottish publishing industry in the nineteenth century.

indigenous, independent companies, anything in between may find it difficult to compete on a global scale because there is a high chance of failure or, if they become successful, being bought by a conglomerate (Sinclair et al, 2004).

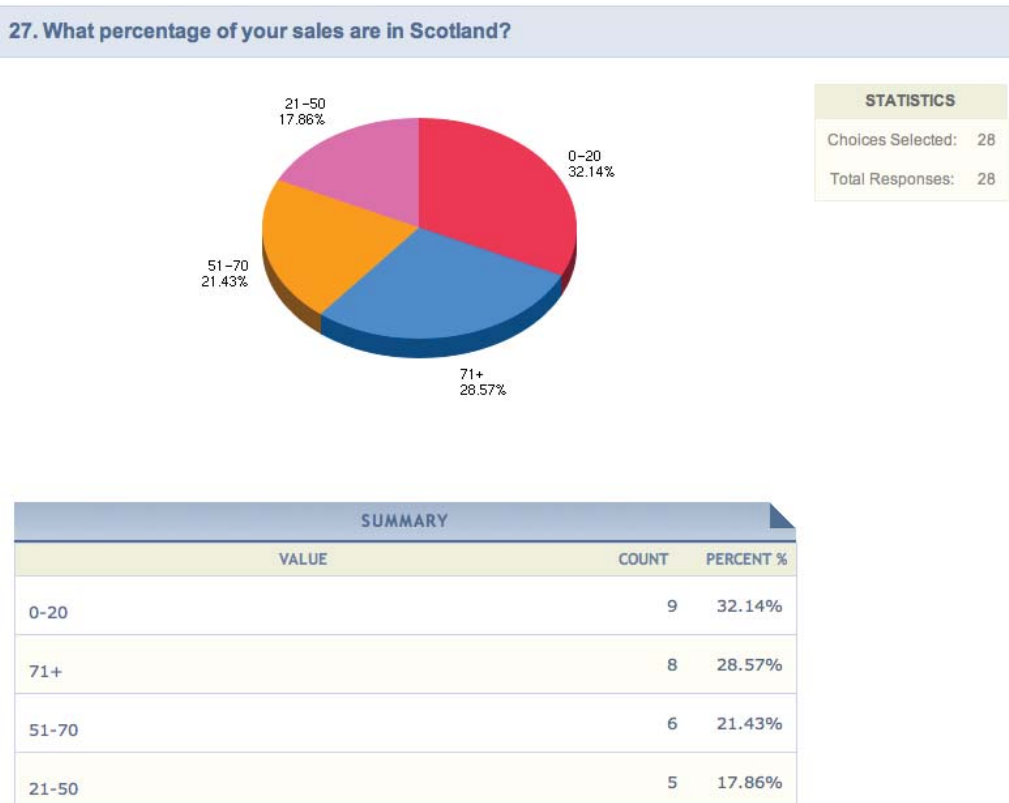


Figure 15. Domestic sales

There are two main groups of publisher in the Scottish publishing industry. The first group are a larger, more commercial type of publisher with larger turnover and employment. The second group are smaller publishers who are less commercially motivated and produce products of cultural value. The second group, of smaller publishers, rely on the domestic Scottish market for their sales because their products are aimed, specifically, for this market.

However, the first group, of larger publishers, have a more international/global outlook and do not rely solely on the domestic Scottish market (Sinclair et al, 2004). McCleery (2009b) makes the distinction between the different types of Scottish publishers based on their output: “those firms that publish *for* Scotland and those that publish *in* Scotland” (McCleery, 2009b, p. 5). There is a disparity, in terms of turnover and market orientation, between the larger and smaller publishers. The 2003 survey found that seventy seven percent of Scottish publishers’ turnovers came from sales in Scotland with the larger companies more likely to look outwith the domestic Scottish market for sales<sup>194</sup> (Sinclair et al, 2004, McCleery, 2008, p.90). In comparison the 2010 survey found that just under a third (32.1%) of the surveyed publishers said that less than a fifth of their sales are in the domestic Scottish market, nearly half of the publishers said that over fifty-one percent of their sales are in the domestic market, and just under three tenths (28.6%) said over seventy-one percent of their sales are in the Scottish market. This reinforces how inward looking Scottish publishers can be and how little they have evolved in the last seven years. There are a number of small, independent, indigenous publishing companies in Scotland that predominantly focus on the domestic market; however, the products created often have strong cultural content that does not translate well overseas and this can prove to be problematic if Scottish publishers want to exploit rights internationally. There is also an insufficient range of publishers in Scotland, with very few children’s publishers

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<sup>194</sup> Canongate, Birlinn and Mainstream are all included as larger Scottish companies (McCleery, 2008).

and the demise of educational and academic publishing<sup>195</sup> (Sinclair et al, 2004). One of the reasons that Agent B gave for placing their authors with London publishers, instead of a Scottish publisher, was the lack of genre appropriate publishers in Scotland (see page 270). Children’s Publishing, in particular, can be very lucrative with international rights sales and merchandising (Owen 2006, see pages 122-125). It is clear that consumer tastes are changing and that Scottish publishing industry must create products that reflect consumer tastes and also create opportunities for authors who have no choice but to be published in London.

### 6.3. Contemporary Issues

#### 6.3.1. Literary Agents



Figure 16. Scottish publishers who accept authors without agents

<sup>195</sup> Education publishing as virtually disappeared in Scotland with not one educational publisher under Scottish ownership (Sinclair et al, 2004).

Contrary to the belief of just over two fifths (41.2%) of the surveyed authors with agents (discussed in Chapter Five), Scottish publishers do accept authors without agents. The majority (92.8%) of the surveyed publishers accept authors without literary agents and nearly all (96.4%) actually preferred not to work with literary agents. Just over two-fifths (21.4%) of publishers deal with London literary agents and the same number deal with Scottish agents<sup>196</sup>. Surprisingly, out of the publishers who deal with London agents, two thirds control the world English language rights including US rights for most authors and just under a fifth (16.7%) controlled these rights for some authors. Additionally, all of the publishers, who deal with agents, said they controlled both the translation rights and the electronic rights, and two thirds said they controlled the film and television rights. This shows that agents do not always hold on to all of the rights, as discussed in Chapter Five. Therefore, it is not surprising that three fifths of the publishers who deal with London agents think that publishers have the same amount of control as they ever did since the advent of agents. Robin Robertson said:

“Increasingly, there is no rights potential because the rights are all held by then agent.”

Robertson said the reason for this is the:

“Slow attrition from the agents. It used to be the case that I bought world rights for a book. I cannot remember that last time I bought world rights. They want to control as many territories as possible, control everything, apart from what I do here: getting the book out into our market. We used to have a very active rights department, I put that in

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<sup>196</sup> The same publishers who dealt with literary agents in Scotland also dealt with agents in London.



the past tense because there is not the same need anymore because all that work is done by agents and we very seldom get those rights”.

From this, it appears that Scottish publishers have more control over rights than London publishers.

All of the interviewed publishers accepted authors without agents and, in keeping with the survey results, the majority showed some degree of preference to working without agents. Publisher A publishes “a vast number” of unagented authors; however, Publisher A does often work with Scottish literary agents rather than London agents. Publisher A does not work with London literary agents very often because they believe that:

“It would be fair to say this is for the top echelon of authors”. [Publisher A]

Publisher A continues by saying:

“Unfortunately most Scottish publishers are not a priority to London Agents as they [Scottish publishers] are generally too inward looking to make a major success of a book and no matter where an agent is based, they are looking for success for their authors”. [Publisher A]

This confirms the opinions of Agent G and F (discussed in Chapter Five). It also answers the question posed by Agent G, on page 279, about why Scottish publishers make no attempt to contact London-based agents. However this is not true of all Scottish publishers because Publisher A does approach London agents for potential material and therefore does occasionally source material on specific subject areas from not only London

agents but also English language agents and publishers overseas: this shows that they are a proactive and enterprising company. Additionally, Publisher B also contacts London literary agents to see what work they have available; however it is the editors that do this, not the rights departments. Publisher E is, increasingly, working with agented authors; however, some of the work they publish is not commercial so those authors are usually unagented. On the other hand Publisher D does not publish many authors with agents. Publisher D are happy to work with agents but believe that because they have such a close, personal relationship with their authors, the authors prefer to deal directly with Publisher D rather than let the agents deal with them. In this case it is evident that Publisher D plays a nurturing role to their authors, unlike the situation of publishing painted on pages 157-158, which outline the changing nature of publishing which lead the literary agent to be the author's closest ally. The nurturing role of publishers will be discussed further in this chapter.

Publisher A prefers not to work with literary agents saying:

“Some are absolutely fine but many have a completely unrealistic view of what is feasible for their authors, make things more complicated than they really need to be and withhold rights that the publisher may be better positioned to sell over time by doing so direct rather than through subagents who inevitably cherry-pick”. [Publisher A]

However, Publisher A has a strong and experienced rights department. Although concerns about inexperienced agents have been voiced by both authors and agents in Chapter Five, there are also cases of inexperienced

publishers (discussed further in this chapter) where agents are better suited to exploit the rights. Publisher B publishes unagented authors and while they have no definite preference to working with or without an agent, Publisher B believes:

“If you work with an author without an agent you are more likely to get the foreign rights because they will not sell them themselves so, ultimately, it is probably better”. [Publisher B]

Publisher B feels that the rise in the importance of agents means that agents would always try and hold onto more rights, saying:

“It probably is getting harder and harder to acquire rights from agents but we still manage it”. [Publisher B]

Publisher B does have a strong and experienced rights department and so actively exploits rights. Publisher E is the only interviewed agent who showed a definite preference for working with agented authors because they believe that agented authors are “more realistic” about what they will get from the publishing experience, this contradicts the opinion of Publisher A. Publisher E says:

“They’ve talked to their agent already; they know a bit more about the publishing business. If they get wild ideas, the agents can normally put them right”. [Publisher E]

However, Publisher E does still deal with unagented authors and feel that:

“It is difficult to meet these authors’ expectations because most works of literary fiction do not sell lots of copies”. [Publisher E]

Publisher E are surprised that some authors still have this idea that authors earn a lot of money and say that:

“First time authors can often have unrealistic expectations, and can thus be a bit of a nightmare to handle”. [Publisher E]

This notion is echoed by Authors A and D in Chapter Five (pages 234 and 236). Robin Robertson said his attitude towards literary agents fluctuates, depending on the agent because:

“They hold onto the rights that are fun and lucrative generally speaking, not the ones that are a bit of a chore. So, when you have that triangular relationship: author, agent, publisher, it is much more fun, apart from anything else. We all work hard on the promotion of the book from the early stages and are talking to people about it. Talking to anyone who we might meet. If you do not have a good relationship with the agent, where it is combative and it is full of all sorts of things, if it is just not working then, then you do not tend work as hard on promoting the book and you think ‘Let the agent do it, if they’re screwing me for hundred thousand pounds then let them do it’. It is amazing how quickly things sour when agents are just greedy for the sake of it. But if everybody is all pulling together, ok you’ve paid quite a lot of money for the book but you have not been screwed, then it is fair and the author is winning out. Then you all go into in with a sense of common purpose. It is straightforward but it doesn’t always happen that way.”

This shows the importance of the triadic relationship between the author, agent, and publisher, and what can be achieved if this relationship is successful and balanced. However, it also highlights the difficulties that can arise in the publishing process if such a relationship does not exist. Most of

the interviewed publishers expressed a preference for working with London literary agents over Scottish agents. Unlike Publisher A, Publisher B does not usually work with Scottish literary agents. Publisher E prefers to work with London literary agencies although they do also like to work with the larger Scottish agencies. Publisher E says:

“A few years ago, the big agencies did not like to work with small publishers because they would not get big advances or sales but now, particularly with literary fiction, we are the only people they can place work with, so we’re getting more through agents than ever”. [Publisher E]

This shows that Scottish publishers have benefited from large publishers reducing the amount of new titles they publish and highlights the opportunities available to smaller publishers in the current publishing environment.

Three fifths of the surveyed publishers thought that publishers had less control as a result of the advent of literary agents. Not surprisingly, all of the publishers that thought this accept authors without agents and prefer not to work with literary agents. However, over three quarters (77.8%) of these publishers do not actually deal with London or Scottish agents, so cannot be speaking from experience. Publisher A believes publishers have less control of rights as a result of the advent of literary agents. Publisher A believes that contract negotiation is more difficult with agented authors because:

“Agents demand more changes because of what they wish to withhold and sometimes what they perceive to be disadvantageous to their author. They are not always right in this aspect which can make discussions difficult”. [Publisher A]

Publisher C agreed with this, saying:

“Agents are more likely to query clauses in contracts, but we seldom publish books with agents so this does not arise often”. [Publisher C]

Publisher C does not work with agents because “Royalties for academic books also tend to be low, which agents do not like” as a result, because Publisher C very rarely works with literary agents, rights control and the publishing process in general have not been affected for Publisher C. The advent of agents has not affected rights control for Publisher D because they do not really deal with agented authors; however they are more likely to pay an advance: not specifically because there is an agent but more because that author is likely to be doing well if they have an agent, and are thus generally writing full-time so and need an advance for the book to go ahead. All of the surveyed publishers who dealt with agents tailored their contracts to each individual author, irrespective of whether they had an agent or not. Publisher A believes:

“Agents have always been there in one form or another. I think the main impact they have had in recent years is in withholding rights. It is not always the best thing to do and I think they need to be more honest with their authors about what they can effectively achieve sometimes and also spend a little more time thinking about what serves their author best rather than what serves themselves best. I should say that this doesn’t apply to all agents but enough to make me think that if I was capable of writing a best-selling book I would probably not wish to have much to do with around seventy-five percent of those listed in the usual writers’ guides”. [Publisher A]

This confirms the suspicious of both Author B and Agent G, who believe that there are numerous dishonest and inexperienced literary agents in existence.

Publisher B believes that if an agency cannot sell rights properly then it is best for publishers, if they have a good rights department, to have the rights to sell. This mirrors the attitudes of Agents B, D and G, in Chapter Five, who also believe that if publishers cannot exploit the rights correctly then they should not control they rights. Additionally Publisher B believes:

“Agents do not want to sell you rights that you are not going to use so if you acquire rights then you should exploit them immediately rather than wait”. [Publisher B]

This is confirmed by Agent G, on page 300, and also confirms Gordon’s (2002) conviction that the popularity of most books have short life-spans and should thus not be protected for extended periods of time (Gordon, 2002). This also suggests that rights exploitation is driven by market forces and the popularity of a book. Half of the surveyed publishers, who dealt with agents, said they did not have any problems selling rights; however, all of these publishers had a least one person in their company who was trained in rights sales so at least has some experience in rights trading. In contrast to Publisher B’s situation, and in agreement with the sentiments of Agents G etc, Publisher E said:

“Agents are often better positioned to sell rights than small publishers like us. We certainly do not have a problem with them controlling the rights. For most works of fiction these days you would only get UK and Commonwealth rights”. [Publisher E]

Publisher E believes that most agents are used to selling their own translation rights, so rarely sell them to the publishers, especially since the agencies with specific foreign rights etc. departments who are better equipped to sell rights than small publishers. However, the survey of publishers found that out of the publishers who dealt with translation rights, just under nine tenths (88.9%) controlled these rights, which proved this belief, that agents rarely sell translation rights to publishers, wrong<sup>197</sup>. Additionally, the interviews with Scottish literary agents found that only one of the Scottish agents actively dealt with translation rights, which shows that literary agents are not always the best people to deal with such rights<sup>198</sup>.

### 6.3.2. Canongate

Canongate and, to a lesser extent, Birlinn are considered to be the only two, successful, independent publishing companies alongside the other large Scottish publishing companies, which are all subsidiaries of larger conglomerates<sup>199</sup> (McCleery, 2008). Canongate are well known for being a

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<sup>197</sup> Over a third (35.7%) of all the surveyed publishers did not deal with translation rights

<sup>198</sup> The remaining agents either sold these rights to publishers or used an external agency to exploit them.

<sup>199</sup> In 2007 the largest companies, which were subsidiaries of larger companies were: Elsevier, Chambers Harrap, Harper Collins and Mainstream (which is part of Random House) (McCleery, 2008). Publishing Alasdair Gray's *Lanark* in 1981 helped to secure Canongate's reputation as an enterprising literary publisher. *Lanark* became one of the most culturally important modern Scottish novels, which inspired a new confidence in Scotland's political and cultural situation (Crawford, 2007). Because of its popularity outside Scotland, *Lanark* also served as a catalyst in the growth and popularity of Scottish literature in the 1980s (Tiitinen, 2004). Wallace and Stevenson (1993) surmise that after the rise in popularity of *Lanark*, London publishers wanted to capitalise on the revival of Scottish literature. Scottish writing was fashionable and marketable again, and London publishers wanted to exploit this (Wallace and Stevenson, 1993). This suggests that although there is a rich heritage



Scottish publisher with an international outlook, as confirmed by Agents E, F, and G, in Chapter Five, with Agent E saying:

“Jamie Byng has got himself, and Canongate, into the position where London agents will consider Canongate alongside London publishers, when they have an exciting new project. Jamie has made Canongate work by putting them in an international playing field and as a result he’s regarded as an international publisher”. [Agent E]

Feather (2006) uses Canongate as an example of how independent publishing companies can prosper within the globalised, conglomerated publishing industry. Feather (2006) calls attention to the need for smaller publishers to make astute publishing decision while publishing within their means. Canongate achieves this by placing a strong importance on rights within their publishing strategy, which makes them key knowledge holders in rights exploitation. De Bellaigue (2004) highlights that “Canongate has consistently laid much stress on the purchase of rights (world volume rights wherever possible) and their vigorous exploitation” (De Bellaigue, 2004, p.196). This shows that Canongate has more of an international focus than other Scottish publishers – a problem highlighted in the both the 2003 and 2010 surveys. For Canongate in particular overseas sales and rights exploitation have become a core operation of the business. The company also have an important link with Grove/Atlantic and are one of the founding members of the Independent Alliance<sup>200</sup>. This helps Canongate compete in the international arena (De Bellaigue, 2004). According to McCleery (2008)

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of Scottish authors, there had been a lull in the popularity of the Scottish tradition. Although originally rejected by London publishers, *Lanark* helped to bring this tradition back into the public eye after a period.

<sup>200</sup> The Independent Alliance comprised of ten UK publishers and their international partners with the aim of international support and promotion (De Bellaigue, 2004).

the distinction between being a Scottish publisher and a publisher based in Scotland raised many important questions about the Scottish publishing industry. The 1992 study of Scottish publishing, conducted by the Scottish Publishers Association and the Scottish Centre for the Book, “represented in microcosm the Scottish weakness: physical peripherality and economic marginality” (McCleery et al, 2008, p. 89). Canongate have been able to broaden their outlook internationally, therefore, as a result of notable successes such as Mann Booker Prize Winning *The Life of Pi* and Barack Obama’s *Dreams From My Father*.

As outlined in Chapter Two, the digital environment has resulted in new ways to exploit a work, including the book application for the iPhone or iPad. Canongate were quick to profit from this new avenue when they launched *The Death of Bunny Munro*, by Nick Cave, as an iBook app (Tivnan, 2009). Tivnan (2009) describes this as “an e-book on steroids” because it has numerous functions and enhancements such as audio read by Nick Cave, music composed by Cave, videos of Cave reading the book, the ability to email passages of the book to friends and many more functions (Tivnan, 2009). Tivnan (2009) surmises that in years to come the launch of this book will be looked at as when “digital publishing came of age” (Tivnan, 2009). However, the price of this application - £14.99 on the Apple App Store - is a reflection of the production cost of this type of app. However, this cost did not deter consumers and this app became the thirty-third most popular app globally and the fifth most popular paid-for book app (Tivnan, 2009). By embracing digital technology, particularly having an educated grasp on iBook apps and e-

books, have ensured that Canongate are competitors on a national and international scale.

Despite its success, Canongate is not always look upon favourably by other Scottish publishers with Agent E saying, on page 280, “I do not think you’ll find that the indigenous Scottish publishers will look at Canongate with much charity.” Although both agents E and G believe that a way that other Scottish publishers can become successful is by being more internationally focused and by using Canongate’s business model as a paradigm, Publisher A said that Canongate’s success would be difficult for other Scottish publishers to replicate because they have:

“A high risk business strategy driven by Jamie Byng”. [Publisher A]

Agent E concedes that:

“Canongate is really all about Jamie Byng, and Jamie has a rather eclectic and imaginative style of publishing”. [Agent E]

While it is clear that imitating Jamie Byng may not be the way for Scottish publishers to progress they could certainly learn much from the company’s innovative and international outlook. Canongate have been identified as key knowledge holders, in terms of their rights practices, and could share their knowledge with other Scottish publishers. Additionally, as Agent D observed on page 280 of Chapter Five, highly trained staff are vital to the success of a publisher; therefore, employing innovative staff with the skills required to compete in the digital market could help improve the success of Scottish

publishers in the same way as Canongate. Universities that teach Publishing Studies could play an important role in creating graduates to fill the skills gap in the publishing industry; as such, publishing educators and publishing professionals could work together to tailor the curriculum to meet the needs of the evolving publishing industry.

### **6.3.3. A Local or Global outlook?**

The majority of Scottish publishers advocate the idea of culture and Scottish identity, so the products they publish are instrumental in shaping the country's education system and social, cultural and political life. This is a good example of the social and institutional planning theory regarding copyright and the importance of indigenous culture to sustaining a diverse publishing industry. While Scottish publishers have a strong emphasis in promoting, strengthening and preserving Scottish culture, this is not always the case elsewhere. Although London publishers do publish Scottish writing it is not their priority, particularly the more obscure aspects of it. Therefore the Scottish publishing industry fills a gap of promoting regional culture and maintaining diversity in the UK publishing industry: something that Agent G supported on page 280 of Chapter Five (Sinclair et al, 2004). However the emergence of globalisation has resulted in an increase in: transnational ownership and large multimedia companies; the transnational flow of media products, particularly from English-speaking countries; and commonality of transnational culture. This has resulted in a higher concentration of homogenised products and less diversity in the publishing industry, which could be a threat to Scottish culture (McCleery, 2008). Although there are now more titles being published on a

yearly basis, they are mainly being published by a small number of large conglomerates for a smaller number of readers (Baensch, 2004).

Globalisation makes the world a smaller place so Scotland having such a strong, longstanding, and unique culture helps to distinguish it from other countries and cultures. Supporting this distinct identity will help Scotland make more of an impact in the global market (Sinclair et al, 2004). There is also a notion that the SNP, minority-run, government will focus on bolstering Scottish identity through its publishing (The Bookseller, 2007). However, it is important that some Scottish publishers have an international focus and are not limited to publishing only Scottish content.<sup>201</sup> Having an international focus will help publishers appeal to global markets instead of being limited to home markets (Sinclair et al, 2004). Scottish publishers can do this by fostering their intellectual property widely to increase both awareness, of their products, and profit. This may prove difficult for smaller companies because they may not be able to afford to compete in the global market (McCleery et al, 2007). There is a strong connection between the size of a company and their international focus, with larger companies not solely focusing on Scotland for its markets (McCleery, 2008). As discussed above, a good example of a successful Scottish Independent publisher, with an international outlook is, Canongate whose recent success includes the Mann Booker Prize-winning *Life of Pi* by Yann Martell (McCleery et al, 2007). Although, in theory, it would be possible to publish Scottish provincial works that sell well globally, especially when

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<sup>201</sup> In 2002, seventy seven percent of publishers suggested that over half of their turnover was from sales in the Scottish market. This figure was unchanging in 2007 and rose to 78.5% in the 2010 survey (McCleery et al, 2007)

Scotland is perceived as fashionable, in reality in order to gain success in a global market the products should have a more universal appeal, and many Scottish works do not translate well into other cultures (McCleery, 2001).

