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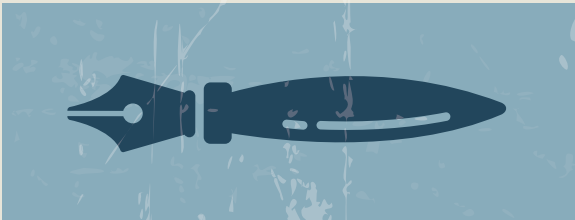
E-CONTENT SUPPLEMENT  
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## Digital Content

What's next

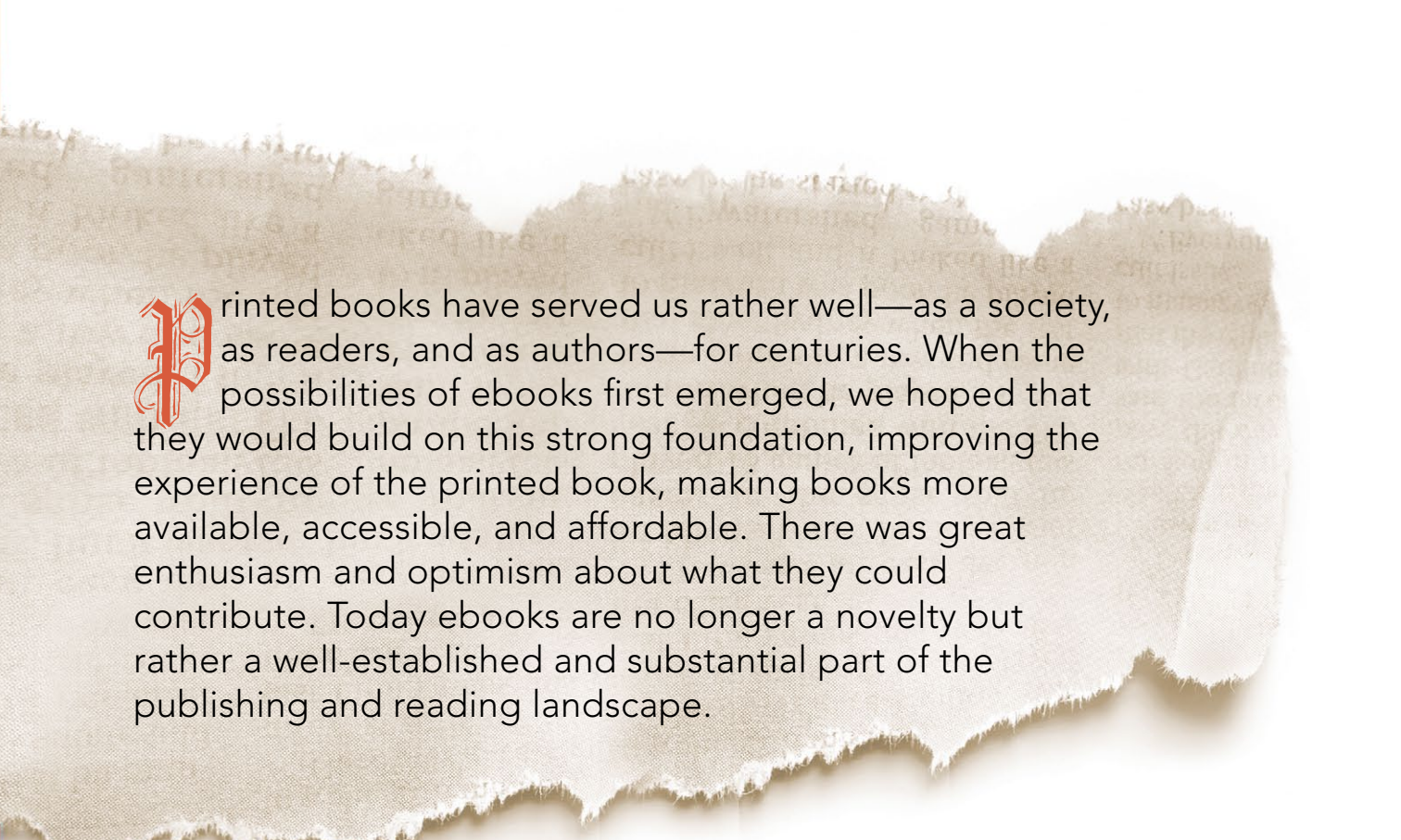


# Ebooks *in* 2013

Promises broken, promises kept, and Faustian bargains



By  
Clifford A. Lynch



**P**rinted books have served us rather well—as a society, as readers, and as authors—for centuries. When the possibilities of ebooks first emerged, we hoped that they would build on this strong foundation, improving the experience of the printed book, making books more available, accessible, and affordable. There was great enthusiasm and optimism about what they could contribute. Today ebooks are no longer a novelty but rather a well-established and substantial part of the publishing and reading landscape.

Sadly, ebooks have not only failed to deliver on much of their promise, they have become a vast lost opportunity. They are becoming a weapon capable of considerable social damage; a Faustian technology that seduces with convenience, particularly for those who consume a great many books, but offers little else while extracting a corrosive toll on our social institutions and norms. The failure here is not primarily one of technology but of the way that rights holders have chosen to apply the technology, and perhaps even of the legal and public policy frameworks that have allowed this to take place.

### **Introduction, definitions, and scope**

Ebooks are a vast subject, and here I can cover only a few points selectively and in little detail. Important topics like the fate of bookstores and the trends toward consolidation in purchasing channels are not discussed. My concern here is with the broad ecosystem of electronic reading platforms—ranging from dedicated devices like the Kindle and the Nook to software that runs on general-purpose laptops and tablet computers—that provide content to these platforms, such as Amazon and OverDrive, and with the publishing industry. All of this is shorthanded by the term “ebooks.”

I exclude new genres of digital content that cannot be reduced to printed form without losing much of the essential content or character of the work (though this is where many of the real long-term revolutions may lie, and

some of the most fascinating developments are to be found; for elaboration, see [Peter Brantley’s article on page 22](#)). Rather, I am thinking of traditional books presented on electronic reading platforms. I focus on mass market materials rather than, say, scholarly monographs. When I speak of libraries, while public libraries are most directly affected, I speak too of research libraries, which also collect and preserve much of the broad cultural record.