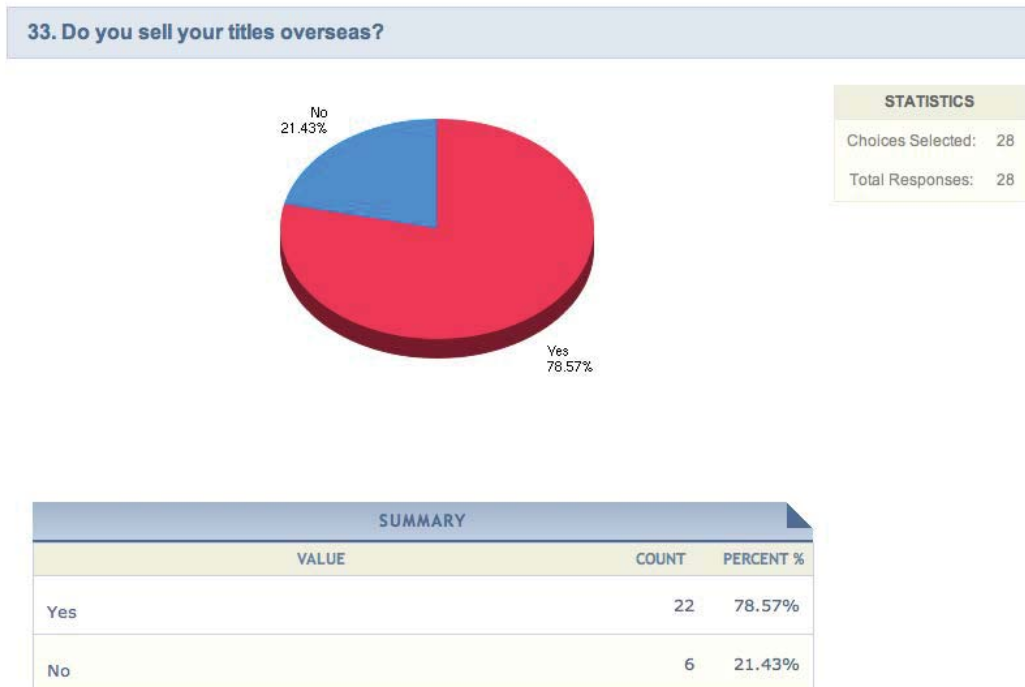


Figure 17. Overseas sales

Although just under four-fifths (78.6%) of publishers sell their titles overseas, less than a fifth (17.9%) have an overseas rights agent working on their behalf. Of the 82.1% of publishers who did not use overseas rights agents, just over a third (34.8%) sold their titles directly to overseas publishers, so it is unclear how the remaining publishers sell in these overseas markets. All the publishers who had overseas rights agents working on their behalf earned between one and thirty percent from rights sales, while out of the publishers without overseas subagents who sell directly to overseas publishers, just under nine tenths (87.5%) earned between one and thirty percent from rights sales, while the remaining publishers earning over fifty one percent. This shows that publishers selling directly to overseas publishers have a small

chance of earning more money through rights sales than if they hired subagents. Nearly two thirds (64.3%) of respondents attend book fairs, which suggests that face-to-face meetings are still vital for rights deals. Of the publishers who attended book fairs, nearly four-fifths (77.8%) attended the London Book Fair, and just over three-fifths (61.1%) attended Frankfurt. Just over a quarter (27.8%) attended BookExpoAmerica and just under a quarter (22.2%) attended Bologna: the lack of attendance at these two fairs could be due to the cost of attending a fair in America and because the Bologna book fair focuses on Children's publishing. Only a quarter of publishers questioned bought rights from overseas publishers, and nearly three-fifths (57.1%) of those, who bought rights from foreign publishers, bought six to ten titles from per annum. So the publishers who buy rights from overseas publishers do so quite actively. However, nearly nine tenths (89.3%) of the publishers questioned said that they did not have access to funds to underwrite the purchase of works to be translated into English. Even so, only twenty eight percent of the publishers who did not have access to translation funds said that they would buy more foreign language titles if they had access to funds to support translation into English: something that could both widen their audiences and increase their income. This confirms, as outlined on pages 91-96, that British publishers are less likely to publish foreign language books because of the dominance of the English language.

Half of the publishers questioned publish local interest books, with over a third (35.7%) of those publishers saying that over eleven percent of their titles fell into this category. Half of the publishers that published local interest books

said that the Scottish market contributed to fifty percent or more of their sales. This Scottish-specific content can explain for the lack of interest in rights portrayed by many of the surveyed publishers and also the lack of engagement in the international market. Although publishing international content, and content from non-Scottish authors, could help Scottish publishers compete globally, with copyright helping to protect this investment, it is clear that many Scottish publishers exist to promote, preserve and strengthen Scottish culture by publishing Scottish content, which would be overlooked by larger, global publishers. The vast majority of Publisher A's list is comprised of Scottish authors writing about Scottish subjects for a Scottish audience. The view is that the company's main income comes from its home sales; however, Publisher A's rights department is based down in London, which shows, conversely, that this company think beyond the Scottish market. Publisher A believes that it can be difficult selling Scottish content overseas especially:

“If the subject is a very Scottish one. There is no connection with any other audience other than a Scottish audience. Also, quality can be an issue as you have a very small pool of talent. This is something that also affects other nationalities but if the pool is bigger, your talent ‘hit’ rate is also likely to be slightly larger. A Scottish author writing on a broader subject line would not have a problem selling as long as there is an international connection with the subject, it is a well-known subject and the writing is very good quality. The latter is always the most important element of any book targeted for rights sale”. [Publisher A]

Publisher B, who also has an office based in London, believes that other Scottish publishers must diversify their lists if they want to be more successful. However, as highlighted earlier, many Scottish publishers publish important Scottish content that preserves, promotes and strengthens Scottish



culture and helps to diversify the UK publishing industry. This shows that not all Scottish publishers are commercially motivated and thus rights exploitation is not of great importance to them. Publisher B would not publish solely Scottish content because they know it would not sell overseas and so they would not want the rights to something like that. Publisher E said:

“Although seventy-five percent of our authors are Scottish, we’re not only a Scottish company. Clearly we’re very interested in Scottish fiction but we also have authors from other parts of the UK, Europe and the US too. However, we really like to be close to our authors and this can cause problems if they’re based too far away because we cannot afford to fly them over or fly over to see them”. [Publisher E]

Although the majority of Publisher D’s authors are Scottish or live in Scotland they do not choose their authors based on their nationality because they “like to have a broad spectrum of authors from a broad spectrum of backgrounds.” However, Publisher D does admit that their proximity to Scottish authors makes it easier to deal with them. So although all of the interviewed publishers do not solely publish Scottish authors, they are often tied to mostly publishing Scottish authors due to proximity, financial and market constraints.

#### **6.3.4. The Nurturing Role of Scottish Publishers**

Authors require time and support, from their publishers, in order to develop their talent and writing skills (Legat, 1991). It is evident that the Scottish Publishing industry plays a key role in the cultivation of Scottish writing and authors. In particular smaller, independent publishers spend more time supporting their authors to get the best work from them over time. Many internationally successful Scottish authors started their careers with Scottish

publishers. Unfortunately, the lure of bigger advances and larger marketing budgets, offered by London publishers, has proved too much for many Scottish authors. The *Review of Scottish publishing* states that “It is not always axiomatic that a successful writer will gravitate towards larger publishers: Canongate has had some success in luring star authors e.g. their Man Booker Prize winner Yann Martel, but a ‘roll call’ of Scottish authors reveals that most of the commercially-successful writers are published outside Scotland. Bigger marketing budgets, larger advances and the prestige of some literary imprints are difficult to combat”, this highlights the difficulties that Scottish publishers face (Sinclair et al, 2004, p. 14). Nowadays it is quite commonplace for Scottish authors to start their careers with Scottish publishers then move on to London publishers once they have become successful. This is not surprising, when Scottish-based authors such as Janice Galloway earn significantly below the poverty line<sup>202</sup> (McGinty, 2008). This situation is not isolated, as discussed in Chapter Five, the majority of Scottish authors had to supplement their writing in order to live with numerous authors earning below minimum wage. This is one of the problems that need to be addressed and it is clear that more government funding and investment is required to sustain and encourage Scotland’s literary activity.

Robin Robertson said that when he published Scottish authors, with his London publisher, during the 1980s and 90s there were no real alternative Scottish publishers for Scottish authors. Robertson continues:

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<sup>202</sup> Janice Galloway earned £6500 from her writing in 2007 (McGinty, 2008).

“It is not just about advances, it is about distribution as well. At that point, and it is different now and of course Canongate is a completely different animal. Canongate then was tiny, it could not pay anything and there was no distribution, you would never find the books south of the border. They had no system of rights development. The thing about these writers particularly, I mean someone like Jim Kelman is an international writer; he’s not a British writer. He’s an international writer; he’s got that kind of sensibility. To be published, just for the sake of it, to be published in Scotland, is ridiculous”.

This sentiment echoes the views of agents G and H in Chapter Five.

Robertson continues:

“I do not really see why Scottish authors have to be published in Scotland. I think you should go to where you are going to be best published. We [Jonathan Cape/Randomhouse] can do better by Scottish authors and publishers here from this office because we are a huge publishing company with a lot of sales outlet, a lot of clout, we’ve got money to pay for advances and covers, we can sell the rights around the world. What’s the point in doing anything different? It is not as if they’ve [Scottish authors] become less Scottish”.

This is a sentiment that most of the literary agents agree with. Agent F said that what Robertson did during this period was a “Key cultural turning point” and continues, “What Robin Robertson did was remake the relationship between Scottish writing and London publishing. Scottish writing became a sexy, marketable commodity in London, again” Agent G adds that:

“Robin has done more for Scottish writing by having it published in London, and being taken seriously on an international stage.” [Agent G]

So although these authors were leaving Scottish publishers to be published in London, they were getting more exposure than Scottish publishers could offer them and this exposure reflected well on Scottish writing in general.

Additionally, Robertson points out that he has nurtured numerous authors at the start of their careers and they have left to be published by other publishers: it is not solely an occurrence for Scottish publishers.

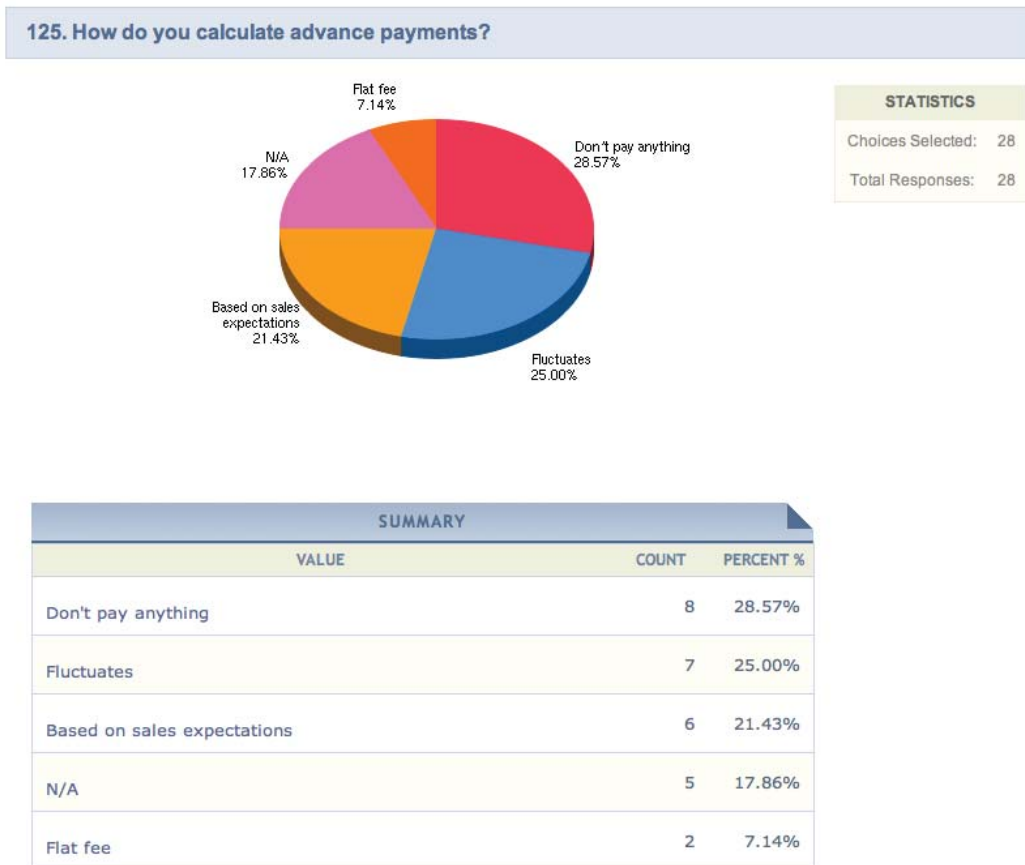


Figure 18. Advanced payments

The results of the 2010 survey of publishers reveal that it is no surprise that Scottish authors leave to be published in London because the advances paid by Scottish publishers are very low and often non-existent (also Chapter Five for the results of the authors survey). This study found that advances are more important to authors than rights sales, so authors are bound to be lured away by higher advances. Just under a third (28.6%) of publishers do not pay their authors an advance, just over a quarter (26.1%) base their advance

payments on sales expectations, just over three tenths (30.4%) say their advance payments fluctuate, and less than a tenth (8.69%) pay a flat fee<sup>203</sup>. Not surprisingly, those publishers who do not pay their authors an advance do not deal with literary agents. This is also reflective of the survey of authors where just under two fifths (39.1%) of authors did not receive an advance. However, less than two fifths (39.3%) of the publishers questioned published Fiction, which would explain the lack of author advances. Of these publishers, who published fiction, only just under a tenth (9.1%) preferred to work with a literary agent (all the publishers accepted unagented authors) while under half of these publishers (45.5%) dealt with literary agents: this is another reason that could explain the lack of author advances. Out of the publishers who published fiction, three tenths did not pay an advance, which shows their authors have to write without any initial financial support from them.

### **6.3.5. Looking to the Future: Improvements**

Electronic publishing, as discussed earlier in the thesis, is a topic that is being discussed extensively in the publishing industry. Although it is prevalent in the Educational and Academic sector, the trade publishing sector has been more cautious. However, Scottish publishers lack the specific expertise involved in electronic publishing as a result of the demise of educational publishing in Scotland. Also, the majority of indigenous publishers lack the funds to invest in electronic publishing. As discussed on pages 326-330, Canongate have been quick to respond to the potential that electronic publishing creates, making many of their titles e-book applications for devices such as Apple's

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<sup>203</sup> Just under a fifth (17.9%) of publishers do not deal with authors so they will be taken out of the equation.

iPhone and iPad. The majority of the interviewed and surveyed publishers were not engaged in digital publishing at this level. If electronic publishing in trade publishing becomes widespread in the future, it is likely that the Scottish Industry will be left behind (Sinclair et al, 2004).

The SAC review suggests several ways of improving the current situation. Firstly publishers must keep up-to-date with new technology. This investment will help enhance capability. Secondly, publishers must employ highly skilled people in order to build up a wealth of expertise. This way, they will have the range of skills required to compete in an ever-changing market. It is particularly important to encourage people to work/stay in Scotland instead of London. Thirdly, the governing bodies must make it possible for companies to compete more successfully in local, national and global markets. Legislation for protecting and exploiting IPR must be looked at and products must be more market based. Finally the links between the publishing industry, government, academic and business partners must be strengthened to improve the infrastructure and increase the support network (Sinclair et al, 2004). If these actions are implemented then it could result in more creativity within the Scottish publishing industry and therefore more productivity. Consequently this could mean an increase in the products created, which means possible income generated from exploiting IPR overseas; more jobs generated in the creative industry, which means more experts working in Scotland; and the promotion of Scotland and Scottish authors, which strengthens, promotes and preserves Scottish culture (Sinclair, 2004).

Although the 2003 survey suggested that Scottish publishers must keep up-to-date with new technology to compete in the global market, the 2010 survey revealed that less than a third (32.1%) of the surveyed publishers are involved in electronic book publishing. This shows that Scottish publishers have not acquired the necessary skills suggested in the 2003 survey. Of those publishers who were involved in e-book publishing, two thirds said that none of their current titles fell into the e-book category, just over a fifth (22.2%) said that between zero and ten percent of their titles were in the e-book category and only 11.1% of these publishers said that over half of their books fell into the e-book category. Of all the publishers involved with e-book publishing, all agreed or strongly agreed that electronic publishing was a good opportunity for publishers, although over two fifths (44.4%) believed it was also a threat to conventional publishing, and all of these publishers either agreed, or strongly agreed, that e-publishing offered greater potential for copyright infringement. However two thirds of these publishers believe that e-publishing offers them a lucrative new revenue stream and all of these publishers, who are involved in e-book publishing, either agree or strongly agree that e-publishing can work in conjunction with traditional publishing. While over three quarters of these e-book-involved publishers thought that e-publishers left small companies vulnerable to competition from larger publishers, conversely, two thirds of these publishers thought that it also gave small publishers the ability to compete successfully with the larger companies. In contrast to the survey results, all of the interviewed publishers were involved in electronic publishing in some form. Publisher A is working on a programme of e-books, mainly for fiction and reference non-fiction, because Publisher A believes that e-

publishing offers access to new markets. Additionally, Publisher A believes that electronic publishing offers good opportunities for publishers and allows smaller publishers to compete with the larger ones. Publisher C is developing e-books and other digital publishing technology because they believe that digital rights are the most significant growing area and, as such, “don’t want to be left out”. Publisher B is the most adept of all the publishers because they have a digital expert, who deals with digital issues because they believe:

“It is a good way of appealing to a new audience”. [Publisher B]

As a result, Publisher B has had a whole project of acquiring digital rights from agents and is also turning the backlist into e-books. Publisher D have negotiated a deal with a company to create e-books, which they are selling it on their website; however, Publisher D would eventually like to create e-books in-house. Publisher E is developing their own e-books in-house and sells them through their website. Publisher E is surprised that not very many other Scottish publishers are doing this (i.e. have a similar e-book programme and selling them through their own website). Publisher E says:

“If you look at the predictions from the rest of the industry, they are predicting many more sales in the coming years and it just seemed like a very sensible investment to make”. [Publisher E]

The results of the interviews show a more positive picture of Scottish publishers’ engagement with digital publishing than the survey results, particularly Publisher E, who is a small publisher with two staff and yet is still as actively engaged in e-publishing as they can be. This shows that



publishers of all sizes can be involved in the digital arena. These results also demonstrate that by using external experts, a publisher can still get involved even if they do not yet have the relevant skills. However, these publishers were very interested in getting involved with this research project, which shows they are proactive and have a keen interest in publishing trends: this may not be representative of other Scottish publishers.

Nearly four fifths (78.6%) of the publishers questioned acquire electronic rights. Of the remaining publishers who do not acquire these rights, two thirds do not earn any income from rights sales because they do not sell rights at all. Of the publishers who do acquire electronic rights only just over three tenths (31.8%) actively sell these rights to other media companies. So does this mean the rights are lying dormant? This question can, partly, be answered by Publisher A, who controls the electronic rights for many of their authors but does not actively exploit or sell them because of time constraints. Although Publishers A does see the importance of such rights; they do not always have the time and/or expertise to utilise them. Additionally, as discussed earlier, publishers buy electronic rights to prevent competing editions of their books becoming available so they control them as a preventative measure rather than with a view to exploit them. In confirmation of this, all of the interviewed publishers expressed the importance of controlling the electronic rights in the digital publishing environment regardless of whether they had the skills to exploit them. Publisher A's contracts are currently being developed to fit in with the digital environment:

“All technology matters in our contracts allow for systems, devices or transmissions means yet to be developed”. [Publisher A]

Publisher C has a future technology clause for their newer contracts, Publisher B is now amending their contracts so they can acquire e-book rights and Publisher E has always insisted that e-book rights are written in to their part of the contract, and have done from the start, because they want to control the rights. Although it is encouraging to see that Scottish publishers place value in developing technologies and the opportunities they could bring to both Scottish authors and publishers, these rights are worthless if they are not exploited. As discussed on pages 113-117, the danger of controlling the authors' electronic rights, without exploiting them correctly or offering them fair recompense, can result in discord between the publisher and the author. However, three of the interviewed publishers are actively using their electronic rights. In particular, Publisher B's digital programme is really important for them: every time they publish a book they will have a simultaneous e-book. Additionally, Publisher C believes that digital publishing is an excellent opportunity for them, so because they do not have the means to create e-books they licence e-book rights to partners who then sell the books on their behalf.

The majority (85.7%) of the surveyed publishers believe that electronic publishing is a good opportunity for publishers. However, just over seven tenths (71.4%) of all publishers agree that electronic publishing holds greater potential for copyright infringement, while just over a fifth (21.4%) strongly agree with this sentiment. The remaining (7.1%) publishers had no opinion on

this matter. Publisher E has found a simple solution for piracy: instead of protecting their e-books with “complicated DRM” they have created a simple ‘watermarking’ system, where each e-book is numbered, so Publisher E would be able to find the source of any pirated copies. Publisher B said they have not been affected by digital piracy as yet but observed that:

“It will be interesting to see if piracy rises, like in other industries such as music, as e-books become more popular”. [Publisher B]

In fact none of the interviewed publishers had experienced any sort of book piracy. Over a fifth of the surveyed publishers thought it was expensive to train staff in the skills required for e-publishing, while just over a third (35.7%) disagreed with this. However, over two fifths (42.9%) of the publishers questioned did not have an opinion on this. The majority (85.7%) of the publishers questioned believe that e-publishing can work in conjunction with traditional publishing, while the remaining publishers did not have an opinion on this subject. Just over a fifth of the publishers questioned did not believe that e-publishing made smaller companies vulnerable to competition from larger multinational companies, while half of the publishers either agreed or strongly agreed that it did. Just under three tenths (28.6%) did not have an opinion. However, over half (53.6%) either agreed or strongly agreed that e-publishing enabled small companies to successfully compete with larger multinationals, although over a third (35.7%) of the publishers questioned did not have an opinion on this. It is unclear whether this lack of opinion, for many of the questions, shows apathy towards e-publishing and emerging

technologies on the part of Scottish publishers or if digital publishing is just irrelevant to their business model.