I want to be clear that, at least when dealing with the major publishers, nobody *buys* an ebook; one licenses it under typically very complex terms that constrain what you are allowed to do with it. The notion that you *buy* an ebook or *own* an ebook is a great marketing lie. The license constraints are enforced by a mix of technological and legal mechanisms. While technology is readily available to circumvent most of the technological enforcement mechanisms (though perhaps beyond the technical skills of the average reader), its use is often at best legally ambiguous. And ample pirated content can be downloaded without technical constraints on use and reuse. But here I will focus on the world of ebooks as offered in the standard consumer marketplace.

### **Promises kept and broken**

The ability to adjust fonts and type size and to employ text-to-speech technology on reading platforms promised much greater access for visually challenged readers—many more than for people who are legally blind. Much of the technology is in place, and more continues to be refined, though certainly much more still can and should be done, and some reading platforms are much more hospitable

than others. Sadly, the Authors Guild and publishers have successfully insisted that the right to have a text read out loud is a separate feature that doesn't come routinely when you license an ebook, thus limiting the extent to which one key adaptive technology can be employed.

Ebook technology promised the ability to carry a large collection of books in a light, compact portable form. This promise has been delivered and is indeed one of the great attractions of ebooks to regular readers, particularly those who travel frequently.

Ebook technology eliminates the need to print, warehouse, store, ship, maintain and pay tax on inventory, and transport physical copies of books. One expectation is that ebooks would be more easily and rapidly available—no more waiting for special orders to be shipped, or driving from bookstore to bookstore. One would simply download the title in question. For books acquired by consumers from commercial sources, this has clearly been realized, and downloading is usually quite straightforward. A second expectation was that ebooks would be “greener.” It's hard to evaluate this, as one must consider the ecological footprint of the manufacture of the reading platforms and the delivery infrastructure and amortize it appropriately. I'm not aware of a good analysis of this.