An indication about the lack of engagement in the digital environment is that fact that the majority of the interviewed publishers knew very little about the Google Book Search settlement. Additionally, a quarter of the surveyed publishers had never heard of it. Out of the surveyed publishers who had heard of the GBS, two-thirds revealed that they would not be opting out, which indicates that the GBS has had a positive reception amongst Scottish publishers. Additionally, less than a tenth (9.5%) of publishers did not give an answer to this question, which suggests that they are undecided. This is no surprise given that the settlement deal is unresolved. Less than a fifth (19%) of the publishers, who had heard of the GBS, believed they would make a profit from this programme, while just over a quarter (23.6%) did not believe they would earn any revenue. The remaining publishers did not answer this question, which could again link to both lack of knowledge and the ongoing case. However, this attitude is not specific to Scottish publishers and the president of the Booksellers Association warned that ignoring the GBS, digitisation and the opportunities and threats that new technology enables could result in the book publishing industry becoming “irrelevant” (Neill, 2010). Out of the interviewed publishers, only Publisher A and Publisher C showed a real understanding about both the positive and negative implications of the GBS, although Publisher E did express doubt and concern about the settlement. Interestingly Publisher A and C, the most knowledgeable about the GBS, expressed differing views about the programme. While Publisher C

described the GBS as a “boon” because they have received a high proportion of referrals to their website from it, Publisher A describes the settlement as “untenable” despite agreeing that the idea behind a digital repository was a good one. As such Publisher A will be opting out while Publisher C will not. Although Publisher E does not like the GBS they believe that they cannot do anything about it alone because they are such a small company and so although they:

“Would rather there was not a settlement, but, pragmatically, if there is a settlement we would like to register our books and get some money from them”. [Publisher E]

This helps to illustrate the dominance of a company like Google: despite being unhappy with settlement, some small publishers do not feel like they have any other choice but to engage with the programme.

### **6.3.6. Looking to the Future: Alternative methods for Revenue**

Increased competition from other English-language publishers has emphasised the importance of Scottish publishers looking at alternative methods for creating revenue. Although rights sales and licensing are secondary sources of income, they can be particularly lucrative. Publishers can take advantage of new media and technology to create revenue from existing titles, therefore increasing their value. This can be done by exploiting the rights through new formats or even reprinting out-of-print titles in an up-to-date way. Sinclair et al (2004) found that many publishers believe the Scottish Arts Council should be more motivational in encouraging the development of new products and services corresponding to new and alternative media:

something that many of the publishers vocalised in the 2010 survey (Sinclair et al, 2004). This would make it easier for companies to exploit their products across other media and form strong links for the future. The 2003 review also suggests that more education about IP is required because many financial organisations are cautious about accepting IP as an asset. The 2003 SAC Review suggests that the Creative Industries Sector should be responsible for educating potential investors on the nature of the sector and the risks and flexibility involved (Sinclair et al, 2004). However, a 2006 study found that the problem was attributed to the publishers' lack of desire to take risks rather than the banks/financial organisations lack of knowledge of businesses with an IP foundation<sup>204</sup> (McCleery, 2008). In Glasgow there have been government-supported initiatives to create a number of screen-based media industries. If these industries flourish then publishers might work in conjunction with them to exploit original work and create spin-offs (McCleery, 2008). This will help strengthen the Scottish publishing industry and the Scottish Creative industries as a whole, which will in turn strengthen the Scottish economy.

Out of the interviewed publishers only two had rights departments (Publishers A and B); however, all of the publishers were involved in exploiting rights to some degree. Although Publisher C does not have a rights department, they did previously employ a rights consultant. At present a number of people within the company deal with various rights; however, there is no-one trained in selling rights within this company. This situation is also reflected in the

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<sup>204</sup> This study in 2006 was to create an achievable paradigm for publishers to better access finances through an investment fund (McCleery, 2008).

practice of both Publisher E and D. Publisher E does not have a rights department because only two people work for the company so they do all publishing jobs themselves. Although Publisher D does not have a rights department or anyone trained in selling rights, all staff members deal with rights in some capacity. The staff at Publisher D picked up their rights knowledge through experience in a similar way as the autodidactic London literary agents. Additionally, Publisher D has created a copyright and permissions guide for their authors: something that Author B recommended that publishers do. Rights are not a priority for Publisher E because they said:

“It is very rare that we have rights to sell”. [Publisher E]

If Publisher E does have the foreign rights to sell “although this is very rare because the literary agents normally hold on to these” they use a London-based subagent to sell these rights because of their [Publisher E] lack of experience. Publisher E says:

“When we first started up we thought that rights would be immensely important but the truth is they’re not: not to us anyway, we’d like to sell more of them but we recognise the difficulties”. [Publisher E]

Publisher E says:

“Rights are something that we have less of a handle on than most publishers because we never get them”. [Publisher E]

This study has revealed that this is not the case for many Scottish publishers who appear to control many of the lucrative rights, such as translation,

electronic and film and television, for many of their authors. So for Publisher E, this is probably because they are a very small new company with no specific rights expertise or experience and often deals with literary agents. As discussed in Chapter Five, the majority of literary agents try to control rights in cases where they believe they can exploit them better than the publisher and this appears to be the case for Publisher E. Publisher A has a rights department with one person working in it because there is no-one else in the company that is trained in selling rights. Publisher A believes their rights department is:

“Quite important on specific occasions and in some categories as it helps to cover investment made on some advances and it is a fresh income stream for the company”. [Publisher A]

However Publisher A concedes that the company is still relatively small and does not have that many books with overseas appeal. On the other hand, Publisher B believes they have one of the best rights departments in the United Kingdom because they take rights acquisition and exploitation more seriously:

“Smaller companies cannot afford to do it, and for bigger companies it just was not a priority”. [Publisher B]

Publisher B believes that a “Rights department is an investment” and as a result of putting so much emphasis on this function, Publisher B has built up a reputation for rights excellence and “frequently acquires world rights”. The importance given to rights varies according to the size of the initial investment into the project, for example if the author was granted a high advanced



payment (Owen, 2010). Additionally, this study found that having a comprehensive rights strategy allowed publishers to pay their authors larger advanced payments.

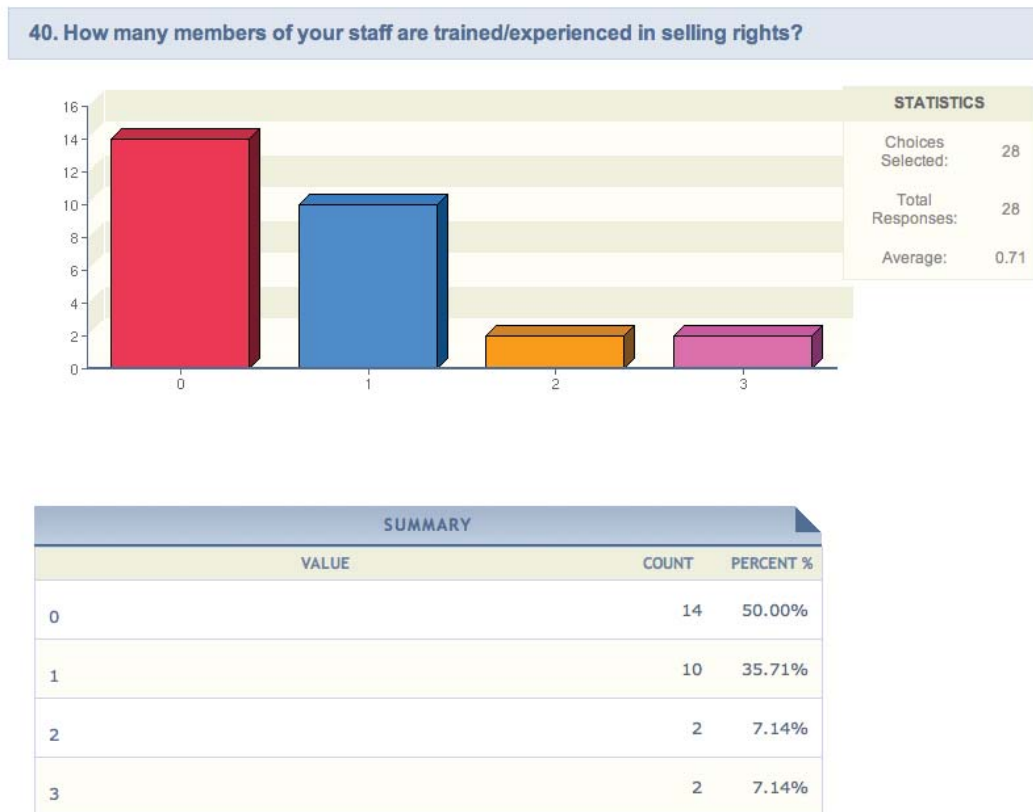


Figure 19. Experienced rights staff

All of the publishers surveyed had less than five members of staff who dealt with rights; however this is not surprising because almost four-fifths (78.6%) of the publishers surveyed had less than ten full-time staff working for them<sup>205</sup>. Half of the publishers surveyed did not have any staff trained or experienced in selling rights. Over a third (35.7%) had one staff that was trained or experienced and less than a sixth (14.3%) has two or more. The majority

<sup>205</sup> One seventh had between eleven and twenty-five staff, while just over seven percent had over twenty-six full-time staff.

(85.7%) of publishers said they would not be recruiting in the next year so this shows little scope to develop rights departments within Scottish publishing companies, especially since less than half (45.8%) of these publishers have no staff trained/experienced in selling rights. This confirms that small publishers deal with rights on an ad hoc basis. Additionally, Owen (2010) asserts that, “any rights strategy should be carefully planned and coordinated with other sales and marketing activities to maximize the benefits for both author and publisher”: something the majority of Scottish publishers do not seem to be following (Owen, 2010, p.58). Half of the surveyed publishers have one or more staff trained/experienced in selling rights. Less than a fifth (8.3%) of these publishers (who are not recruiting within the next year) use freelance rights experts. From these figures, it is not surprising to discover that a quarter of the publishers questioned do not actually sell rights.

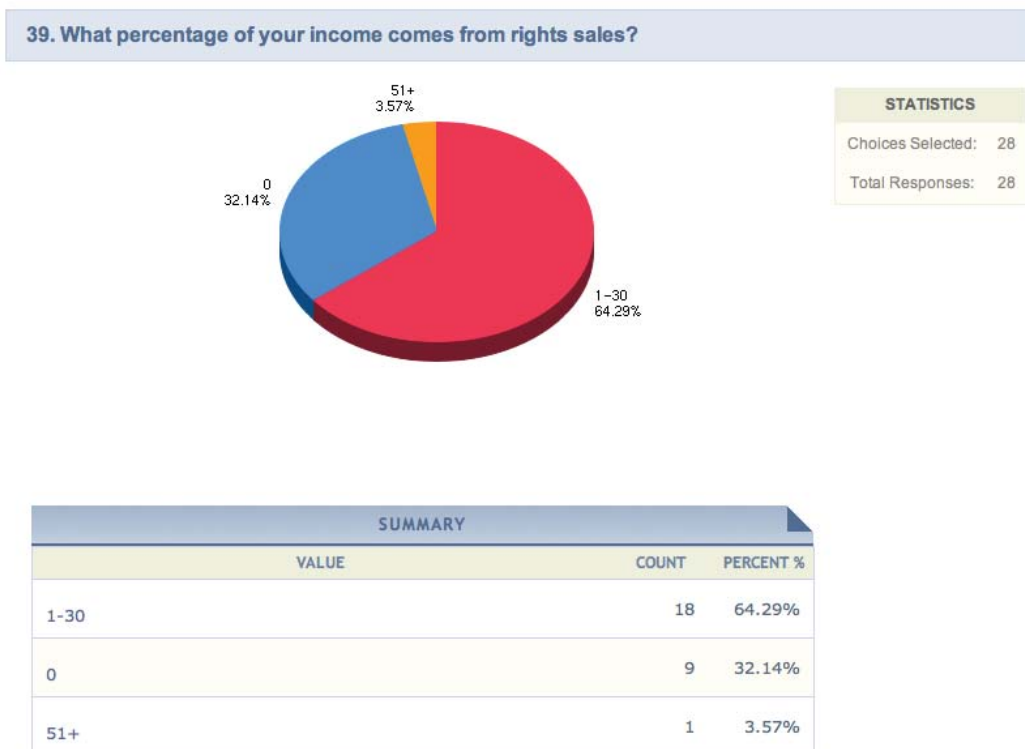


Figure 20. Rights income

Just under a third (32.1%) of publishers surveyed earned nothing from rights sales. However just under two thirds (64.3%) said that between one and thirty percent of their income came from rights sales. Only 3.6% earned over fifty one percent of their income through rights sales. Surprisingly, all of the publishers that earned over fifty one percent of their income through rights sales had less than ten staff with only one who is trained and/or experienced in selling rights. This shows that a large rights department is not necessary in order to earn money from rights sales. Of the publishers who earned nothing from rights sales, just under nine tenths (88.9%) had no staff who were trained in selling rights and the same amount of publishers said that rights potential was either unimportant or irrelevant when taking on a project. Despite this, over a fifth (22.2%) of the publishers who earned nothing from rights sales controlled all the authors' rights, including the lucrative translation, electronic and television and film rights, so these rights are lying dormant. All of these publishers, who control the rights, publish educational material. Although film and television rights may not be relevant, the electronic and translation rights could be exploited so, again, these rights appear to be lying dormant. Out of the publishers who did earn income from their rights sales, just over a quarter (26.3%) split the income fifty-fifty with their authors, just over a tenth (10.5%) of these publishers kept all the income for themselves, without sharing it with their authors, and remaining publishers (63.2%) said it was variable. Unsurprisingly, the publishers who kept the rights income for themselves do not deal with literary agents. These findings show that over a third of Scottish publishers do not adhere to the common practice in trade

publishing, where the author earns a higher percentage of the income earned from rights sales<sup>206</sup> (Owen, 2010).

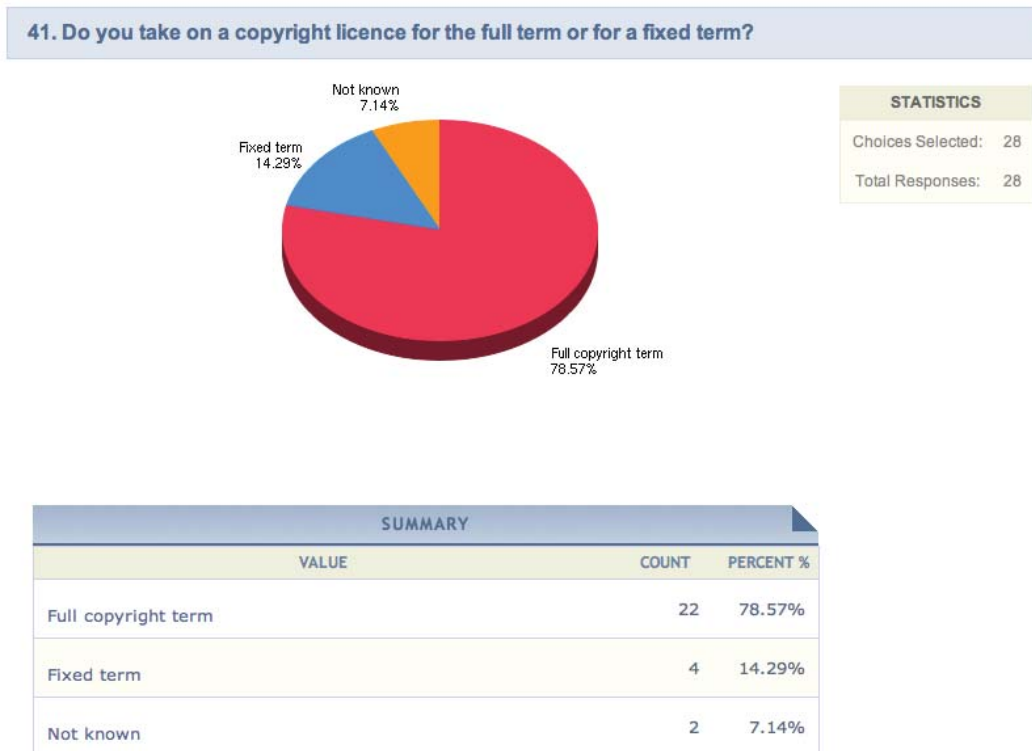


Figure 21. Copyright licence term

The majority (85.6%) of the publishers surveyed said they took on the copyright licence for the full-term, not just for world English-language rights but often for the other subsidiary rights too. This means that although they are not always exploiting the authors' rights they do control them for the full copyright term, which means other people cannot exploit them correctly without a licence from the publisher who might not grant this due to fear of

<sup>206</sup> For example, it is not uncommon for an established author to receive between eighty and ninety percent of the income from the sale of translation rights. Additionally, even though the division of rights income in academic/educational publishing is lower than in trade publishing, the common division is fifty/fifty (Owen, 2010). Despite the potential income from rights sales, this study has found that many authors are more interested in advanced payments.

competing editions (see pages 113-117). Many of the interviewed agents, in Chapter Five, suggested fixed term licences as a solution to this. Publisher A usually takes on the copyright licence for the full-term; however they have been taking some fixed term licences recently. Publisher C generally controls all publishing rights, for the full copyright term, when they take on a project because they do not deal with agents. Publisher D acquires all rights to books they publish for the full copyright term and say, “Every book that we publish, we have all the rights to that book” then they sub-licence certain rights. Publisher D say:

“We would not be very keen only to take partial rights: you put so much effort into making a book really commercial and really well thought through so to then not to have the rights to that work is pointless”. [Publisher D]

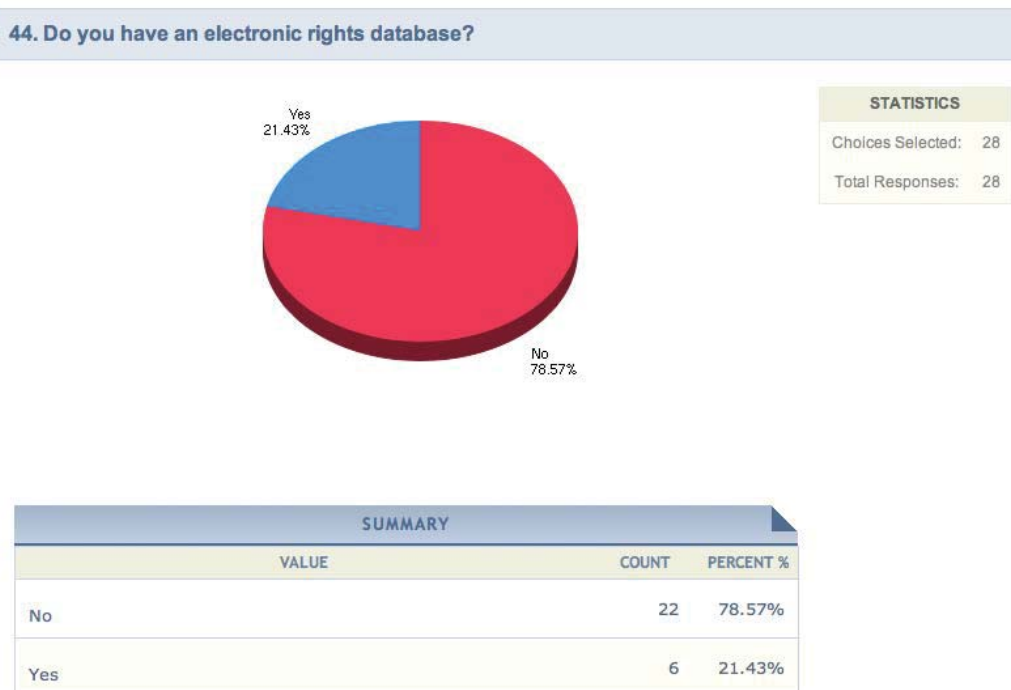


Figure 22. Rights database

Just under four fifths (78.6%) of the publishers surveyed did not have a rights database. This figure is worrying since Owen (2006) asserts that rights operations must be based on a consolidated system that records and builds a profile of all the company's rights transactions (Owen, 2006). As outlined previously, Owen (2010) asserts that a rights database, whether manual or electronic, is vital for a successful rights strategy (Owen, 2010). Out of the publishers with rights databases half have two or more staffed trained/experienced in selling rights, they all earn between one and thirty percent of their income through rights sales, over four fifths (83.3%) say that rights potential of a new project is either very important or important, all the respondents with rights databases attend book fairs. Rights exploitation is clearly a more organised process for these publishers and it not done on an ad-hoc basis. This shows that some Scottish publishers do see the value in rights exploitation and thus have invested in it as part of an organised business plan. For example, Publisher B believes:

“To make money from rights you need a lot of people to work on it because there's an awful lot of admin, there's sublicensing, contract etc.” [Publisher B]

So Publisher B has a comprehensive rights database to keep track of all their transactions. This confirms Owen's (2006) assumption that efficient rights activity can lead to increased company productivity. Publisher A also has a rights database but it is off-the-shelf and is quite basic now. This is something Publisher A hopes to upgrade in the next few years. All of the interviewed publishers attend book fairs; however, the majority do so under the umbrella

of Publishing Scotland because of the expenses involved. Publisher A attends the main books fairs and believes that this is essential because:

“Face to face contact can be very effective in building up relationships, which is vital for rights sales”. [Publisher A]

Publisher A mainly sells rights by targeted submissions and book fairs. Publisher C and Publisher D attends book fairs under the Publishing Scotland umbrella and find them very useful. Publisher D finds Frankfurt Book fair to be a good environment to sell rights a negotiate works: however, the difficulty is having the time to follow up these negotiations. Publisher D says:

“Some of the deals are old deals, deals which are longstanding, but some of the deals are new and we negotiate directly. We never sign a deal at Frankfurt but we know the people that we’re doing the deals with. We get a lot of enquiries from people that we’ve never heard of from countries that we do not know what the trends/language etc. are, so we cannot assess who they are, or whether they are reputable or what they’re going to do with your book. If you sell them the rights to your book and it turns out they do not have marketing skills to sell your book then that means you cannot sell your book in that country because they have the exclusive rights”. [Publisher D]

Publisher E do not attend book fairs because they do not really deal with rights and if they do they do it through their agent, so there is no point in them attending. Publisher E says that “book fairs are very expensive to attend” and it is not a priority for them.

Nearly two-fifths (39.3%) of publishers control English-language territorial rights including US rights within their contracts, while a quarter of the

publishers said they controlled these rights with most authors. Of the surveyed publishers who controlled these rights with all authors, ninety percent preferred not to work with literary agents/agencies and ninety percent accepted authors without agents. In fact ninety percent of these publishers do not deal with literary agents at all. Not surprisingly, eighty percent of these publishers said that publishers have less control as a result of the advent of literary agents and it is clear that they would rather not give up the control of these rights by working with agents. Publisher A tries to hold on to as many rights as possible, including world rights. Publisher A buys world rights with some authors but it depends whether they have an agent. In fact what rights Publisher A control does still vary with whether the author has an agent; however Publisher A usually controls the electronic rights, the EL rights and various other subrights. Publisher C also usually controls the world English language rights, including US when possible. Publisher B try to purchase world rights wherever possible and “tend to pay more to acquire foreign rights” because they “publish books with international appeal and we do that deliberately because they will sell in overseas markets” however, Publisher B adds that:

“If you’re planning to publish a lot of books about British sports people or books about Scotland then there is no point having a large rights department”. [Publisher B]

This can partly answer why many Scottish publishers have not invested in a rights department: because they publish Scottish material for the domestic Scottish market and thus rights exploitation is peripheral. Both the publishers with rights departments sell their rights directly to publishers overseas, with



the exception of the more difficult territories. As outlined on pages 215-217, this helps increase profit from rights sales. Publisher A uses subagents in territories where necessary, such as China and Japan. Publisher B sells directly to almost everywhere except Asia and some eastern European countries. Publisher B believes that subagents are used in Asia because it is expensive to travel there; also subagents in the different markets understand the market there better. Although Publisher C does not have a rights department, they do sell directly to a few countries and uses subagents in certain territories. Publisher B believes that once a company has built up a reputation they are more likely to be taken seriously by other publishers, so “if you are trying to sell rights in France, for example, and have built up relationships there then it is easier to sell your book”. Although Publisher D does not have a rights department they rarely usually use subagents and sell directly to the publishers. Over a third (35.7%) of the surveyed publishers said that exploitation of translation rights was not applicable for their company, which shows that international markets are not important to many Scottish publishers. However, nearly three fifths (57.1%) of the surveyed publishers usually control the translation rights. Publisher E does not sell their work overseas very often because, “It is difficult to get overseas publishers interested. The sales in the UK are low, so doesn’t appeal overseas”. Working with smaller publishers, in different countries, rather than focusing on larger publishers, could be a solution to this.

Just under two fifths (39.3%) of the publishers questioned said that the exploitation of film and television rights were not applicable for their company.

However half of the publishers questioned usually controlled these lucrative rights and only just over a tenth (10.7%) of the publishers said that the authors usually retained these rights. Unsurprisingly, two thirds of the publishers who said the authors usually controlled the lucrative film and television rights deal with literary agents in comparison to just under three tenths (28.6%) of the publishers, who usually controlled these rights, who deal with literary agents. As discussed on pages 117-122, these rights are particularly lucrative. Despite the general belief that literary agents generally control these rights, Publisher A does sell the film/TV and audio rights through their rights department. As outlined in Chapter Two, this practice is increasingly infrequent in the publishing industry.

The majority of both surveyed and interviewed publishers said they were not involved in buying rights from overseas publishers, which confirms that expanding their lists to have a more international appeal is not of great importance to most Scottish publishers. Publisher A does not buy the rights from overseas publishers because their main focus is the domestic, Scottish market, and, subsequently, they have not been involved in co-edition publishing in the last five years. Publisher C also does not buy rights from overseas publishers but has been involved in co-edition publishing in the last five years. Although Publisher C does think it is important to publish international authors, they try to buy their work in English and also prefer if the authors are already known in the English-speaking world. However, Publisher C does still try to actively sell translation rights and although they have stopped selling co-publication rights they are channelling translations through

agents. Both Publisher B and D try to buy foreign rights if they find a title that fits in well with their lists. Publisher B, in particular, is very active in searching for suitable foreign work and frequently works in conjunction with overseas publishers. Publisher B believes that this helps to build relationships with other publishers and to boost their international profile.



Figure 23. Rights training

Just over a third (35.7%) of the surveyed publishers said that they would benefit from rights training. Of the publishers, who said they would benefit from rights training, seventy percent said ‘lack of time’ was their main problem in selling rights, while thirty percent said that it was ‘lack of expertise’ that hindered them. Publisher B said that their rights department was an “investment” and that the successful trade in rights required commitment and organisation, so a solution for publishers who have difficulties selling rights could be to invest in an organised and comprehensive rights selling

infrastructure, which would include properly trained staff and a rights database. A fifth of the publishers, who said they would benefit from rights training, said that making contacts was one of the biggest problems and a further fifth said that they did not sell rights. However, half of the publishers, who said that making contacts was one of their main problems in rights selling, did not actually attend book fairs, so the attendance of books fairs, such as the London Book Fair, could be a way for these publishers to expand their contact list. Despite feeling like they could benefit from rights training, sixty percent of these publishers earned between one and thirty of their income through rights sales, while ten percent earned over fifty one percent in rights sales. The remaining thirty percent earned no income at all through rights sales. Two fifths of the publishers, who said they would benefit from rights training, have no staff that were trained in selling rights, while a further forty percent have one staff trained in selling rights. However, only half of the publishers, with no staff trained in rights sales, said they were going to recruit new staff in the next year. This suggests that if the remaining half are planning to develop rights expertise within their companies, they will train staff in-house instead of employing trained new staff. As a result the person trained in rights will not focus solely on rights trading, which, again, suggests that rights exploitation will be done on an ad-hoc basis. In comparison, over a quarter (28.6%) of all the surveyed publishers said that 'lack of time' posed the biggest problem in selling rights, while just over a tenth (10.2%) said that it was a lack of expertise that prevented them from exploiting the rights fully. Under a fifth (17.9%) said they did not have any problems selling rights, while the same amount said they did not have appropriate material for rights

exploitation.. Publisher A believes the main difficulty they have selling rights is the quality of the material published and the limited scope of the company (i.e. selling Scottish works with no real international focus), which is a problem that many other Scottish publishers must face given the nature of their publishing programme. However, other subsidiary rights such as electronic and dramatic rights, may be suitable for Scottish-focused works, for example: a book on Scottish hillwalking could work well as an e-book, an enhanced e-book, or an app. Publisher C believes the main difficulty they have selling rights is that:

“Aside from e-book and journal rights and permissions, the revenue rarely justifies the work involved in the sale”. [Publisher C]

Publisher D says the biggest problem with selling rights is the lack of time because they generate so much work from Frankfurt, consequently, Publisher D hope to hire a rights specialist in the future. This shows that adequate rights exploitation requires investment and focus and thus needs at least one trained specialist.

When asked: How important is rights exploitation to your business model?

Publisher A replied that:

“It should be more important than it is because it gives an ongoing income stream. However, as a publisher of Scottish books for the Scottish market, so rights exploitation is ‘icing on the cake’”. [Publisher A]

Publisher A believes that rights potential is only important on a small number of books taken on to their list and said:

“If we were to broaden our markets and publish more commercial books then rights exploitation would definitely be more of a priority for us”. [Publisher A]

On the other hand, despite not having a rights department, Publisher C believes that rights exploitation is a very important part of their business model and it made up ten percent of their revenue for financial year 2009 (1st August 2008 to 31st July 2009)<sup>207</sup>. Publisher C believes that digital rights are the most significant growing area and hope to gain more expertise in this area. However Publisher C believes that the rights potential of a project is not important when they are considering whether to publish. Publisher B believes rights potential and rights exploitation are very important to their business model and strategy and, accordingly, they have strategy meetings where rights acquisitions and sales are an important element of the discussion. Publisher B examines the potential rights income from foreign rights sales etc. in conjunction to potential advances because:

“Ideally we’d like to pay off the advance with the rights sales”.  
[Publisher B]

This shows that Publisher B is capable of paying their authors advances as a result of their rights strategy: this could be a lesson for publishers who do not pay their authors advances. Rights potential is quite important to Publisher D but they do publish some specialist works that might not appeal to overseas markets. Publisher D always tries to work out whether there is a potential

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<sup>207</sup> This income was comprised of: Journal erights 7%; translations 0.2%; book permissions 2%; journal permissions 0.8% (of total revenue).

market in other countries and try to adapt books for wider markets, and believes selling rights is crucial to this. It is clear that becoming more skilled in selling rights can help widen publishers' income streams and thus allow them to offer larger advances: this can, in turn, help retain existing authors and attract new authors.

### **6.3.7. Government Support**

In order to support and maintain a flourishing and competitive marketplace that guarantees creativity, a range of quality products, consumer choice and the maintenance of a unique cultural identity within a global society it is clear that the government will have to have some sort of involvement (Sinclair et al, 2004). It is evident that industry bodies such as Scottish Arts Council and Publishing Scotland must work in conjunction with Scottish publishers, and also with libraries and universities, to improve the organisational structures and competitiveness of the industry. This will help bolster the situation of Scottish publishing. Publishing Scotland also has an important supportive role to play. Publishing Scotland is the spokesman for Scottish publishers so are responsible for maintaining a strong, focused publishing industry. This support includes keeping up-to-date with trends, help with funding and giving advice (Sinclair et al, 2004). The increased transnational flow of books can lead to large publishers dominating the open marketplace. Therefore the Government must accept responsibility to maintain this unrestricted market and keep competition in existence. Preventing the growth of cartels can do this, as well as ensuring that writers have the freedom to express themselves and readers have the freedom of choice (McCleery, 2001).

The Scottish Arts Council actively helped to promote Scottish writing internationally by offering translation grants to overseas publishers who want to publish Scottish writing (McCleery, 2001). These translation grants encourage publishers to publish works they would otherwise disregard due to high translation costs. As the international profile of Scottish authors grows in popularity, so does the demand for translation grants with individual publishers obtaining between £1,500 and £8,000. The sales of these translated works results in not only the promotion of the works overseas but also more revenue for the original publisher and author (McCleery, 2001). However, according to the 2010 survey, Scottish publishers were not interested in publishing translated works and preferred to concentrate on the domestic market.

Scottish bookselling has been in decline for the past few years, with conglomerate bookshops/sellers now dominating Scotland (Sinclair et al, 2004) The consolidation of booksellers in the UK has led to a homogenisation of the titles being bought, which has an adverse effect of Scottish publishers, particularly those who publish content about the more obscure aspects of Scottish culture (McCleery, 2008). However, the advent of the Internet, and selling books online, has supplied smaller, indigenous publishers with more opportunity to sell their books to a wider market (McCleery, 2008). *Books from Scotland* is an online bookshop and magazine devoted to promote Scottish



publishers and books published in Scotland<sup>208</sup>. It is funded by Publishing Scotland, after a recommendation in the SAC Report, and it allows the books to be distributed widely overseas (McCleery, 2008). This offers Scottish publishers an important opportunity to promote their books and IPR. Although *Books from Scotland* is a comprehensive resource for publishers, writers and consumers, it exists primarily to increase the Scottish Publishing Industry's export sales (Sinclair et al, 2004). The *Books from Scotland* website has proved to be popular with many Scottish publishers (Dennys, 2006).

There was much controversy in the Scottish publishing industry over the plans to subsume the Scottish Arts Council into a larger administrative body called Creative Scotland, which represents Scotland's creative industries<sup>209</sup> (Tivnan, 2008b). Although the Scottish Parliament had not yet passed the Creative Scotland Bill in 2008, the transitions caused ructions within the Scottish publishing industry (Tivnan, 2008b). In order to help the Scottish government finance the change, the Scottish Arts Council had to cut £100,000 worth of block grants to six Scottish publishers, which included Edinburgh-based Birlinn (Tivnan, 2008b). This caused Hugh Andrew, the C.E.O of Birlinn, to resign from Publishing Scotland, and publicly denounce their actions (Andrew, 2008). Andrew protested that while the funds allocated for the publishing sector will decrease by £50,000, the funding that Publishing Scotland will receive will increase by £60,000, and argues that funding from the Scottish

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<sup>208</sup> The Scottish Publishers Association (SPA) now Publishing Scotland launched *Books from Scotland* in 2005. In 2007 it had 13,000 Scottish-interest titles in its catalogue (McCleery, 2008)

<sup>209</sup> Creative Scotland is the proposed cultural development body, which will be amalgamation of The Scottish Arts Council and The Scottish Screen, so will therefore assume their responsibilities and inherit their resources (Creative Scotland, 2008).

Arts Council should not be given to the publishing trade body but to the actual publishers (Andrew, 2008). While Birlinn will lose its £20,000 block grant, Publishing Scotland will have its funding increased to £260,000 (Tivnan, 2008b). In defence to Andrew's claims, Publishing Scotland issued a letter to The Bookseller stating that the extra funding, they will receive, did not come from the funding quota allocated to publishers because funding for "organisations and publications are separate" (Whittles, 2008, p.21). While Andrew criticised the funding spent on the website *Books from Scotland*, which he described as "an economic disaster", Lorraine Fannin, the then chief executive of Publishing Scotland, argued that the funding will be used to promote Scottish publishing nationally and internationally, and will help establish a rights database, which will be included in their website (Lyons, 2008). In defence of *Books from Scotland*, Fannin argued that the number of people visiting the website each month is increasing, and that it also helps increase visitor traffic to the publishers' websites (Lyons, 2008). However, it is evident that the Scottish Arts Council funding is essential for Scottish publishers, and has helped established many Scottish publishers internationally as well as nationally. The Scottish Arts Council's block grants scheme meant that publishers could apply for an annual sum rather than have to rely on getting a grant for each book. Without this scheme, many publishers, particularly smaller ones, are concerned about taking risks and invest in future projects because they will have to apply for funding on a book-to-book basis (Tivnan, 2008b).

The formation of Creative Scotland was a clear indication that the Scottish government identified the creative industries as a key sector in Scotland. Recent Government statistics about Scotland's creative economy have displayed that it plays a crucial role in stimulating growth, ambition, and job creation (Creative Scotland 2008a). Linda Fabiani, the previous Culture Minister, emphasised the importance the Government places on Scottish culture and the role it plays in developing a more prosperous Scotland (Scottish Government website, 2008). The Creative Scotland Bill itself stresses that the artists will have the independence and capacity to make their own creative choices. This shows that although the government recognises the importance of the arts on society, and the economy, and supports the Creative Industries, it will not encroach on any artistic decisions (Scottish Government website, 2008). As Richard Holloway (2008) outlines in his essay, there is a worry that creativity can be stifled and compromised when artists work closely with the State. Instead of taking risks, challenging prejudices and questioning society, artists can end up adhering to the rules and regulations of the establishment/institution when they rely on them (Holloway, 2008). This shows that Creative Scotland would have the dual role of encouraging the Creative Industries to flourish, to progress the government's plan of increasing the creative economy, while ensuring that creativity is not impeded or jeopardised by this involvement (Holloway, 2008).

During the formation of Creative Scotland, there were discussions about the examination of the workplace policies and practices of other small nations to determine whether best practices could be shared and transferred. Ireland

and Canada were identified as two possible case studies due to their similarities, in industry infrastructures and dual/minority language issues, to Scotland (McCleery, 2009b). In turn, the results of this research could be used for other small-nation publishers who can learn lessons from comparative publishing patterns. Additionally, as Creative Scotland represents all creative industries in Scotland it is clear that, given the size of Scotland, creative organisations from different sectors can work together to strength the Scottish creative industries: as such, the findings from this research can be used to provide a starting point for discussions. Furthermore, the important role that universities play in the creative economy, through their growth of talent and knowledge transfer through research, has been recognised: this underpins the need for different sectors of the creative industry to work together to prevail over challenges, and develop a flourishing and competitive creative economy (Universities Scotland, 2011).

#### **6.3.8. The importance of Literary Culture and Intellectual Property**

The Scottish publishing industry is a subsidiary part of Scotland's Creative industries, which generated revenues of approximately five billion pounds a year (Sinclair et al, 2004). Creative industries play an important social and cultural role in educating, entertaining and providing leisure activities for the nation. This can include promoting cultural diversity, from traditional to contemporary Scotland; keeping a record of traditional to modern Scottish values; promoting innovation, and income through creativity; providing a high standard of job, and attracting new talent; and promoting cultural tourism by creating a strong culture (based on authors, poets, theatre, festivals, comedy, art etc.), which will attract visitors to Scotland (Sinclair et al, 2004). Although

the capability of authors attracting tourists to Scotland is undeveloped, many initiatives have been created to promote reading and Scottish literature. Edinburgh was appointed at UNESCO's first city of Literature in 2007 and there have been many projects devised since, including the One Book-One Edinburgh campaign (Gifford, 2007, City of Literature, 2009).

A strong and flourishing literary culture and publishing industry can encourage tourism, which can result in the growth of supplementary businesses and investment in local business. Not only does literary tourism promote Scottish authors and Scotland, and increase the potential for merchandising, it also brings money into the Scottish economy. Robert Burns has dominated literary tourism for the past 200 years and figures by the World Bank estimate that Burns generates over £100million in tourist revenue for Scotland (Kelbie, 2007). The prominent Scottish authors such as Burns, Sir Walter Scott and Sir Arthur Conan Doyle have always attracted tourists from overseas however it is the new generation of Scottish author that are playing an increasingly important role in Scottish literary tourism. Iain Rankin's crime novels, featuring the famed Inspector Rebus character, are an international success having been translated in several languages and turned into a television programme filmed around Edinburgh. This international popularity has led to an influx of tourists visiting Edinburgh to visit the places mentioned in the books. There are now Rebus tours in Edinburgh to guide tourists around the famous landmarks in the books, including Rebus' favourite pub. Although Rankin himself may not have the appeal of someone like Burns, his books have a

commercial attraction and are boosted by being exploited over different media (Kelbie, 2007).

A strong literary culture can help contribute to a national culture and identity. Rosemary Coombe (1998) surmises that, “The rhetoric of cultural nationalism clearly bears the same logic that defines copyright” (Coombe, 1998, p.224). This is to say that a nation, or a group of people, define and create a particular culture from cultural resources and assert ownership of the works/objects that represent it. However, the cultural author, that is the nation or group of collected authors, cannot legally possess and control the works/object, in support of a culture, in the same way an individual author could control his/her work under copyright laws (Coombe, 1998). While the collective author, the nation or group, can maintain authority over the original object, it cannot prevent reproduction, or gain financially if it is reproduced elsewhere (Coombe, 1998).

#### **6.4. Conclusion**

Mann (2009) argues that the Scottish booksellers successful campaign against the Stationers’ Company’s monopoly of the book trade, discussed in the introductory chapter, provided “a metaphor for the life of Scotland’s book traders in the early modern period: argumentative to the last but equally conscious of the contribution their trade could make to the welfare of the Scottish people” (Mann, 2009, pp. 436-437). While it is evident that many Scottish publishers create products that strengthen, promote and protect Scottish culture, which does help to contribute to the Scottish economy, and thus the “welfare of the Scottish people”, by stimulating tourism and the

interest in Scotland, it is clear that Scottish publishers are not the dominant force they were in the nineteenth and early twentieth centuries. Stevenson (2010) describes the Scottish publishing industry as “now largely defunct but historically important” (Stevenson, 2010, p. xvii).

While publishing Scottish content, aimed at the domestic market, is a low-risk strategy for Scottish publishers, Publisher B has proved that a high-risk strategy, which targets national and international markets, is possible for an independent Scottish publisher. The results of this study show that Scottish publishers are not exploiting their authors' work efficiently across international markets and different media, in spite of having an unusual degree of control of rights in an industry dominated by literary agents. While Clark (2008) asserts that not all works are suitable for rights exploitation – and this could be relevant to the Scottish publishers who are happy to solely publish Scottish content – it is clear that commercial trade Scottish publishers must look beyond Scotland, and Scottish authors, if they want to earn income from rights exploitation and sell their work internationally. Additionally, this content can be exploited through different mediums even if it has a Scottish focus. Many Scottish publishers solely, or at least predominantly, publish work for the domestic Scottish market. As such rights exploitation is not an important part of their business model. However, even if these publishers do not want to sell foreign rights, there is still the possibility that other rights exploitation – such as dramatic or electronic – would bring value to their company and authors. For examples, non-fiction books about Scotland could be successful e-books, enhanced e-books, or apps, while plays and works of fiction could be

dramatised on Scottish radio, television, or theatre. Additionally, London publishers and agencies are saturated and there are more now budding authors than ever before, especially as publishers focus on big name authors. Scottish trade publishers, and agents, can benefit from this because they can represent the authors who have difficulty publishing in the contemporary publishing environment. However, it is clear that there is a lack of skills within the Scottish publishing industry and both publishers and agents must offer a good, professional, service if they want to compete in both national and international markets. As such, specialised rights training and knowledge exchange could help companies develop a more focused and organised rights selling business model, and thus attract new authors and markets. Publisher B has been identified as a key knowledge holder so would be a good company to share its best practices.

There is a clear need for publishers to learn more about rights exploitation; however, issues such as time and cost can hinder these advancements. As such, a community of practice could be a suitable, and self-perpetuating, way for the Scottish publishing industry to work together to learn from each other and develop skills. Publishing Scotland and Creative Scotland could act as intermediaries to facilitate knowledge exchange between those in the Scottish publishing industry and extend this to other creative industries, countries, universities etc. This cross-sector community of practice would strengthen Scotland's creative industries and, in turn, help other small-nation's creative industries. The implications of this would be rich, diverse, and buoyant global



knowledge and digital economies that help to sustain indigenous cultures, languages, and traditions.

## **Chapter Seven: Conclusions**

### **7.1. Aims and Objectives**

The intended aims and objectives of this research have been achieved throughout this thesis. The first objective was to give an overview of the current Scottish publishing Industry, providing an analysis of how Scottish publishers deal with, and understand, rights issues. This objective was met through a survey with Publishing Scotland members and interviews with representatives from five publishers. The findings and recommendations, outlined in Chapter Six, will help Scottish publishers to exploit copyright successfully, and across all media, and ultimately contribute to a flourishing publishing economy. The second objective was to build a case examining how authors' earn income and harness their IPR and to highlight their attitudes towards authorship and copyright, and the role the literary agent plays in this. This objective was met through a survey of the Society of Authors in Scotland member and interviews with six Scottish-based authors, four Scottish agents, and five London agents. The findings and recommendations, outlined in Chapter Five, give a greater understanding of the role authorship and of the literary agent in Scottish publishing. The final objective was to determine the level of IPR awareness, of authors, literary agents, and publishers, and to outline any shortcomings. This objective was achieved through a combination of above methods and the findings, outlined in Chapters Five and Six, will help to develop the necessary training required.

## **7.2. Summary of Discussion**

The advent of copyright completely rearranged the publishing industry. Not only did it give authors legal control over their own works, and create a written record of the original work to which other works could be compared for authenticity, it created the modern appreciation of what a professional author is: Someone who should be recognised, and rewarded, for creating original work. Without these copyright laws there would not be such an expansive range of information and ideas published in this day and age (Givler, 2003). Copyright is also instrumental in maintaining the relationship between authors, publishers and the public (Feather, 1994). Lyman Ray Patterson (1968) asserted that copyright in the twentieth century, was predominantly a publisher's right, followed by an author's right, and finally followed by the public's right; however, many copyright scholars and commentators are in disagreement to who copyright benefits and this issue is still being debated extensively today.

The value of IP to the United Kingdom's economy is growing as the country, increasingly, becomes a knowledge-based economy. It is now the conventional belief that the UK's economy will prosper mainly through the commercialisation of knowledge-based products and studies have shown that while the manufacturing industries have disintegrated, intangible assets are thriving. The creative industries, including the publishing industry, are therefore very important not only financially, with its contribution into the country's GDP, but also socially because it creates an environment where innovation and creativity can thrive. Consequently, it is important to maintain a

fair and robust IP system that both safeguards creators and encourages innovation in future creators. Piracy has been a problem since before the first official copyright law and has played an integral role in shaping and defining legislations over the centuries. However, history has shown that domestic piracy can also be a response to a stringent copyright system and can act as a promotional tool, particularly to lesser-known authors. The importance of this research project is found in the investigation of the operational procedures of key players in the knowledge economy: authors, publishers and literary agents, which builds a case about how rights are exploited and protected within the publishing industry. This case highlights the strengths and the failings of these key players in harnessing IPR, which will help them to improve their operations and exploit rights more efficiently to contribute to the UK's knowledge economy.