A third, related expectation is that ebooks would be cheaper than printed books. This is complicated: Are ebooks cheaper from the consumer's perspective, or do they offer larger profit margins than printed books, which are distributed in some fashion among the distributor, author, and publisher (some of whom may win, and some of whom may lose)? While most current ebooks from major publishers are cheaper than the equivalent list-price hardcover on, say, Amazon, they are often more expensive than Amazon's discount price on that hardcover and are sometimes more than the paperback edition, if there is one. And usually used print copies are cheaper than all the other alternatives. (There's a very complicated story here about the pricing of new books, involving something called “agency pricing,” a US government lawsuit against Apple and the major publishers related to price fixing, and publisher strategies to prevent Amazon from taking over their world.) It is also worth noting that in the ebook ecology, established authors can leave their publishers and sell directly through channels like Amazon, charging lower prices than commercial publishers and perhaps

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making greater profits. New authors can go directly to the public through these same channels, and often charge only a few dollars for their ebooks. In both of these cases, the consumer sees genuinely and substantially lower prices.

Finally there are issues—I don't want to call them promises, exactly—about privacy, data collection, and reading as a social activity rather than a purely individual one. Clearly, ebook reading platforms can collect hugely detailed (though not necessarily entirely reliable) data about readers'

habits and practices on an individual basis. Market channels like Amazon and Apple can collect this data and resell it or provide it as part of their agreements with publishers, perhaps in anonymized and/or aggregated form. In theory, the data might even find its way back to authors (see the very provocative story [“E-Readers Track How We Read, But Is the Data Useful to Authors?”](#) on National Public Radio's *All Things Considered*, Jan. 28, 2013).

It's not clear what's going on here, or who is holding what data for how long, or how available this data is to various government agencies, but we seem to be increasingly in a world where, if data can be collected, it will be collected. I sense there's a smoldering discomfort here, perhaps as a consequence of greater awareness that consumers' lives and activities are grist for a “big data” world.

The notions of social reading—shared annotations and the like—are still very experimental and in their infancy. It's hard to tell how popular they will be among readers (some of this may depend on how they are balanced with privacy), but they are surely developments to watch.

## **Libraries and ebooks**

A much more efficient and responsive public library, circulating much of its most popular material digitally to patrons with ebook readers via networks, is certainly among the promises many saw in ebooks. The reality has been appalling.

A view among some publishers (and indeed some authors as well)—most commonly expressed when they are talking privately among themselves—is that circulating libraries are thieves. They say each circulation takes a sale (or at least some fraction of a sale) from their revenues. Under the law, there was no way to avoid selling printed books to libraries, or to charge them differential rates. With ebooks and license agreements, they can essentially opt not to do business with libraries (by not allowing circulation as a permitted activity under the license of-

fered) or charge libraries at differential (much higher) rates, as well as manipulating availability (for example, no bestsellers in the library till a year after consumer release). All of these things are happening today: Some major publishers severely constrain which titles and libraries have access to their e-titles; some are charging very high prices or renting books to libraries for a limited number of loans or a limited time period, or both. Douglas County (Colo.) Libraries has prepared informative data showing how many titles on various bestseller lists are available to libraries in ebook form (a pathetically small portion), and what a library would pay in comparison to a consumer. While there may be some argument for limited differential pricing, the current situation, which essentially puts the library's long-term ability to carry out its mission at the mercy of publishers, should be sounding alarms in the public policy arena. The general public is largely unaware of what is happening here, and it is vital that libraries bring public scrutiny to the situation.

Even when libraries can successfully license ebooks, delivery is another disgrace. Consider how easy Amazon has made it to buy books from many different publishers and have them delivered to your Kindle reader (or to Kindle software running on a tablet). Contrast this to the embarrassing and byzantine complexity that confronts a library patron trying to locate and borrow an ebook from his or her library. One comes away from watching such an interaction with the sense that while there are problems everywhere—the systems, the user interfaces, the help, and tutorials—publishers and platform providers have no intention of, or motivation for, making this experience comparable to the ease of a consumer purchase. I suspect that, for most readers, this reflects badly on the library and the author. The other actors in the chain who are most culpable are not terribly visible to the average reader.