The current uncertainty about copyright legislation, and the shortfall of these laws to provide the balance between the public and private good, can be traced back to the formation of the first copyright laws in the eighteenth century. Although the emphasis of contemporary copyright veers towards authorial rights, with the creator of the works or the copyright holders benefiting from more protection than ever before, it is often forgotten that copyright was originally a publishers right and followed by a public right to encourage dissemination of knowledge. Although copyright is often thought of as an incentive to create, strict copyright laws can actually have the opposite effect and stifle creativity. Copyright laws first came into existence to ensure the wide dissemination of knowledge and to stop the monopoly of the book

trade. However, large global companies, such as publishers, are now using this legislation to control how information is communicated and priced, using the Romantic notion of authorship to rally for longer copyright terms. Conversely, many scholars argue that the length of the current copyright term is too long because the profit from copyrighted work is usually derived for a few years after publication (Gordon, 2002, Lessig, 2002, Withers, 2006). Additionally, many works, that have no commercial potential, are over-protected by copyright: something that Hargreaves (2011) recommended needed addressing. The solution to this problem could be to look at the terms outlined in the Statute of Anne. While the copyright registration system could be reintroduced to distinguish works that require copyright protection and to keep a legal record of copyrighted works; this would also bring up many issues surrounding the decision to who distinguishes what work should be registered. Limiting the copyright term could provide a safeguard for authors and protect the publishers' economic investment. However, research has found that there are some works that have success over a longer period of time. A solution to this would be to introduce a renewable copyright licence after a limited term, such as twenty-one years as outlined in the Statute of Anne and suggested by Boyle (1996), and then smaller limited terms thereafter with the copyrighted works entering the public domain no more than seventy-five to one hundred years after the work was first registered. Lessig (2002) suggests a five-year term of renewal (Lessig, 2002). Whether the copyright licence should be extended or not could be determined by the economic value of the work i.e. if the work is still earning money and how much money. This would help to promote the collaborate nature of creativity

and contribute to a robust public domain. Additionally, this study emphasised the importance of copyright in the digital environment. Although many commentators call for the abolition of copyright while other petition for legislation to be strengthened and lengthened it is clear that lessons can be learned from copyright history: there is much concern that piracy will rise in the digital environment; however, history shows that piracy is often a reaction to the monopoly of the knowledge-based industries. Instead of making copyright more restrictive new business models could be introduced to reflect both the interests of the copyright holders and the public.

Additionally scholars argue that domestic piracy can often act as a promotional tool, particularly for lesser-known authors, and stimulate sales after the initial publication sales peak (Neilan, 2009d, Van Eijk, 2010). This type of small-scale domestic piracy can often help consumers discover new artists, which, in turn, could help new artists earn more income in a market driven by big-name artists. However, the campaign against piracy is international and operated on a large-scale with new legislation that punishes domestic digital piracy instead of focusing on the real criminals: the large scale international pirates who infringe material for commercial purposes. While this study is not promoting piracy it is clear that small-scale, domestic piracy is undertaken by active consumers of entertainments products who want instant access to products for non-commercial use. Instead of punishing these domestic consumers, and further antagonising them, it is clear that media companies, such as publishers, must learn from these findings and consider alternative business models to compliment the digital arena. A series

of surveys have found that piracy in the music and film and television industries is in decline since the introduction of streaming and legal downloading services such as Spotify and BBC iplayer (Topping, 2009, Wauters, 2009, Owen, 2010). As such, e-publishers can look towards business models, such as advertising, as a way of subsidising free content, along with other business models such as subscription costs, as an alternative to preventative business models such as DRM-protection. This would not only help to pre-empt e-book piracy but would also enable copyright holders earn income through licences and consumers to access digital content in a less restrictive manner.

### **7.3. Summary of findings, recommendations, and significance of research**

The aim of this research was to investigate the effects of globalisation and technology on the Scottish publishing industry's operational practices of copyright exploitation and protection to determine whether Scottish publishers, literary agents, and authors were fostering their IPR effectively and efficiently. The research found that the current practices of Scottish publishers and literary agents are inadequate for the burgeoning digital publishing environment: this has a detrimental effect on the earnings of Scottish authors. The utilitarian approach to copyright is very widely used and argues for the balance between the incentive for the authors and the information being accessible to the wider public. However, it is evident that a large level of creativity existed before the advent of copyright laws, and the primary research results show that authors would write even if copyright did not exist. Consequently, this thesis argues that copyright exists, in the

Scottish publishing industry, mainly as an economic incentive for publishers, rather than an incentive for authors to create. However, Scottish publishers are not exploiting these lucrative rights effectively or efficiently, if at all. Instead they are using copyright, and subsidiary rights, as a form of preventing competing editions of the work being published in order to protect their investment, but, as the review of literature found, this can cause ructions in the author-publisher relationship. The digital market continues to grow and is opening up the possibilities for rights exploitation. However, Scottish publishers, despite controlling electronic rights, are not capitalising on this growth and these important rights are lying dormant. Although this study has found that the majority of Scottish authors do not think about harnessing their rights, there has been a backlash against publishers controlling electronic rights in the English publishing industry and this could happen in Scotland too. A solution to this would be to revamp current publishing agreements to include short-term licences. Scottish publishers could offer renewable short-term licences for subsidiary rights such as electronic rights. This would allow the rights to be released if they remain unexploited within the licence period, leaving authors, and their agents, the option to licence them to another company.

Scottish publishers control more rights than London publishers; however, this is because London publishers publish bigger-name authors, usually with London-based literary agents, who rights are more lucrative than smaller name author, especially those authors who publish content that does not translate well and is more suitable for the domestic markets. Although the



rights of all authors have potential, this potential is guided by market factors, so popular authors are more likely to be sold overseas, and thus translation rights will be more lucrative. However, despite having control of most rights, Scottish publishers are not capitalising on this. It is clear from this study that most Scottish publishers are failing to take advantage of their authors' rights and both publishers and authors are missing out as a result. While Scottish publishers currently lack the innovation and expertise to foster these rights correctly, both Scottish and London literary agents are keen to control and exploit these rights on behalf of the author. Although the majority of Scottish publishers would prefer not to work with agents, and a large number of them do not, they must learn to work in conjunction with them instead of allowing lucrative rights to remain dormant. Naturally, the assumption is that literary agents have more rights expertise than publishers; however, this study found that the majority of the Scottish literary agents also did not have the expertise in rights exploitation. This not only highlights the skills gap between both London publishers and agents, and Scottish publishers and agents but also shows how difficult it is for Scottish publishers and agents to compete with this dominant publishing industry.

One solution to this problem would be to create a solid infrastructure for rights exploitation by training staff in selling and buying rights and investing in a robust rights department. Publisher B can be used as a paradigm for other Scottish publishers because they have an organised and comprehensive rights strategy which enables them to pay their authors advances, based on projected income from rights sales, and trade rights internationally. This has

helped to build Publisher B's reputation as an international publisher, who can compete with London publishers and successfully publish within the competitive publishing environment. However, despite the interest and desire many publishers showed in rights training, issues such as time and cost can stop publishers from developing their rights practices and/or recruiting new staff with the relevant skills. An advantage that the Scottish publishing industry has over the London publishing industry is that it is small and close-knit, like a community where people know each other and are willing to help each other and give advice, so setting up a more interactive, knowledge exchange programme could be more suitable for the Scottish publishing industry. For example, the ASLA was set up as a support system for Scottish literary agents and has provided a forum for professional discussion. As such, the recommendation for the Scottish publishing industry would be to create a community of practice mixed with some formal training courses, both facilitated by Publishing Scotland and Creative Scotland, for publishing professionals to share best practices and help bridge the skills gap. A sharing mechanism would have to be designed to allow industry professionals to contribute to the discussion forum where they can share knowledge and improve their practices by learning from each other. For example regular meetings, a yearly conference, work-shadowing, mentoring, workshops, an online forum, a wiki etc. could all be set up to enable the exchange of knowledge, ideas, and best practices. As this community of practice will be based on contributions from its members it will be self-perpetuating. Additionally, as the knowledge, both tacit and common, builds and advances it can develop the community of practice and its problem solving capabilities.

This research identified Publisher B as a key knowledge holder, so they would be in a good position to commence this knowledge exchange. The success of the suggested community of practice will be dependent on the participation of key knowledge holders.

Additionally, creating stronger links between universities and publishing professionals could help strengthen the industry. Publishing courses, at universities, play an important role in developing and nurturing talent to create a future publishing workforce with suitable skills for the digital environment. The publishing industry must work with publishing educators to ensure that publishing graduates are equipped to fill the skills gap within the publishing industry. This is a mutually beneficial relationship: publishers will be able to advise publishing educators what skills gaps exist in their companies, and in the industry as a whole, and ultimately recruit from a pool of highly skilled graduates, and publishing educators will be able to develop their courses to suitably equip their graduates to improve and progress the publishing industry, and develop research to drive industry innovation. There are two prominent Publishing Masters programmes in Scotland that could contribute to the community of practice. Additionally, universities can provide continuing professional development for publishing professionals through short-courses, workshops, and distance learning: these could run in conjunction to any courses offered by Creative Scotland or Publishing Scotland.

The survey of authors showed that the majority of authors did not earn very much from their writing and had to earn money from other avenues.

Additionally, the survey found that authors were being paid very small or no advances and the survey of Scottish publishers showed that the majority of publishers did not pay their authors advances. In fact, Scottish authors who publish with London publishers are more likely to earn higher advances and income than those who publish with Scottish publishers. It is no surprise then that many big name Scottish authors opt to publish their work with London publishers. Additionally, one of the reasons the Scottish authors, who were involved in this study, claimed to publish their works outside Scotland was the better advances paid by London publishers. Scottish publishers can learn from Publisher B's strategy of maximising their income through rights exploitation, which allows them to pay their author advances, and the resulting exposure of both their company and their authors, to build a competitive and flourishing publishing environment in Scotland.

This research found that the majority of Scottish agents lacked the skills to deal with rights effectively and either licenced them to publishers or outsourced external agencies to deal with them. However, it is clear that Scottish agents have to develop their skills in selling rights if they want to compete with London agents. Again, like Scottish publishers, this can be done through rights training and knowledge exchange. While the ASLA has been set up as a support system for Scottish agents, they could also benefit from learning from other industry professionals. Agent B has been identified as a key knowledge holder, and can be used as a key knowledge exchange participant because they have developed an agency that have strong links with both the Scottish and London publishing industries and a strong foreign

rights department, which helps their newer agents who might have difficulties selling rights. Agent B may be willing to participate in this knowledge exchange because of the difficulty they faced while trying to learn rights skills. Agent B was unable to find any agents who were willing to let them work-shadow so worked with a publisher instead: this shows that people in the publishing industry, no matter what their job, can work together to develop skills and improve the industry. Although it is clear that individuals with experience of rights exploitation have gained their expertise through on-the-job experience, the current publishing climate is moving quickly and, as such, inexperienced publishers, and literary agents, do not have the time to learn solely through experience. Consequently rights training courses, seminars, and knowledge exchange can be very beneficial and, in the short term, external agencies can provide both the expertise and guidance necessary for efficient exploitation. Owen (2010) contends that an organised and dynamic rights operation can contribute significantly to the financial growth and stability of a publishing company (Owen, 2010). As such, it is clear that Scottish publishers and agents must place a greater importance on an efficient rights strategy if they want to compete on a national and international scale.

Finally, this thesis not only contributes towards our theoretical and empirical understanding of copyright operating within the traditional and digital book publishing industry, but it also has a practical application by informing the development of workplace policies and practices for publishers, authors, literary agents, and organisational bodies. The publishing industry, enabled by new technology and consumer attitudes, is evolving at a rapid rate and so

education and guidance is necessary for industry players to keep abreast and compete. If the recommendations outlined in this thesis are implemented, the Scottish publishing industry has the capability to create a rich and informative community of practice that can find practical ways to help solve the problems of not only the Scottish publishing industry but also other regional and small nation publishing and creative industries. This will ultimately help Scotland's, and other small nations', economy to flourish, ensure that the global publishing marketplace is both diverse and competitive, and help maintain unique cultural identities within a global society.

#### **7.4. Limitations of this research**

This research has a regional focus and could be considered to have a narrow scope; however, the recommendations for improvement could be applicable to other small nation and/or regional publishing industries, and also to other industries that trade in intellectual property. The main limitation of this study was time constraints, which impacted on the size of the sample taken. As discussed in Chapter Four, the response rates for both surveys were very low despite being distributed under the umbrella of authoritative trade bodies. The low response rate by authors could indicate that authors are passive when it comes to talking about the commercialisation of their work. The reliance on Publishing Scotland, one of the trade bodies, resulted in one of the surveys being delayed for several months, which could have impacted on the subsequent interviews. Fortunately, a previous study and access to the surveys that had been completed bridged the information gap. Several measures were put into place to ensure survey response: working in conjunction with trade bodies, the survey being advertised on the trade

organisations websites and newsletters, the professional and easy to complete design of the survey, a prize incentive, and the option of sending printed versions of the survey to those with no internet access. Additionally, as outlined in Chapter Four, one of the stipulations of sending out the survey in association with Publishing Scotland was that they could also use the results to analyse the state of Scottish publishing, so additional sections were added to ascertain other information. Although this information did help give an indication on the operational factors of Scottish publishers, especially in comparison to the 2003 survey, it added extra sections making it quite a lengthy survey to complete. The length of the survey could have been one of the reasons for the low response rate. An additional factor could be the divergence on subject matters covered within the one survey: ideally the experts within the publishing company would complete each specific section; however the electronic format rendered this impractical. Unfortunately, it is impossible to know whether distributing a more rights-focus survey without Publishing Scotland would have yielded a better response rate. Additionally, the apathy displayed by many Scottish publishers during this research could be indicative of the future of the Scottish publishing industry: A stagnant industry comprised mainly of parochial companies who are not adapting to, and have displayed apathy towards, the changing nature of the global publishing industry.

## 7.5. Suggestions for further study and dissemination of the research

Although this research focuses on the publishing industry, the findings and recommendations could also have an impact on other industries that deal with intellectual property. With the Scottish Arts Council being subsumed into new cultural body Creative Scotland, there is now an emphasis on the links between different creative industries. Additionally, new multi-platform methods of dissemination highlight the need for cross-industry collaboration. As such, it would be interesting to increase the size of the research to incorporate other creative industries within Scotland. A comparative examination of how the operational factors of rights protection and exploitation differ in each sector could help all the Creative Industries in Scotland to work together to harness IPR more effectively, internationally, and across different media. The community of practice could be extended to include other creative industries, with members sharing knowledge and best practices. Creative Scotland would be the main intermediary and could facilitate this knowledge exchange to mobilise the scaling up of these best practices.

In the first instance, the findings of this research will be disseminated to the Scottish publishing industry through a conference organised in conjunction with Publishing Scotland. The recommendations of creating a community of practice will be suggested through this engagement with the publishing industry; Publisher B and Agent A will be invited as key knowledge holders who have the ability to share their knowledge with other publishing practitioners. A comic style poster will be created to communicate the findings in a simple and engaging way: this poster will be based on a previous poster



created by the researcher (see Appendix 22). If the Scottish publishing, facilitated by Publishing Scotland, agree to set up a community of practice, research could be undertaken to monitor and evaluate the suggested community of practice to investigate whether it has improved practices in the Scottish publishing industry. If this community of practice proves to be successful, a case study could be developed and a transferable model could be created and used for learning by other relevant parties. This model would be customisable and based on a feedback system from its members, so could be applicable to other small nation and regional publishing industries and other creative industries. An investigation into the rights practices of other small countries, such as Ireland or Canada, could be undertaken to demonstrate how other small countries operate within an increasingly globalised and digital environment, and to investigate whether any lessons can be learned from their operations. Ultimately, a global, digital community of practice could be set up to encourage discussion and the sharing of best practices: this would help solve the problems that hinder the growth and progression of publishers in the globalised and digital environment.

## Appendices

### Appendix One: Questions for Scottish Literary Agents

Before I start, can I ask your permission to record this interview?

The information provided will be for research purposes only. Also, would you like your answers to be on the record (where you and the information you provide can be quoted) or off the record (where you can't be quoted).

[Give information about research project and why their participation is important]

#### Background

What is your background/training in publishing?

Why did you become an agent?

Is your agency a sole proprietorship? A partnership? A corporation?

How long has your agency been in business?

Are you a member of the Association of Authors' Agents?

How many people are employed at your agency?

Of which, how many are agents?

What different responsibilities do you have as an agent?

How did you 'learn' to become an agent?

Do you have much editorial input?

How do you handle legal, accounting, public relations or similar professional services that fall outside the normal range of a literary agency's function?

How much of an obstacle is being based in Scotland, with regards to selling an author's work? i.e. Does missing out on regular lunches, launch parties and other events mean that you miss out on potential deals?

#### Authors

How many authors do you represent?

What 'type' or genre of author do you represent?

What is your average commission?

Does this commission vary from author to author?

How many unknown/new authors does your agency take on each year?

Do you only represent Scottish authors?

If yes, why? If no, why?

How important is potential commercial success and the potential for rights sales when you are considering representing an author?

Have any of your authors moved to larger agencies?

Have any of your authors moved to London based agencies?

If yes, why did they move?

If/when your author moves to another agency, what is your policy about handling any of their unsold subsidiary rights that were reserved to them under the original publishing contracts? Does the agent retain control, or do they revert back to the author?

Have any authors moved to your agency from London agencies or other agencies?

If yes, why?

Do you think Scottish authors are in a better or worse position now than they were before the advent of Scottish literary agents? Why?

Do you work with Scottish publishers, or predominantly with London-based publishers? Why?

Do Scottish authors, who publish with Scottish publishers only, really need agents? Why?

## **Rights**

What type of rights training do you have?

How important is rights exploitation to your business model?

What percentage of your income is from rights sales?

Do you have an electronic rights database? If so, what kind?

How large a role do you play in the creation of an author's contract?

Do you create the contract in-house?

Do you have a boiler plate/standard contract with different publishers?

Do you have an example of one you could give me?

What rights do you hold on to (or try to hold on to)?

Do you have a clause that includes any rights that may arise in the future?

Do you handle foreign, film or TV rights?

Does your commission vary for:

\*Basic/domestic sales to UK publishers

\*Film and television rights

\*Foreign and translation rights

\*US rights

\*Audio and multimedia right

If so, by how much?

Do you have agents who specialise in film/television rights? Why?

Does your agency represent script-writers or other people in the media?  
Why?

Do you have agents who specialise in foreign rights? Why?

Do you attend book fairs?

If so, what fairs and what value do they bring?

How do you sell an author's rights? E.g. Online, face-to-face etc., auctions?

Which method do you prefer?

Do you work with overseas rights agents?

If so, in what countries?

Do you sell directly to overseas publishers?

If so, in what countries?

How often do you retain world rights (English language rights) including US rights?

How often do you retain world rights (English language rights) excluding US rights?

Do you sell rights for Canada separately from the USA?

Do you read international trade press?

Is it difficult to sell the rights of Scottish authors?

If yes, what are the main problems?

If so, which rights specifically?

Is it more difficult to sell the translation rights of Scottish authors, in comparison to, say, English authors? If yes, why is this?

### **Electronic Rights/Media Convergence/Electronic Publishing**

How often do you grant the publisher electronic rights? And for what reason?

Which rights do you grant: electronic version or electronic edition rights?

What royalties are negotiated on these rights?

Do you actively sell the authors rights to other media companies?

If so, what rights?

If so, what media companies?

What products?

Based in London/Scotland? Why?

What are your feelings about e-book piracy? Preventative measures?

Have you experienced any problems regarding piracy?

How important do you think electronic rights will be in the future?

Have you heard about the Google Book Search Settlement?

What are your feelings about this?

What have you been advising your authors to do?

### **Future of Literary Agencies**

What are your main problems in selling rights?

How would you like to improve your agenting skills?

Would you benefit from rights training/seminars?

Does your company have internal workshops?

Are literary agencies going down the same route as publishers, in that they are becoming larger, multimedia conglomerates? Focus on big name authors?

Is there anything else you would like to add?

## **Appendix Two: List of All Scottish Literary Agents**

**Jenny Brown Associates** (Contacted and interviewed)

33 Argyle Place Edinburgh EH9 1JT  
Telephone: 0131 229 5334  
Email: Jenny-brown@blueyonder.co.uk  
Website: www.jennybrownassociates.com

**David Fletcher Associates** (Contacted and did not respond)

58 John Street Penicuik EH26 8NE  
Telephone: 01968 673409  
Fax: 01968 675723

**Fraser Ross Associates** (Contacted and interviewed)

6 Wellington Place Edinburgh EH6 7EQ  
Telephone: 0131 553 2759  
Email: lindsey.fraser@tiscali.co.uk Email: kjross@tiscali.co.uk  
Website: www.fraserross.co.uk

**Duncan McAra** (Contacted and declined interview)

28 Beresford Gardens Edinburgh EH5 3ES  
Telephone/Fax: 0131 552 1558

**McKernan Literary Agency** (Contacted and interviewed)

5 Gayfield Square Edinburgh EH1 3NW  
Telephone: 0131 557 1771  
Email: maggie@mckernanagency.co.uk  
Website: www.mckernanagency.co.uk

**McLean and Slora Literary Agents** (Contacted and did not respond)

20A Eildon Street Edinburgh EH3 5JU  
Telephone: 0131 556 3368

**Judy Moir Agency** (Contacted and did not respond)

5 Gayfield Square Edinburgh EH1 3NW  
Telephone: 0131 557 1771  
Email: judy\_moir@blueyonder.co.uk

**Alexandra Nye, Writers & Agents** (Contacted and did not respond)

Craigower 6 Kinnoull Avenue Dunblane Perthshire PK15 9JB  
Telephone: 01786 825114

## **Appendix Three: Letter requesting an interview - Scottish Literary Agents**

Melanie Ramdarshan  
Scottish Centre for the Book  
Edinburgh Napier University  
Tel: 0131 455 6528  
Email: m.ramdarshan@napier.ac.uk

Dear [name of relevant person],

I am a postgraduate research student in the Scottish Centre for the Book, Edinburgh Napier University. My research involves the study of the exploitation and protection of Intellectual Property Rights (IPR) in Scotland and Ireland as part of a larger project on Creativity and Rights. At present I am undertaking primary research to ascertain the effects of globalisation, new technology and media convergence on Scottish authors, publishers and literary agents, particularly in respect to how they exploit and protect their IPR. However, there is little literature available covering these issues, and in order to redress this I am in the process of conducting interviews with relevant organisations to obtain original material and build an overview of the Scottish publishing industry.

I would greatly appreciate your participation in this project to enable me to portray a fair representation of Scottish literary agencies. The proposed interview would take approximately 45-60 minutes and could be anonymous at your discretion. With your agreement, I would prefer to record the interview; the information obtained would be used for research purposes only. I hope that you will agree to contribute to this exciting project because the information acquired would greatly assist the investigation of the current IPR situation in Scotland and will, in turn, help to strengthen it.

I can be contacted at the email address or telephone number above and would be happy to meet with you at a time and location of your choice. Please do not hesitate to get in touch if you require further information or clarification of any points.

Yours Sincerely,

Melanie Ramdarshan



## **Appendix Four: Anonymised description of Interviewed Scottish Agents**

### **Agent A**

Agent A is the founder of a medium-sized literary agency, which is the biggest agency in Scotland. This Edinburgh-based agency consists of five literary agents (includes one foreign rights agent) and represents around 140 authors. This agency was established in 2002 and focuses on a variety of genres. Agent A has a particular interest in fiction and narrative non-fiction and represents around forty authors.

### **Agent B**

Agent B is co-founder of a two-person literary agency based in Edinburgh. This agency was established in 2002 and has a particular focus on children's authors and illustrators. Agent B's agency represents approximately fifty authors.

### **Agent C**

Agent C is the founder of a Scottish publishing company but now works for a medium-sized literary agency based in Edinburgh. Agent C has a particular interest in children's authors and represents approximately twenty authors.

### **Agent D**

Agent D is the founder of a small, two-person, literary agency based in Edinburgh. Agent D was a very successful editor with a London-based publisher and personal circumstances made them leave this job to become an agent. Agent D is interested in literary fiction and their agency also represents high quality non-fiction.

## **Appendix Five: Sample of Interview Questions – Scottish Authors**

Before I start, can I ask your permission to record this interview?  
The information provided will be for research purposes only.

Also, would you like your answers to be on the record (where you and the information you provide can be quoted) or off the record (where you can't be quoted).

[Give brief information about project]

### **Background**

Full or Part-time author?

How long have you been writing as a profession?

How many full-length (i.e. not including items for anthologies) publications have you had throughout your career so far?

What is your main source of income? Do you supplement your writing? How do you feel about this?

What are your main sources of income through writing?

Did you have a profession before writing? Did you give up that profession?

Do you earn an advance? Has this changed over the years?

Are you happy with the amount you earn from writing?

How long does it take you to finish a work? Do earnings compensate for this?

### **Agents and Publishing**

Do you have a literary agent?

If yes, why did you decide to employ an agent? Based in Scotland, London? If yes, what benefits has having an agent brought? Why did you choose that agent?

Before you had an agent, how did you handle your rights/contracts? Member of the SOA – help towards these things?

Do you publishing work in London or Scotland? Why? Do you find it difficult to get your work published in Scotland?

Does your last book contract contain an option clause for future books? Are you obliged to stay with a publisher?

### **Contracts and Rights**

How important is potential rights sales for you when you are embarking on a project?

Are you involved in contract negotiations? Would you like to be?

Do you know how much of your income is through rights sales? How much of this is split with publisher?

Copyright laws exist to give credit and payment for work and therefore in some cases encourage people to write. Would there be as much incentive for you to have written your book if there was less or no financial reward?

### **Globalisation and foreign rights**

Are your books published overseas? Which countries?

Who negotiates deals? Publishers or agents?

Difficulty when writing in Scots, or about Scots content? [if relevant]

How important are overseas sales to you?

### **Digital Publishing**

Have you sold adaptations of your work to different media? If yes, what media?

How did you go about selling these rights – who created the opportunities?

Ebook – what do you think of them? Beneficial?

Do you have a 'future technology' (i.e. covering all media not yet invented) clause in your own contracts?

Have you heard about the Google Book Search settlement? Will you be opting out? Do you think you will be able to earn money from this?

Other industries, such as the music and film industries are managing to adapt to online content, musicians are adapting by going out and playing live more often to generate income. In what way do you think the publishing industry could adapt?

General concerns/questions about copyright?

Would you benefit from some kind of rights training?

Creative commons

## **Appendix Six: Letter requesting an interview – Scottish Authors**

[My contact details]

Dear [name of relevant person],

I am a postgraduate research student in the Scottish Centre for the Book, Edinburgh Napier University. My research involves the study of the exploitation and protection of Intellectual Property Rights (IPR) in Scotland and Ireland as part of a larger project on Creativity and Rights, within the Scottish Centre for the Book. The 'Creativity and Rights' project seeks first to discover the degree of knowledge and understanding of and benefits from IPR among authors, agents and publishers in Scotland and then to identify viable measures in order to resolve any gaps or problems. This is not solely an 'academic' project; it aims to deliver a useful service to the creative community in Scotland. Accordingly, the project team includes Lorraine Fannin, recently retired Chief Executive of Publishing Scotland, and Aly Barr, who is on a six-month secondment from the Scottish Arts Council.

At present I am undertaking primary research to ascertain the effects of globalisation, new technology and new cross-media platforms on Scottish authors, publishers and literary agents. However, there is little literature available covering these issues, and in order to redress this I am in the process of conducting interviews with relevant organisations to obtain original material and build an overview of the Scottish publishing industry. I am particularly interested to build a case about authorship in the twenty-first century and, as such, believe your contribution is very important.

I would greatly appreciate your participation in this project to enable me to portray a fair representation of Scottish and/or Scottish-based authors. The proposed interview would take approximately forty-five minutes and could be anonymous at your discretion. With your agreement, I would prefer to record the interview; the information obtained would be used for research purposes only. I hope that you will agree to contribute to this exciting project as the information acquired would greatly assist the investigation of the current IPR situation in Scotland and will, in turn, help to strengthen it.

I can be contacted at the email address or telephone number above and would be happy to meet with you at a time and location of your choice. Please do not hesitate to get in touch if you require further information or clarification of any points.

Yours Sincerely,

Melanie Ramdarshan

## **Appendix Seven: Anonymised profile of Interviewed Scottish Authors**

### **Author A**

Author A is a male, Scottish, Scottish based author with a London-based literary agent. Author A has published three novels and various short stories, poems, children's books in Scots etc. Author A was published in magazines since the 1980s, and had their first book, a book of short stories, published in 1991 and has published twenty books since then (poems, novels, essays, short stories, children's books) Author A writes literary fiction and other work as well. Author A has won several prizes/awards for their writing and was nominated for a major book prize.

### **Author B**

Author B is a female, English author based in Scotland with a literary agent based in England, but not London. Author B has published over ten books and writes mainly children/teenage fiction. Author B has been shortlisted for many prizes/awards for their writing. Author A was the chair of The Society of Authors and also runs a consultancy business for authors.

### **Author C**

Author C is a female, Scottish, Scottish based author with an Edinburgh-based literary agent. Author C has published five novels and a book of short stories and writes historical fiction and teenage fiction.

### **Author D**

Author D is a female, Scottish, Scottish-based author with a based literary agent. Author D writes mainly crime fiction and has published twelve full-length publications.

### **Author E**

Author E is a male, English, Scottish-based author with an Edinburgh-based literary agent. Author E has published fourteen books and writes children/teenage fiction. Author E has won several prizes/awards for their writing.

### **Author F**

Author F is a female, English, Scottish-based author with a London-based literary agent. Author F has published fourteen books and writes mainly fiction. Author F has won several prizes/awards for their writing.

## Appendix Eight: Scottish authors and their agents

<b>Author</b>	<b>Agent/Agency</b>
Iain Banks	Simon Kavanagh/ Mic Cheetham Literary Agency
Christopher Brookmyre	Caroline Dawnay (books) and Charles Walker (dramatic)/United Agents
Alan Bisset	Victoria Hobbs/A.M. Heath
William Boyd	Stephen Durbridge/The Agency
Theresa Breslin	Laura Cecil/ Laura Cecil Literary Agency
Stewart Conn	The Agency
Robert Crawford	David Godwin Associates
William Dalrymple	David Godwin Associates
Carole Anne Duffy	Peter Straus/Rogers, Coleridge and White
Janice Galloway	Derek Johns/A.P. Watt
Alasdair Gray	Zoë Waldie/Rogers, Coleridge and White
Andrew Greig	Georgiana Capel (film) and Abi Fellows (foreign)/ Capel and Land
Kathleen Jamie	Peter Staus/Rogers, Coleridge and White
Jackie Kay	The Wylie Agency
James Kelman	Gill Coleridge/Rogers, Coleridge and White
A.L. Kennedy	Antony Harwood Ltd
Joan Lingard	Bruce Hunter/David Higham Associates
Liz Lochhead	57 Productions
Bernard MacLaverty	Gill Coleridge/Rogers, Coleridge and White
Allan Massie	Curtis Brown
Alexander McCall Smith	Caroline Walsh/David Higham Associates
Val McDermid	Gregory & Company
James Meek	Natasha Fairweather/A.P. Watt
Denise Mina	The Sayle Literary Agency
Nicola Morgan	Elizabeth Roy Literary Agency
Ewan Morrison	Lucy Luck Associates
Andrew O Hagan	Derek Johns/A. P. Watt
Janet Paisley	Julia Tyrrell Management Ltd
Don Paterson	TriplePA
Ian Rankin	Peter Robinson/Robinson Agency
James Robertson	Natasha Fairweather/A.P. Watt
J K Rowling	Christopher Little
Ali Smith	The Wylie Agency (UK) Ltd
Muriel Spark	Tom Erhardt/Casarotto Ramsay and Associates Ltd
Alan Spence	Camilla Hornby/Curtis Brown
Zoë Strachan	David Miller/Rogers, Coleridge and White
Alice Thompson	Jonny Geller/Curtis Brown
Alan Warner	David Godwin Associates
Louise Welsh	David Miller/Rogers, Coleridge and White

## **Appendix Nine: Sample questions for London Literary Agents**

Before I start, can I ask your permission to record this interview?  
The information provided will be for research purposes only. Also, would you like your answers to be on the record (where you and the information you provide can be quoted) or off the record (where you can't be quoted).

[Give information about research project and why their participation is important]

### **Background**

What is your background/training in publishing?

Why did you become an agent?

Is your agency a sole proprietorship? A partnership? A corporation?

How long has your agency been in business?

Are you a member of the Association of Authors' Agents?

How many people are employed at your agency?

Of which, how many are agents?

What different responsibilities do you have as an agent?

How did you 'learn' to become an agent?

Do you have much editorial input?

How do you handle legal, accounting, public relations or similar professional services that fall outside the normal range of a literary agency's function?

Are you aware of agents operating out of Scotland?

### **Authors**

How many authors do you represent?

Of those, how many are Scottish/Scottish-based?

What 'type' or genre of author do you represent?

What is your average commission?



Does this commission vary from author to author?

How many first-time/new authors does your agency take on each year?

Do you only represent Scottish authors?

If yes, why? If no, why?

How important is potential commercial success and the potential for rights sales when you are considering representing an author?

Have any of your authors moved to other London based agencies?

If yes, why did they move?

Have any of your authors moved to a Scottish agency?

If so, why?

If/when your author moves to another agency, what is your policy about handling any of their unsold subsidiary rights that were reserved to them under the original publishing contracts? Does the agent retain control, or do they revert back to the author?

Have any authors moved to your agency from Scottish agencies or other agencies?

If yes, why?

Do you think Scottish authors are in a better or worse position now than they were before the advent of Scottish literary agents? Why?

Do you work with Scottish publishers, or predominantly with London-based publishers? Why?

Do Scottish authors, who publish with Scottish publishers only, really need agents? Why?

## **Rights**

What type of rights training do you have?

How important is rights exploitation to your business model?

What percentage of your income is from rights sales?

Do you have an electronic rights database? If so, what kind?

How large a role do you play in the creation of an author's contract?

Do you create the contract in-house?

Do you have a boiler plate/standard contract with different publishers?

Do you have an example of one you could give me?

What rights do you hold on to (or try to hold on to)?

Do you have a clause that includes any rights that may arise in the future?

Do you handle foreign, film or TV rights?

Does your commission vary for:

\*Basic/domestic sales to UK publishers

\*Film and television rights

\*Foreign and translation rights

\*US rights

\*Audio and multimedia right

If so, by how much?

Do you have agents who specialise in film/television rights? Why?

Does your agency represent script-writers or other people in the media?  
Why?

Do you have agents who specialise in foreign rights? Why?

Do you attend book fairs?

If so, what fairs and what value do they bring?

How do you sell an author's rights? E.g. Online, face-to-face etc., auctions?

Which method do you prefer?

Do you work with overseas rights agents?

If so, in what countries?

Do you sell directly to overseas publishers?

If so, in what countries?

How often do you retain world rights (English language rights) including US rights?

How often do you retain world rights (English language rights) excluding US rights?

Do you sell rights for Canada separately from the USA?

Do you read international trade press?

Is it difficult to sell the rights of Scottish authors?

If yes, what are the main problems?

If so, which rights specifically?

Is it more difficult to sell the translation rights of Scottish authors, in comparison to, say, English authors? If yes, why is this?

### **Electronic Rights/Media Convergence/Electronic Publishing**

How often do you grant the publisher electronic rights? And for what reason?

Which rights do you grant: electronic version or electronic edition rights?

What royalties are negotiated on these rights?

Do you actively sell the authors rights to other media companies?

If so, what rights?

If so, what media companies?

What products?

Based in London/Scotland? Why?

What are your feelings about e-book piracy? Preventative measures?

Have you experienced any problems regarding piracy?

How important do you think electronic rights will be in the future?

Have you heard about the Google Book Search Settlement?

What are your feelings about this?

What have you been advising your authors to do?

### **Future of Literary Agencies**

What are your main problems in selling rights?

How would you like to improve your agenting skills?

Would you benefit from rights training/seminars?

Does your company have internal workshops?

Are literary agencies going down the same route as publishers, in that they are becoming larger, multimedia conglomerates? Focus on big name authors?

Is there anything else you would like to add?

## **Appendix Ten: Sample Interview Questions – Robin Robertson**

Tell me about your career in Publishing

What was your motivation behind publishing these Scottish authors?

Why do you think this period was so prolific for Scottish writing?

Do you think that Scottish authors, because they were lacking representation, lacking their own government, took on the responsibility of portraying, making a record of, Scottish culture?

Why do you think they, these Scottish authors, decided to publish in London rather than Scotland?

Do you think it's more important for Scotland and Scottish publishers to be behind the promotional of Scottish writing, no matter where it is published, or do you think the onus is on the government to provide some sort of support so that Scottish writers can stay published in Scotland?

How do you think that Scottish publishers can compete in a global market?

How do you think that Scottish literary activity can be supported and encouraged?

What did you advise your authors about agents, and what would you advise them now?

Your role in publishing has developed over the years from editor to deputy publishing director: Have your priorities changed over the years?

How important is the commercial aspect and rights potential when you're taking on a new project?

You said you had less control over the rights as a result of the advent of agents?

Which rights do you normally hold on to then?

Do you find it difficult to sell the rights of Scottish authors, especially in comparison to your other authors?

Do you find difficulties selling translation rights? How well does Scottish writing translate into other languages/territories?

Do you find literary agencies are increasingly holding onto more lucrative rights?

How do you feel about electronic rights and how do you see them developing?

How do you think Scottish publishers and agents isolation from London – i.e. not having regular access to the relevant people and companies – affects their position in the marketplace?

## **Appendix Eleven: Letter requesting an interview – London Literary Agents**

Melanie Ramdarshan  
Scottish Centre for the Book  
Edinburgh Napier University  
Tel: 0131 455 6528  
Email: m.ramdarshan@napier.ac.uk

Dear [name of relevant person],

I am a postgraduate research student in the Scottish Centre for the Book, Edinburgh Napier University. My research involves the study of the exploitation and protection of Intellectual Property Rights in Scotland and Ireland as part of a larger project on Creativity and Rights. At present I am undertaking primary research to ascertain the effects of globalisation, new technology and media convergence on Scottish authors, publishers and literary agents. However, there is little literature available covering these issues, and in order to redress this I am in the process of conducting interviews with relevant organisations to obtain original material and build an overview of the Scottish publishing industry.

I would greatly appreciate your participation in this project to enable me to portray a fair representation of literary agencies that represent Scottish, and Scottish-based, authors. The proposed interview would take approximately forty-five minutes and could be anonymous at your discretion. With your agreement, I would prefer to record the interview; the information obtained would be used for research purposes only. I hope that you will agree to contribute to this exciting project as the information acquired would greatly assist the investigation of the current IPR situation in Scotland and will, in turn, help to strengthen it.

I can be contacted at the email address or telephone number above and would be happy to meet with you at a time and location of your choice. Please do not hesitate to get in touch if you require further information or clarification of any points.

Yours Sincerely,

Melanie Ramdarshan

## **Appendix Twelve: Anonymised profiles of Interviewed London Agents**

### **Agent E**

Agent E is a partner in a medium sized, London-based, agency, which was established in 1967 but has grown in size and partnership since. This agency consists of twelve agents after merging with a small agency in 2009. Agent E has been an agent for nearly forty years and is completely self-taught. Agent E predominantly represents literary fiction, and represents several key Scottish authors. Before becoming an agent, Agent E worked in magazine publishing and publicity for a well-known publisher.

### **Agent F**

Agent F is a now retired literary agent who worked for some of the largest literary agencies in London. Agent F was an agent for thirteen years and accumulated a client list of fifty authors. Agent F decided to quit agenting when they moved to Scotland because they did not see the possibilities for agenting in Scotland. Agent F represented several well-known Scottish authors.

### **Agent G**

Agent G works for a medium sized, London-based, agency, which was established in 1967 but has grown in size and partnership since. This agency consists of twelve agents after merging with a small agency in 2009. Agent G has been an agent for over twenty years, although they did not go down the route of working in the publishing industry first. Agent G predominantly represents literary fiction authors, although there are some very commercial authors on Agent G's list.

### **Agent H**

Agent H worked for a very small London-based literary agency, founded by Agent H until they merged with a medium-sized agency in 2009. Agent H was an editor at a very well known large conglomerate publishing house and left when a large literary agency offered Agent H a job. Agent H worked at this literary agency for sixteen years before forming their own agency. Agent H represents around forty-five to fifty authors. Agent H does not represent a specific genre. Agent H represents several very well known commercial Scottish authors.

### **Agent I**

Agent I works for a medium-sized, London-based literary agency, which was established in 1935, so has been in business for seventy-five years. This agency consists of six book agents, two film and TV agents and two foreign rights agents. Agent I was a children's book editor who became disillusioned with life in a big publishing company so joined the agency when they branched into children's authors. Agent I represents approximately sixty to seventy authors, four of these are Scottish authors. Agent I speciality is children's authors. Agent I represents one of Scotland's most commercially successful authors.



## **Appendix Thirteen: Interview Questions to Scottish Publishers**

The information provided will be for research purposes only.

Also, would you like your answers to be on the record (where you and the information you provide can be quoted) or off the record (where you can't be quoted).

[Information about research]

### **Company background**

What is your background in publishing? [Question used to create familiarity/build a relationship]

Do you have a rights department?

If so, how many people work within this department?

If so, how important is your rights department? Why did your company decide to develop this department?

Did you undergo training in selling/dealing with rights?

How important is rights exploitation to your business model?

### **Agents**

Do you publish/accept unagented authors? What are the benefits of this?

Do you work with Scottish literary agents?

Do you work in conjunction with London agents?

Do you prefer working with agents? Why? Why not? For what reasons? Do you prefer to work with Scottish or London agents – for what reasons?

How the advent of agents has changed the publishing process

What impact do literary agents/agencies have on rights control?

Do you ever contact London agents to see if they have anything that you can publish? How do you source material to be published?

How close is your relationship with London?

### **Rights**

How important is the rights potential of a book when you are taking on a project?

What rights do you try to control? Why? What rights are most important/lucrative for you?

Do you take on a copyright licence for the full term or for a fixed term? Why? Do you accept limited licences – what are your feelings about limited licences?

How do you sell an author's rights?

Is it difficult to sell the rights of Scottish authors? What are the main problems?

If so, which rights specifically?

Is it more difficult to sell the translation rights of Scottish authors, in comparison to, say, English authors? If yes: why is this?

Do you work with overseas agents? Do you sell directly? What countries? Why do you work with these agents?

If you do use subagents, do you use your subagent for: A title-by-title basis or your full list?

Do you have an electronic rights database? If so, is it Manual, off the shelf, Customised to your requirements? Why did you decide to invest in a rights database?

What percentage of your income comes from rights sales?

Do you attend book fairs? If yes, which fairs?

If yes, are what value do these book fairs bring?

Do you buy rights from overseas publishers? Why? How important is this to your business model?

Have you had experience of co-edition publishing in the last five years? If yes, why is this important?

How often do you retain world rights? Why is this important to your company?

What percentage of your income is from subsidiary-rights sales? Not the primary publication deal? Are you happy with this?

If there were funds available to support translation into English, would you buy more foreign-language titles? Why?

How important is having an international focus – i.e. Buying foreign rights, selling foreign rights? International authors?

How large a role do you play in the negotiation of an author's contract?

Do you tailor your contracts to each individual author? Does this vary for authors with agents?

### **Electronic/Digital Publishing**

Do you have a 'future technology' clause in your own contracts? Yes -Why do you feel this is important? No - Why do you not include this?

If you control the media/electronic rights, do you actively sell them to other media companies? How important is this to your business model?

If yes, which media rights? If yes, e-rights for which products? More info about apps.

Is your company developing e-books/new digital technology? If yes, Why do you feel this is important? If no, why are you not doing this?

How do you feel about digital publishing?

What do you think of Google Books Search (and the ongoing settlement deal)?

Have you been affected by copyright infringement? If so, give examples.

### **Future/Improvements**

What problems do you face with selling rights?

Would you undertake training (or further training) in selling/dealing with rights? If so, what training would you require? Who would provide this training?

What do you think of the current copyright term? Should it be shorter/longer?

What do you think of the introduction of a rights registry?

Would you like to add anything else to this discussion?

## **Appendix Fourteen: Anonymised Profiles of Interviewed Scottish Publishers**

### **Publisher A**

Publisher A is a medium-sized publishing company based in Edinburgh that have over 1000 books in its catalogue and an output of over 170 titles a year. This makes Publisher A one of the biggest independent publishers in Scotland. Publisher A publishes a wide range of Scottish interest books and so counts the domestic Scottish market as its core market. Publisher A has a rights department, which consists of one person, which is based in London.

### **Publisher B**

Publisher B is a medium sized independent publishing company based in Edinburgh, which was founded in 1973. Publisher B has a rights department with four trained staff. Publisher B also has an office based in London. Publisher B has a domestic, national and international publishing agenda.

### **Publisher C**

Publisher C is a scholarly publisher of academic books and journals based in Edinburgh. Publisher C sells their products worldwide and also works in conjunction with other similar presses in North America. Publisher C do not have a rights department or anyone trained in selling rights, although several staff deal with rights related issues in some capacity.

### **Publisher D**

Publisher D is the publishing branch of the Church of Scotland, which was founded in 1954. Publisher D publishes a range of work from religious writing to biographies and histories and they have approximately 200 works in their catalogue. Publisher D have less than ten staff working there and none of the staff are trained in selling rights although several staff deal with rights related issues in some capacity.

### **Publisher E**

Publisher E is a two-person independent publishing company, based in the North of Scotland, founded in 2006. Publisher E mainly publishes literary fiction and only has two staff members (the founders). None of the staff members are trained in selling rights. Publisher E has fifty-three publications in their catalogue and this includes fiction, anthologies, short stories and collections of poetry.

## Appendix Fifteen: Covering Letter for Survey

Why take part in the survey about Intellectual Property Rights?

Intellectual Property Rights are at the heart of publishing. They enable the reward of authors and managed dissemination of their work across diversity of media and often in a variety of forms. Without the protection offered by IPR as applied in differing forms and jurisdictions across the world, authors would face diminishing returns from their work and loss of control over its integrity and nature. This all sounds quite inspirational but to a large extent it may also be aspirational as well.

Concern about the effectiveness of authors, agents and publishers in awareness, administration and exploitation of IPR has led to the setting up of the 'Creativity and Rights' project within the Scottish Centre for the Book at Edinburgh Napier University. This project, funded through an internal Edinburgh Napier Principal's Award from Professor Joan Stringer, seeks first to discover the degree of knowledge and understanding of and benefits from IPR among authors, agents and publishers in Scotland and then to identify viable measures in order to resolve any gaps or problems. This is not an 'academic' project; it aims to deliver a useful service to the creative community in Scotland. Accordingly, the project team includes Lorraine Fannin, recently retired Chief Executive of Publishing Scotland, and Aly Barr, on a six-month secondment from the Scottish Arts Council funded by the Principal's Award, as well as staff and postgraduate students from the Scottish Centre for the Book.

The first stage of the project has to be an information-gathering exercise so that a clear snapshot of current knowledge and practice is available. An online survey of Scottish authors is underway and this will be followed up by a number of interviews. Interviews are being undertaken with Scottish-based agents and agents based elsewhere who act for Scottish authors. It is vital to the project that the voices of publishers should be heard as well. That is why we are using the pages of your newsletter to ask you to give approximately twenty minutes of your time to undertake the online survey at: This survey is anonymous and its results will be published in aggregated form. If you do not have access to the Internet, then we would be pleased to send you a paper copy with sae for return. Just phone Fiona Hartree on 0131 455 6429 or send her a note at Scottish Centre for the Book, Edinburgh Napier University, Craighouse Campus, Edinburgh EH10 5LG. We will contribute a further piece to this newsletter later on in the year to offer a summary of the survey's results and an update on the project's progress. As an additional incentive, we will offer a case of champagne to a participant drawn at random from all those completing the survey online or by post.

Alistair McCleery  
Melanie Ramdarshan  
Scottish Centre for the Book at Edinburgh Napier University

## Appendix Sixteen: Publishing Scotland Survey

### Section One: Welcome

Some notes about the survey: A red asterisk beside a question indicates that it is required; the survey will not be able to progress without this type of question being answered. However, you do not need to answer questions without an asterisk if they do not apply to you. Please note that the data from this survey will be used in an aggregated form only and details from any individual company will NOT form part of the analysis. The individual profiles will be held ONLY by Publishing Scotland, will remain confidential and will not be shared with either other members or third parties including those involved in the analysis.

1. If you wish to be entered into our free prize draw, for six bottles of champagne, please enter your email address here.

Please note this is not necessary to complete the survey and you may skip this if you do not want to be entered into the prize draw.

All data from this survey will be aggregated. Your details will be held separately and used only for the purposes of the draw in October 2009. The list of email addresses will be deleted as soon as the winner has been confirmed.

=====  
**Section Two: Company Information**  
=====

2. Company name

---

3. Address

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4. Name of person completing survey?

---

5. Job title (s) Please select all answers that apply.

- Director
- Editor
- Marketing Manager
- Publisher
- Publications Manager
- Commercial Officer
- Other

6. Date company established

- Before 1960
- 1961-1980
- 1981-2000
- Since 2000

=====  
**Section Three: Staff**  
 =====

7. Number of employees

- 0-10
- 11-25
- 26-50
- 51-100
- 101-250
- 251+

8. How many full-time employees fall into the following categories?

	0-5	6-10	11-20	21+
Editors/editorial				
Marketing/publicity				
Sales				
Production/design				
Rights				
Finance				
Publishing Management				

9. How many part-time employees fall into the following categories?

	0-5	6-10	11-20	21+
Editors/editorial				
Marketing/publicity				
Sales				
Production/design				
Rights				
Finance				
Publishing Management				

10. Who is responsible for communication with authors?

- Director
- Marketing Manager
- Publications Manager
- All staff in different capacities
- N/A no authors
- Editor
- Publisher
- Commercial Officer
- N/A no other staff
- Other

11. How many staff have:

	0	1-5	6-10	11+
Specialist publishing qualifications				
Attended training courses this year				
Management responsibility				

12. Will you recruit extra staff in the coming year?

- Yes  
 No

13. If yes, how many?

14. How many freelance staff do you use regularly?

15. For what kind of work? Please select all answers that apply.

- Editors/editorial                       Marketing/publicity  
 Sales     Production/design  
 Rights     Finance  
 Publishing Management

=====  
**Section Four: Company Ownership**  
=====

16. How is the company owned?

- Independent/owner-managed  
 Institution/public-sector organisation  
 Trust  
 Private shareholder-owned  
 PLC/Subsidiary of large company

17. If PLC/Subsidiary of large company, please name holding company

=====  
**Section Five: Titles**  
=====

18. How many titles do you have in print?

- 10-20     21-30  
 31-40     41-50  
 51-60     61-70  
 71-100     101-150  
 151-300     301-700  
 701+



19. What percentage of your titles in print falls into the following categories?

	0	1-10	11-30	31-50	51-70	71+
Fiction						
Poetry						
Children's						
General non-fiction						
Educational						
Religious						
Art/illustrated						
Reference						
STM						
E-book						
Academic						
Customised products						
Professional						
Local Interest						
Comic Books						
Maps and other non-book products						

20. Average price for  
 Hardback \_\_\_\_\_  
 Paperback \_\_\_\_\_

21. How many titles

	0-5	6-10	11-20	21+
Do you plan to publish this year?				
Have you commissioned this year?				
Have you published in the last 3 years, which were submitted by agents?				

22. What is your ratio of sales to stock-in-hand?

=====  
**Section Six: Markets: Home-Retail**  
 =====

23. Do you sell to the UK trade?  
 Yes  No

24. If yes, to which retailers?

	Yes	No
Waterstones		
WH Smith		
Amazon.co.uk		

Supermarkets		
Independents		
Wholesalers		
Library suppliers		
School suppliers		
Other internet retailers		

25. Do you have sales representation?

- Yes  
 No

26. Do you have an in-house rep?

	Yes	No
In Scotland		
In England and Wales		
In Ireland		

27. Do you have an independent sales agency?

	Yes	No
In Scotland		
In England and Wales		
In Ireland		

28. What percentage of your sales are in Scotland?

- 0-20  
 21-50  
 51-70  
 71+

29. Does your rep visit

	Yes	No
The head offices of the major UK chains		
The main Scottish wholesalers		
The main Scottish library suppliers		
The main UK wholesalers		
The main UK library suppliers		

30. What does your sales function cost as a % of receipts?

- 0-20                       21-30  
 31-40                       41+

31. Do you have a per title marketing/promotion budget?

- Yes  
 No

32. Are you involved in Web 2.0 marketing? For examples please refer to Q.

33.

- Yes  
 No

33. If yes, which of the following? Please select all answers that apply.

- Podcasting/streaming
- Twitter
- Youtube
- Social networking sites
- Other

34. If other, please specify

=====  
**Section Seven: Markets: Exports**  
=====

35. Do you sell your titles overseas?

- Yes
- No

36. Do you have a representative/distributor in

	Yes	No
Europe		
USA		
Canada		
Australia		
New Zealand		
South America		
Japan		
India		
Other		

37. What is your average export discount?

- 0
- 1-15
- 16-30
- 31-45
- 46-60
- 61+

=====  
**Section Eight: Distribution**  
=====

38. How are your books distributed?

- Self
- Book Source
- Bookspeed
- Other distributor
- Other wholesaler
- N/A

39. What does your distribution/storage function cost as a % of receipts?

- 0-10
- 11-20
- 21-30

- 31-40
- 41-50
- 51+

40. Do you have problems in collecting cash owed?

- Yes
- No

=====

**Section Nine: Selling Rights**

=====

41. What percentage of your income comes from rights sales?

- 0
- 1-30
- 31-50
- 51+

42. How many members of your staff are trained/experienced in selling rights?

43. Do you take on a copyright licence for the full term or for a fixed term?

- Full copyright term
- Fixed term

44. What percentage of authors are licenced for the full term of copyright?

- 0-25
- 26-50
- 51-75
- 76-100

45. How important is the rights potential of a book when you are taking on project?

- Very Important
- Important
- Not important
- Irrelevant

46. Do you have an electronic rights database?

- Yes
- No

47. If yes, is it?

- Manual
- Off the shelf
- Customised to your requirements

48. Do you have overseas rights agents working on your behalf?

- Yes
- No

49. If yes, in which countries? Please select all answers that apply.

- Australia

- Baltics (Latvia, Lithuania, Estonia)
- Brazil
- Bulgaria
- Canada
- China
- Croatia & Balkans
- Czech Republic/Slovak Republic
- France
- Germany
- Greece
- Holland
- Hungary
- Italy
- India
- Indonesia, Thailand and Vietnam
- Israel
- Japan
- Korea
- New Zealand
- Poland
- Portugal
- Romania
- Russia, Ukraine, Georgia and environs
- Scandinavia (Norway, Sweden, Finland, Denmark and Iceland)
- South Africa
- Spain
- Spanish-speaking South and Central America
- Taiwan
- Turkey
- USA
- Other

50. If yes, do you use your subagent for

- A title by title basis                       Your full list

51. Do you sell directly to overseas publishers if you do not deal with rights sub agents in that country?

- Yes     No

52. Do you attend book fairs?

- Yes     No

53. If yes, which fairs? Please select all answers that apply.

- Frankfurt     London Book Fair  
 Book Expo America                                       Bologna  
 Other

54. If other, please specify?

55. If yes, are these book fairs?

- Useful
- Non useful

56. If yes, how many titles do you follow-up from fairs per annum?

- 0-5
- 6-10
- 11-20
- 21+

57. Do you buy rights from overseas publishers?

- Yes
- No

58. If yes, how many titles per annum?

- 0-5
- 6-10
- 11-20
- 21+

=====

**Section Ten: Selling Rights 2**

=====

59. Have you had experience of co-edition publishing in the last five years?

- Yes
- No

60. If yes, how many titles were originated

	Under ten	Over eleven
By you		
By overseas partner		

61. How often do you retain world rights (English language rights) including US rights?

- With all authors
- With most authors
- With some authors
- With no authors

62. How often do you retain world rights (English language rights) excluding US rights?

- With all authors
- With most authors
- With some authors
- With no authors

63. Do you sell rights for Canada separately from the USA?

- Yes
- No

64. Who usually controls the different subsidiary rights? For author this can include the author's agent.

	Publisher	Author
Same language territorial		
Translation or foreign language		
Book Club		
Film and TV		
Radio		
Paperback		
Serial		
Electronic edition		
Electronic version		
Audio		
Merchandising		

65. Does this vary from author to author?

Yes  No

66. Buying rights; do you have access to funds to underwrite the purchase of works to be translated into English?

Yes  No

67. If there were funds available to support translation into English, would you buy more foreign-language titles?

Yes  No

68. Do you have access to reliable translation (into English) services?

Yes  
 No

=====  
**Section Eleven: Media and Electronic Rights**  
=====

69. Do you have a 'future technology' clause in your own contracts?

Yes  
 No

70. Would you accept a 'future technology' clause in any contracts offered to you?

Yes  
 No

71. If you control the media/electronic rights, do you actively sell them to other media companies?

Yes  
 No

72. If yes, which media rights? Please select all answers that apply.

- Radio
- TV
- Film
- Audio

73. If yes, e-rights for which products? Please select all answers that apply.

- E-books
- Podcasts
- Web adaptations
- Computer games

74. Do you actively seek rights based on other media products?

- Yes
- No

75. If yes, which products? Please select all answers that apply.

- Films
- Television programmes
- Computer games
- Blogs (and other online activities)
- Toys

76. Which of the following areas of electronic publishing are you involved in?

Please select all answers that apply.

- E-books
- Electronic articles/anthologies
- CD Roms
- Company website
- Online catalogues
- Online sales
- Print-on-demand
- Podcasts
- Other digital content
- Electronic marketing
- None

77. How active are you on a scale of 0-5 (5 being the most active and 0 being not active at all) in the following areas of electronic publishing?

	0	1	2	3	4	5
E-books						
Electronic articles/anthologies						
CD Roms						
Company website						
Online catalogues						
Online sales						
Print-on-demand						
Podcasts						
Other digital content						
Electronic marketing						



78. Please indicate your opinion on the following statements: Electronic publishing

	Strongly disagree	Disagree	No opinion	Agree	Strongly agree
is a good opportunity for publishers					
is a threat to conventional publishing					
holds greater potential for copyright infringement					
offers a lucrative new revenue stream					
is expensive to train staff in required skills					
can work in conjunction with printed works					
offers access to new markets					
offers authors the opportunity to publish their own work					
leaves small publishers vulnerable to competition from larger corporations such as Google					
enables small publishers to compete successfully with larger multinationals					

=====  
**Section Twelve: Selling Rights 3**  
 =====

79. Do you accept authors without literary agents?

- Yes
- No

80. Do you prefer to work with literary agents/agencies?

- Yes
- No

81. What impact do literary agents/agencies have on rights control?

- Publishers have less control
- Publishers have the same amount of control
- Publishers have more control

82. Do you tailor your contracts to each individual author?

	Yes	No
Author without agent		
Author with agent		

83. What are your main problems in selling rights? Please select all answers that apply.

- Lack of time
- Lack of expertise
- Inappropriate material
- Don't sell rights
- Making contacts
- No problems
- Other

84. If other, please specify?

85. Would you benefit from rights training/seminars?

- Yes
- No

86. Have you heard about the Google Book Search settlement?

- Yes
- No

87. If yes, will you be opting out?

- Yes
- No
- Undecided

88. If yes, do you expect to earn revenue from the Google Book Search settlement?

- Yes
- No

=====  
**Section Thirteen: Web**  
 =====

89. Do you have a company website?

- Yes
- No

90. Do you sell books on the internet?

- Yes
- No

91. If you do have a company website, do you feature any of the following on it?

	Yes	No
Company information		
Author information		
Book reviews		
Interactive readers response facility		
Secure server facility for credit card payment		

=====  
**Section Fourteen: Financial and Sales Information**  
=====

92. Annual sales turnover (world, incl. rights income)?  
\_\_\_\_\_

93. % growth in the last 5 years?  
\_\_\_\_\_

94. Home retail sales? (£)  
\_\_\_\_\_

95. Export sales? (£)  
\_\_\_\_\_

96. Direct mail? (£)  
\_\_\_\_\_

=====  
**Section Fifteen: Company Finance**  
=====

97. Working capital sources (please number in order of importance)

- \_\_\_\_\_ Bank
- \_\_\_\_\_ Shareholders
- \_\_\_\_\_ Private funds
- \_\_\_\_\_ Institutional funds
- \_\_\_\_\_ Local enterprise
- \_\_\_\_\_ SAC

=====  
**Section Sixteen: Financial Reporting**  
=====

98. Do you produce quarterly or monthly financial reports for Board/Management?

- ( ) Yes
- ( ) No

99. Do you receive government or SAC support of any kind?

- ( ) Yes
- ( ) Not at the moment

100. If yes, is this figure included in the financial reports?

- ( ) Yes
- ( ) No

101. If yes, do you find the conditions imposed by government/SAC funding to be... (Please select all answers that apply)

- Useful
- Necessary
- Onerous
- Off-putting

102. Do you have a "wish-list" for financial assistance?

- Yes
- No

103. If yes, please list. Please select all answers that apply.

- Multi-media and web development
- Marketing development
- Expansion of SAC funding
- Non-fiction support
- Education/training in selling rights
- More training
- More choice of sales rep, export help
- Other

104. If other, please specify

=====  
**Section Seventeen: Publishing and Sustainability**  
=====

105. How high do you rank environmental sustainability within your operations?

- Irrelevant
- Not important
- Of some importance
- Very important
- Essential

106. Do you source materials that are sustainable and/or have a minimal carbon imprint?

- Yes
- No

107. Would it be possible to make your operation more sustainable?

- Yes
- No

108. What factors might inhibit this?

- Lack of knowledge
- Lack of funding
- Restrictions by parent company's policies
- Other

109. If other, please specify

---

=====

**Section Eighteen: Company Aims**

=====

110. Please number the following in order of importance to Board/Management

- \_\_\_\_\_ To publish specific books
- \_\_\_\_\_ To publish specific authors
- \_\_\_\_\_ To publish in a specific genre
- \_\_\_\_\_ To achieve increased market share
- \_\_\_\_\_ To make a profit
- \_\_\_\_\_ To increase share value
- \_\_\_\_\_ To publicise the company/institution

=====

**Section Nineteen: Future Planning**

=====

111. In planning for the future what are the priorities? (please rank in order of importance)

- \_\_\_\_\_ Increase in turnover
- \_\_\_\_\_ Increase in profits
- \_\_\_\_\_ Increase in title output
- \_\_\_\_\_ Rationalisation of output
- \_\_\_\_\_ Staff re-structuring
- \_\_\_\_\_ Profile raising
- \_\_\_\_\_ Acquisition of other imprint (s)
- \_\_\_\_\_ Sale of company

112. How is this goal to be reached? Please select all answers that apply.

- Improve marketing strategy
- Increase sales through alternative avenues (i.e. Direct mail and website)
- Rights sales
- Publish more books that sell well
- Continue the same
- Other
- N/A

113. If other, please specify

---

114. Where do you obtain business/financial advice? Please select all answers that apply.

- Publishing Scotland
- The Bank
- An accountant
- Local enterprise
- The Board
- Another source
- Yourself

115. If 'Another Source' please specify

116. What other help may be useful to the publishing industry?

=====  
**Section Twenty: Future Vision**  
=====

117. How do you see your company developing in the next five years? Please select all answers that apply.

- |   |  |
|---|--|
| <input type="checkbox"/> Survival recognition             | <input type="checkbox"/> Increase brand    |
| <input type="checkbox"/> Extend existing range further    | <input type="checkbox"/> Develop new range |
| <input type="checkbox"/> Extend market turnover increase  | <input type="checkbox"/> Profitability and |
| <input type="checkbox"/> Commercial awareness/development | <input type="checkbox"/> Other             |
| <input type="checkbox"/> Don't know                       | <input type="checkbox"/> N/A               |

118. If other, please specify

119. What major challenges will you face in sustaining or developing your company's position in the book business? Please select all answers that apply.

- |  |  |
|--|--|
| <input type="checkbox"/> Scottish economy              | <input type="checkbox"/> UK economy                  |
| <input type="checkbox"/> Global economy                | <input type="checkbox"/> Centralised buying policies |
| <input type="checkbox"/> Competition                   | <input type="checkbox"/> Scottish Press and Media    |
| <input type="checkbox"/> Sales representation material | <input type="checkbox"/> Availability of publishable |
| <input type="checkbox"/> Large chains technology       | <input type="checkbox"/> Rapid development of        |
| <input type="checkbox"/> Lack of capital               | <input type="checkbox"/> Lack of staff resources     |
| <input type="checkbox"/> Other                         | <input type="checkbox"/> Don't know                  |
| <input type="checkbox"/> N/A                           |  |

120. If other, please specify

---

121. What would be on your "wish-list" for the proposed replacement for the Scottish Arts Council (i.e. Creative Scotland)? Only three wishes can be chosen, so choose wisely.

- That things will stay the same
- That funding will increase
- That bureaucracy will be simplified
- That non-fiction will be included in funding
- That there will be an increase in funding for specific purposes (i.e. website development)
- That the reality of publishing in Scotland will be recognised
- That it will offer funding for marketing/promotion
- That it will offer funding for translation fees
- Other (a wish of your choice)

122. If other, please specify

---

=====  
**Section Twenty One: Authors**  
 =====

123. Have you found successful works in your slush pile?

- Yes
- No

124. If yes, what percentage of your slush pile do you publish?

- 0-10
- 11-20
- 21-50
- 51+

125. Do you deal with literary agents?

	Yes	No
From London		
From Scotland		

126. Do you have a scout who approaches authors?

- Yes
- No

127. Have any of your authors published three or more books with you?

- Yes
- No

128. If yes, which author(s)

129. Do you have a standard author contract?

- Yes
- No

130. How do you calculate advance payments?

- Don't pay anything
- Flat fee
- Based on sales expectations
- Fluctuates
- N/A

131. Do you acquire all rights, including electronic?  
 Yes  
 No

132. How do you split rights income with your authors?  
 50/50  
 40/60  
 Variable  
 100% retained by publisher  
 No rights income  
 Not known  
 Other

133. If other, please specify?

---

=====  
**Section Twenty Two: Publishing Scotland Services**  
 =====

134. Did you participate in any Publishing Scotland training courses in the last twelve months?  
 Yes  
 No

135. If yes, how would you rate the following training events?

	Irrelevant	Not very useful	Useful	Very useful	Essential	Have not attended this course
Welcome to Proofreading						
Advanced Proofreading						
Welcome to Copy-editing						
Writing for the Web						
Design of the Page						
Book Cover Design						
Copywriting						
Impressive Marketing Plans on a Small Budget						
Selling Rights						



Moving into Management						
Editorial Project Management						
Digital Publishing Update						
Print on Demand						

136. What additional areas of training would you like to see?

137. Do you participate in UK or Scottish bookshop promotions?

- Yes  
 No

138. If yes, are they

- Useful  Not useful

139. Do you participate in advertising on BooksfromScotland.com?

- Yes  No

140. If yes, is it

- Useful  Not useful

141. Do you read the Publishing Scotland e-mail Bulletin to members each fortnight?

- Yes  No

142. Have you found the Publishing Scotland Conference to be a useful forum?

- Yes  No  
 N/A

143. Do you find the annual Directory of Publishing in Scotland useful?

- Yes  No

144. Do you (or your staff) telephone Publishing Scotland for information or advice?

- Weekly  Monthly  
 Occasionally  Never

145. Do you contact Publishing Scotland for advice on trade issues?

- Yes  No

146. Do you inform all staff members, especially new recruits, about Publishing Scotland's services?

- Yes  No

147. Do you find the membership subscription levels to be good value?

- Yes  No

148. What other services would you like to have from Publishing Scotland?  
Please select all answers that apply.

- Nothing, it's up to the members to make the most use of the services
- Members to be more informed and consulted
- Rights and contract advice
- Market research
- Sales representation
- Export information and advice
- Co-ordinate more specialist fairs
- Other
- Don't know

149. If other, please specify?

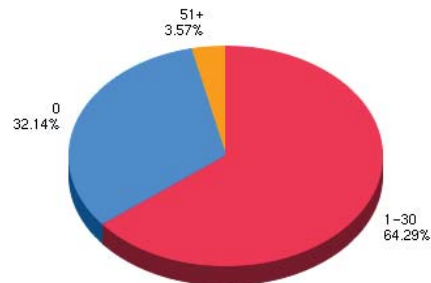
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=====  
**Thank You!**  
=====

Thank you for taking our survey. Your response is very important to us.

## Appendix Seventeen: Examples of Aggregated Data – Survey of Scottish Publishers

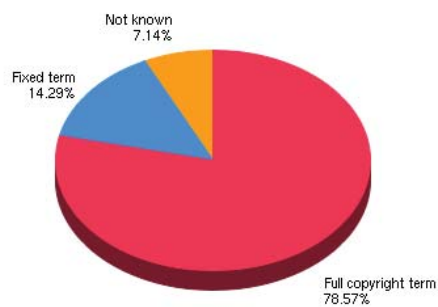
### 39. What percentage of your income comes from rights sales?



STATISTICS	
Choices Selected:	28
Total Responses:	28

SUMMARY			
VALUE	COUNT	PERCENT %	
1-30	18	64.29%	
0	9	32.14%	
51+	1	3.57%	

### 41. Do you take on a copyright licence for the full term or for a fixed term?



STATISTICS	
Choices Selected:	28
Total Responses:	28

SUMMARY			
VALUE	COUNT	PERCENT %	
Full copyright term	22	78.57%	
Fixed term	4	14.29%	
Not known	2	7.14%	

**44. Do you have an electronic rights database?**



STATISTICS	
Choices Selected:	28
Total Responses:	28

SUMMARY		
VALUE	COUNT	PERCENT %
No	22	78.57%
Yes	6	21.43%

**65. If there were funds available to support translation into English, would you buy more foreign-language titles?**



STATISTICS	
Choices Selected:	28
Total Responses:	28

SUMMARY		
VALUE	COUNT	PERCENT %
No	19	67.86%
Yes	9	32.14%

## Appendix Eighteen: Examples of Aggregated Data – Survey of Scottish Authors

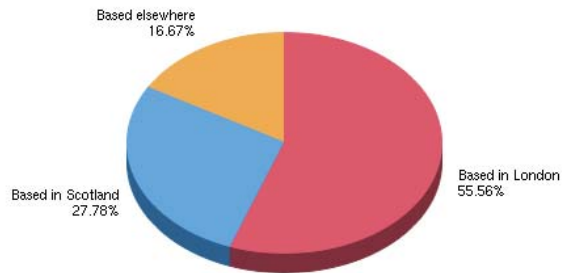
### 26. Do you have a literary agent?



STATISTICS	
Choices Selected:	46
Total Responses:	46

SUMMARY		
VALUE	COUNT	PERCENT %
No	29	63.04%
Yes	17	36.96%

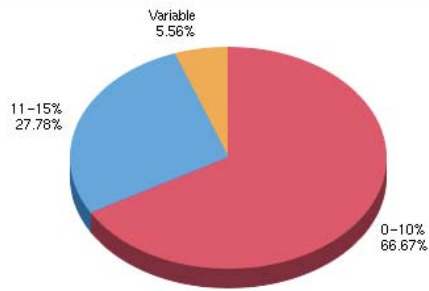
### 33. If you do have an agent, is your agent London or Scotland-based?



STATISTICS	
Choices Selected:	18
Total Responses:	18

SUMMARY		
VALUE	COUNT	PERCENT %
Based in London	10	55.56%
Based in Scotland	5	27.78%
Based elsewhere	3	16.67%

39. If you do have an agent, what commission does your agent receive for UK book rights?



STATISTICS	
Choices Selected:	18
Total Responses:	18

SUMMARY		
VALUE	COUNT	PERCENT %
0-10%	12	66.67%
11-15%	5	27.78%
Variable	1	5.56%

44. Do you find it difficult to get your work published in Scotland?



STATISTICS	
Choices Selected:	41
Total Responses:	41

SUMMARY		
VALUE	COUNT	PERCENT %
Yes	24	58.54%
No	17	41.46%

## **Appendix Nineteen: Covering letter for Authors' Survey**

Intellectual Property Rights are at the heart of publishing. They enable the reward of authors and managed dissemination of their work across diversity of media and often in a variety of forms. Without the protection offered by IPR as applied in differing forms and jurisdictions across the world, authors would face diminishing returns from their work and loss of control over its integrity and nature. This all sounds quite inspirational but to a large extent it may also be aspirational as well.

Concern about the effectiveness of authors, agents and publishers in awareness, administration and exploitation of IPR has led to the setting up of the 'Creativity and Rights' project within the Scottish Centre for the Book at Edinburgh Napier University. This project, funded through an internal Edinburgh Napier Principal's Award from Professor Joan Stringer, seeks first to discover the degree of knowledge and understanding of and benefits from IPR among authors, agents and publishers in Scotland and then to identify viable measures in order to resolve any gaps or problems. This is not an 'academic' project; it aims to deliver a useful service to the creative community in Scotland. Accordingly, the project team includes Lorraine Fannin, recently retired Chief Executive of Publishing Scotland, and Aly Barr, on a six-month secondment from the Scottish Arts Council funded by the Principal's Award, as well as staff and postgraduate students from the Scottish Centre for the Book.

The first stage of the project has to be an information-gathering exercise so that a clear snapshot of current knowledge and practice is available. An online survey of Scottish publishers is underway and this will be followed up by a number of interviews. Interviews are being undertaken with Scottish-based agents and agents based elsewhere who act for Scottish authors. It is vital to the project that the voices of authors should be heard as well. That is why we are using the pages of your newsletter to ask you to give approximately twenty minutes of your time to undertake the online survey at: <http://www.surveygizmo.com/s/128588/society-of-authors-scotland-survey> This survey is anonymous and its results will be published in aggregated form. If you do not have access to the Internet, then we would be pleased to send you a paper copy with sae for return. Just phone Fiona Hartree on 0131 455 6429 or send her a note at Scottish Centre for the Book, Edinburgh Napier University, Craighouse Campus, Edinburgh EH10 5LG. We will contribute a further piece to this newsletter later on in the year to offer a summary of the survey's results and an update on the project's progress. As an additional incentive, we will offer a bottle of champagne to a participant drawn at random from all those completing the survey online or by post.

Alistair McCleery  
Melanie Ramdarshan  
Scottish Centre for the Book, Edinburgh Napier University

## Appendix Twenty: Screen Shots of Online Surveys

### Survey of Scottish Publishers

The screenshot shows a survey form titled "Publishing Scotland Survey". The form is set against a white background with a blue header bar at the top. The questions are numbered 2 through 6. Question 2 is "Company name" with a red asterisk and a text input field. Question 3 is "Address" with a red asterisk and a larger text input field. Question 4 is "Name of person completing survey?" with a red asterisk and a text input field. Question 5 is "Job title (s) Please select all answers that apply." with a red asterisk and a list of job titles, each with an unchecked checkbox. Question 6 is "Date company established" with a red asterisk and a radio button selected for "Before 1960".

**Publishing Scotland Survey**

2. Company name \*

3. Address \*

4. Name of person completing survey? \*

5. Job title (s) Please select all answers that apply. \*

- Director
- Editor
- Marketing Manager
- Publisher
- Publications Manager
- Commercial Officer
- Other

6. Date company established \*

Before 1960

#### Page/Section Two: Company Information



## Publishing Scotland Survey

41. What percentage of your income comes from rights sales? \*

- 0
- 1-30
- 31-50
- 51+

42. How many members of your staff are trained/experienced in selling rights? \*

-- Please Select --

43. Do you take on a copyright licence for the full term or for a fixed term? \*

- Full copyright term
- Fixed term
- Not known

44. What percentage of authors are licenced for the full term of copyright? \*

- 0-25
- 26-50
- 51-75
- 76-100

45. How Important is the rights potential of a book when you are taking on a project? \*

Very Important

Important

Not important

Irrelevant

Page/Section Nine: Selling Rights

## Survey of Scottish Authors

### Society of Authors (Scotland) Survey

**26. Do you have a literary agent? \***

Yes  
 No

**27. If yes, why did you decide to employ an agent? Please select all answers that apply.**

Publishers seem only accept to authors with agents  
 To find suitable publishers for your work  
 To negotiate better contract/royalty deals  
 To negotiate better contracts/rights deals  
 To sell foreign rights, tv & film rights etc  
 To handle the business aspects of writing  
 To act as a personal advocate  
 Other

**28. If other, please specify**

**29. If no, why did you decide not to employ an agent? Please select all answers that apply.**

Established relationship with publisher  
 Society of Authors provides adequate service/support  
 Could not find suitable agent  
 Did not know there were agents based in Scotland

### Page/Section Four: Literary Agents

## Society of Authors (Scotland) Survey

45. In your last contract, did you licence your copyright the full term or for a fixed term? \*

- Full copyright term
- Fixed term
- Don't know

46. Who controlled the different subsidiary rights for your last published books? For author this can include the author's agent. \*

	Publisher	Author	Don't know	N/A
Same language territorial	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Translation or foreign language	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Book Club	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Film and TV	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Radio	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Paperback	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Serial	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Electronic edition	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Electronic version	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Audio	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Merchandising	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Page/Section Five: Rights

## Appendix Twenty One: Survey to Authors

### Section One

Some notes about the survey: A red asterisk beside a question indicates that it is required; the survey will not be able to progress without this type of question being answered. However, you do not need to answer questions without an asterisk if they do not apply to you. You should understand all questions as referring to your last published, full-length book.

1. If you wish to be entered into our free prize draw, for a bottle of champagne, please enter your email address here. Please note that your email address is not necessary to complete the survey and you may skip this page if you do not want to be entered into the prize draw.

All data from this survey will be aggregated. Your email address will be held separately and used only for the purposes on the draw on July 2009. The list of email addresses will be deleted as soon as the winner has been confirmed.

### Section Two: Author Information

2. Age \*  
18-25  
26-35  
36-45  
46-55  
56-70  
71+
3. Sex \*  
Male  
Female
4. Are you a full or part-time author? \*  
Full-time  
Part-time
5. What genre is your writing? Please select all answers that apply. \*  
Fiction  
Poetry  
Children's  
Popular non-fiction  
Educational/textbook  
Religious  
Art/Illustrated
6. How long have you been writing as a profession? \*  
0-5 years  
6-10 years

11-20 years  
21+ years

7. How many full-length (i.e. not including items for anthologies) publications have you had throughout your career so far? \*
- 0  
1-5  
6-10  
11-25  
26-50  
51+
8. How many full-length titles do you currently have in print? \*
- 0  
1-5  
6-10  
11-25  
26-50  
51+

### Section Three: Income

9. What is your main source of income? \*
- Writing  
Full-time job  
Part-time job  
Pension  
Partner's income  
Other
10. If other, please specify
11. What are your main sources of income through writing? Please select all answers that apply. \*
- Books  
Reviews  
Journals  
Magazines  
Radio adaptations  
TV/Film scripts  
Other
12. If other, please specify
13. How do you supplement your writing? Please select all answers that apply \*
- Full-time job  
Part-time job  
Pension  
Partner's income

Other  
N/A

14. If other, please specify
15. Did you have a profession before writing? \*
- Yes  
No
16. If yes, did you give up that profession?
- Yes  
No  
Now part-time rather than full-time  
Now retired
17. Are you the main breadwinner in your household? \*
- Yes  
No
18. Do you save money in a pension? \*
- Yes  
No
19. How much did you earn this tax year (2008-2009) from your writing? \*
- £0-999  
£1000-4999  
£5000-9999  
£10000-19999  
£20000-29999  
£30000-39999  
£40000-49999  
£50000-74999  
£75000-99999  
£100000+  
Would prefer not to answer
20. How much did you receive as an advance for your last contracted book? \*
- Didn't get an advance  
£0-999  
£1000-4999  
£5000-9999  
£10000-19999  
£20000+
21. Is this advance representative of the advances you have earned from your other work? \*
- Yes  
No

N/A

22. Was this advance more, less, or the same as your previous advance? \*

More

Less

The same

N/A

23. Are you happy with the amount you earn from writing? \*

Yes

No

24. How long did it take you to complete your last work? \*

0-6 months

7-12 months

13-18 months

19+ months

25. Is this more, less, or the same compared to previous work? \*

More

Less

The same

NA

#### **Section Four: Literary Agents**

26. Do you have a literary agent? \*

Yes

No

27. If yes, why did you decide to employ an agent? Please select all answers that apply.

Publishers seem only accept to authors with agents

To find suitable publishers for your work

To negotiate better contract/royalty deals

To negotiate better contracts/rights deals

To sell foreign rights, tv & film rights etc

To handle the business aspects of writing

To act as a personal advocate

Other

28. If other, please specify

29. If no, why did you decide not to employ an agent? Please select all answers that apply.

Established relationship with publisher

Society of Authors provides adequate service/support

Could not find suitable agent

Did not know there were agents based in Scotland

- I did not feel it was necessary  
Other
30. If other, please specify
31. If yes, what benefits has having an agent brought? Please select all answers that apply.  
Better contracts  
Better royalty deals  
Better rights exploitation  
Higher advance  
More titles in print  
Source of valuable career advice and guidance  
No benefits  
Other
32. If other, please specify
33. If you do have an agent, is your agent London or Scotland-based?  
Based in London  
Based in Scotland  
Based elsewhere
34. If elsewhere, please specify
35. Why did you choose your particular agent? Please select all answers that apply.  
Word of mouth recommendation  
Proximity to author  
Strong relationship with publishers  
Proximity to London-based publishing activity  
Proximity to Scottish-based publishing activity  
Proximity to London-based media activity e.g. Film, TV etc  
Literary agency has the best reputation  
Specific to genre  
Other
36. If other, please specify
37. If you have a London-based agent, why did you choose this over a Scottish-based agent? Please select all answers that apply.  
Did not know there were Scottish literary agents  
Chose agent before agents were established in Scotland  
Literary agency has the best reputation  
Proximity to London-based publishing activity  
Proximity to London-based media activity e.g. Film, TV etc  
Strong relationship with national and international publishers  
Specific to genre  
Other



38. If other, please specify
39. If you do have an agent, what commission does your agent receive for UK book rights?  
 0-10%  
 11-15%  
 16+%  
 Variable
40. Does this commission vary for \*  
 Yes No N/A  
 Foreign rights  
 TV/Film/Audio rights
41. If yes, is the commission higher or lower for the following rights sales?  
 Higher Lower Variable  
 Foreign rights  
 TV/Film/Audio rights
42. If you have an agent, how many books have you successfully published with you agent?  
 0-5  
 6-10  
 11-50  
 51+
43. If you don't have an agent, how many books have you published without an agent?  
 0  
 1-5  
 6-10  
 11-50  
 51+
44. Do you find it difficult to get your work published in Scotland?  
 Yes  
 No

### Section Five: Rights

45. In your last contract, did you licence your copyright the full term or for a fixed term? \*  
 Full copyright term  
 Fixed term  
 Don't know
46. Who controlled the different subsidiary rights for your last published books? For author this can include the author's agent. \*  
 Publisher Author Don't know N/A  
 Same language territorial

Translation or foreign language  
Book Club  
Film and TV  
Radio  
Paperback  
Serial  
Electronic edition  
Electronic version  
Audio  
Merchandising

47. How is the ownership/control of the subsidiary rights decided? \*
- Negotiations between author and publishers
  - Negotiation between publisher and literary agent
  - No negotiations - publisher decided
  - No negotiations - author decided
  - Other
48. If other, please specify
49. What percentage of your income last year (tax year 2008-09) came from rights sales? \*
- 0
  - 1-30
  - 31-50
  - 51+
50. How was that rights income split between you and your publishers? \*
- 50/50
  - 60/40
  - Variable
  - 100% retained by publishers
  - No rights income
  - Not known
  - Other
51. If other, please specify
52. Are your books published overseas? \*
- Yes
  - No
53. If yes, in which countries? Please select all answers that apply.
- Australia
  - Baltics (Latvia, Lithuania, Estonia)
  - Brazil
  - Bulgaria
  - Canada
  - China
  - Croatia & Balkans

Czech Republic/Slovak Republic  
 France  
 Germany  
 Greece  
 Holland  
 Hungary  
 Italy  
 India  
 Indonesia, Thailand and Vietnam  
 Israel  
 Japan  
 Korea  
 New Zealand  
 Poland  
 Portugal  
 Romania  
 Russia, Ukraine, Georgia and environs  
 Scandinavia (Norway, Sweden, Finland, Denmark and Iceland)  
 South Africa  
 Spain  
 Spanish-speaking South and Central America  
 Taiwan  
 Turkey  
 USA  
 Other

54. How important is potential rights sales for you when you are embarking on a project?\*
- Very Important  
 Important  
 Not important  
 Irrelevant
55. Would you benefit from rights training/seminars? \*
- Yes  
 No

**Section Six: Contracts**

56. Are you published by a Scottish-based publisher? \*
- Yes  
 No
57. If yes, why? Please select all answers that apply.
- Proximity  
 Best publisher for specific genre  
 Not been accepted by London-based publisher  
 Other
58. If other, please specify

59. If no, why not? Please select all answers that apply.  
 Published by a London-based publisher  
 Not been accepted by a Scottish-based publisher  
 Not been published  
 No Scottish publishers relevant to my type of work  
 Other
60. If other, please specify
61. If published by a London-based publisher, why did you choose it over a Scottish-based publisher? Please select all answers that apply.  
 Bigger advance  
 Bigger marketing budget  
 Better links with overseas publishers  
 Better rights potential  
 Better suited to specific genre  
 Advised by literary agent  
 Other
62. If other, please specify
63. Does your last book contract contain an option clause for future books?  
 \*  
 Yes  
 No
64. If yes, how many books does the option clause cover?  
 One  
 Two  
 Three  
 Other
65. If other, please specify
66. Were you directly involved in the negotiations over your last contract?  
 \*  
 Yes  
 No  
 N/A
67. If yes, who did you deal with? Please select all answers that apply.  
 Director  
 Editor  
 Sales/Marketing Manager  
 Publications Manager  
 Commercial Officer  
 All staff in different capacities  
 Other

68. If other, please specify
69. Have your aspirations been fully fulfilled by the publisher of your last published book? \*
- Yes
  - No
  - N/A

### **Section Seven: Media and Electronic Rights**

70. Have you sold adaptations of your work to different media? \*
- Yes
  - No
71. If yes, which media? Please select all answers that apply.
- Radio
  - Film
  - Television
  - Audio (audiobooks, CDs and podcasts)
  - E-books
  - Computer games
  - Web-based applications
72. How did this opportunity arise?
- Publisher
  - Literary agent
73. How much revenue did you earn from this (last contracted product)?
- £0-999
  - £1000-4999
  - £5000-9999
  - £10000-19999
  - £20000+
74. Do you have a 'future technology' (i.e. covering all media not yet invented) clause in your own contracts? \*
- Yes
  - No
75. Would you accept a 'future technology' clause in any contracts offered to you? \*
- Yes
  - No
76. Have you heard about the Google Book Search settlement? \*
- Yes
  - No
77. If yes, will you be opting out?
- Yes

No

78. If yes, do you expect to earn revenue from the Google Book Search settlement?

Yes

No

Thank you for taking our survey. Your response is very important to us.



# Appendix Twenty Two: Copyright Poster

**THROUGHOUT THE UNIVERSE IN PERPETUITY: THE PERENNIAL COPYRIGHT BATTLE**

**IN THE BEGINNING...**

MWAHAHAHA! WE ARE THE ONLY MORTALS WHO CAN CONTROL COPYRIGHT AND IT'S PERPETUAL SO WE HAVE A MONOPOLY OF THE BRITISH BOOK TRADE

**THE STATIONERS COMPANY**

**THE STATUTE OF ANNE (1710)**

I AM THE FIRST OFFICIAL COPYRIGHT ACT AND I AM AN ACT FOR THE ENCOURAGEMENT OF LEARNING. I THEREFORE SET THE COPYRIGHT TERM TO 21 YEARS FROM PUBLICATIONS AND 14 YEARS FOR THOSE ALREADY PUBLISHED.

BUT THE STATIONERS COMPANY HAD A CUNNING PLAN... WHICH ANGERED PROVINCIAL BOOKSELLERS...

BUT THE STATUTE SAYS DIFFERENTLY...

THE COPYRIGHT WE OWN IS A PROPERTY RIGHT BECAUSE THE AUTHORS TRANSFERRED IT TO US

AND SO A BATTLE ENSUED...

THIS CAME TO A HEAD IN THE MOMENTOUS CASE OF DONALDSON V'S BECKETT (1774)

BOTH PERPETUAL COPYRIGHT AND THIS MONOPOLY ARE DETRIMENTAL TO PUBLIC INTEREST...

I THEREFORE DECREE THAT COPYRIGHT HAS A LIMITED TERM

OVER THE LAST THREE HUNDRED YEARS COPYRIGHT LAWS HAVE EVOLVED AND EXTENDED

WE NEED PROTECTION

**MEDIA CORPORATION**

**AUTHORS**

THE COPYRIGHT TERM IS NOW 70 YEARS

HOWEVER, THE CURRENT PROTECTIVE COPYRIGHT LAWS BENEFIT GLOBAL COMPANIES. THIS OPPRESSIVE SYSTEM HAS RESULTED IN MUTINY AND INFRINGEMENT...

TECHNOLOGY HAS DEVELOPED AND EXPANDED RAPIDLY OVER THE YEARS

TECHNOLOGICAL ADVANCEMENT AND GLOBALISATION ALSO MEANS THAT INFORMATION CAN BE DISSEMINATED GLOBALLY

A BOOK CAN NOW BE DISSEMINATED ACROSS LOTS OF DIFFERENT MEDIA, CONSEQUENTLY THE RANGE AND PROFITABILITY OF INTELLECTUAL PROPERTY RIGHTS (IPR) HAS EXPANDED

THIS HAS INCREASED THE EASE OF ILLEGALLY COPYING AND DISTRIBUTION OF COPYRIGHTED MATERIAL

...AND SO THE PERENNIAL COPYRIGHT BATTLE HAS ENGENDERED MANY CONTEMPORARY ISSUES

THE MULTIMEDIA CONGLOMERATES HAVE GLOBAL ACCESS TO AND CONTROL OF THE DIFFERENT MEDIA MARKETS

THE CONSTANT EVOLUTION OF TECHNOLOGY AND MEDIA OWNERSHIP, AND THE PERENNIAL COPYRIGHT BATTLE, HAS RESULTED IN A NEED FOR IPR AWARENESS

THESE ISSUES AFFECT SCOTTISH AUTHORS AND PUBLISHERS BECAUSE THEY WANT TO COMPETE IN THE GLOBAL MARKET...

MY RESEARCH WILL DISCOVER TO WHAT EXTENT THESE ISSUES ARE AFFECTING SCOTTISH AUTHORS AND PUBLISHERS, AND WILL THUS PROPOSE SOLUTIONS...

MWAHAHAHA - WE CAN CONTROL THE RANGE AND DIRECTION OF CULTURAL PRODUCTION BY EXPANDING IPR ACROSS DIFFERENT MEDIA.

HOW CAN WE HARNESS THESE RIGHTS FULLY AND EFFECTIVELY?

**PUBLISHERS, AUTHORS AND CONSUMERS**

**MULTIMEDIA CONGLOMERATE**

**SCOTTISH PUBLISHERS**

...TO ENABLE THEM TO EXPLOIT IPR SUCCESSFULLY AND ACROSS ALL MEDIA, AND ULTIMATELY CONTRIBUTE TO A FLOURISHING PUBLISHING ECONOMY.

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