It's also interesting to note that the music industry has basically abandoned digital rights management (DRM) software after realizing it was accomplishing little except for infuriating customers and blocking innovation. Clearly this is a lesson the publishing world has yet to learn because its insistence on DRM is a substantial part of the problem.

## Ownership and permanence

Books have been some of our most cherished possessions, lasting hundreds of years. They are passed down from generation to generation within families; they cross centuries in the collections of research libraries, collectors, and

used-book stores. They are genuinely part of both the heritage of individuals and families and of our culture collectively.

Ebooks put all of this at risk. Individuals cannot resell or make gifts of their ebooks in most cases because under the license agreements, they do not actually own the books and the licenses are not transferable. Despite Amazon's recent astounding patent on an electronic "used-book store" (this is an invention?) most current license agreements preclude this. Indeed, many common social practices—sharing books among friends, inheriting books from one's parents or grandparents—don't apply to ebooks in meaningful ways, unless the license agreement makes special provisions to allow it, and service providers like Apple and Amazon made the appropriate provisions. If you try this, you'll face technical obstacles and, very likely, potential civil and criminal liability, with astonishingly harsh penalties, particularly if you try to get around the technical obstacles.

Libraries concerned with preserving ebook content for the long term face similar problems. While it is possible to construct perpetual license agreements that make provision for digital preservation and to develop communitywide preservation mechanisms (as has been done with scholarly journals, where research libraries are usually the dominant part of the marketplace), we are far away from seeing such enabling terms and conditions in mass-market ebook licenses. There is, of course, mandatory copyright deposit at the Library of Congress, but it is neither reasonable nor wise to place all our hopes for preservation of the cultural record on any single library, particularly in an age of massive governmental disinvestment in scholarship and cultural heritage. The challenge—and burden—is simply too large. Even a more broadly based copyright deposit regime similar to what is found in the United Kingdom, while better, still centralizes too greatly the responsibility and the vulnerability.

The survival and the stability of ebooks are also tethered to the survival, continued interest, and good behavior of the providers. The ability to continue to use a book on a reading platform; to move it from one platform to another (say, in replacing an old reader with a new one); or to transfer a license, if permitted, all depend on the ebook provider continuing to exist and operating the necessary infrastructure to validate your license. (The details about how tightly these dependencies are designed vary

**Many common social practices—sharing books among friends, inheriting books from one's parents or grandparents—don't apply to ebooks in any meaningful way.**

across providers and platforms.) History is not encouraging here. Consider the problem of “orphan works”: books probably still within copyright whose current rights holders cannot be found in the print publishing world.

Good behavior is also an issue. Amazon, at least, has the capability to update or remove ebooks from a Kindle remotely whenever it “checks in,” as was memorably demonstrated a few years ago when it erroneously removed copies of Orwell’s *1984* from customers’ Kindles. Amazon has since promised to make more measured use of this technical capability, but I cannot shake the nightmare of an overreaching court order to “unpublish” some book, causing Amazon, Apple, and others to do mass deletions, which would include copies in both personal and library collections. Unfortunately, technical capabilities that exist tend to get used sooner or later. This is one that perhaps should never have been built, or should have been designed quite differently, at least if we are to think of ebooks as a genuinely long-lived and reliable means of preserving and transferring knowledge.

Ultimately, we *must* change ebooks from their current frame as highly controlled, experiential goods that are designed to exist within walled gardens. If they are going to become a viable *replacement* for printed books within our society, rather than an alternative format of convenience, they must be customer-owned (or perpetually licensed with reasonable license terms that mimic ownership), standards-based, non-DRM-protected digital objects that can easily be moved from one platform to another.

## The coming crisis

Today ebooks are primarily a supplementary format, an option in the mass market, with the exception of the growing number of works that authors have placed directly into the e-distribution chains. If consumers choose to accept the Faustian bargains implicit in ebooks, if portability and convenience are paramount and the prices are acceptable, there is clearly no problem. I

worry, though, that most consumers honestly do not understand the nature of the bargain that they are making and think they are “buying” their ebooks.

Many reasonably affluent frequent readers have always purchased and subsequently discarded substantial numbers of “read-once” books and these may be genuinely more convenient in ebook format.

Libraries, and particularly public libraries, need to think carefully about why they are licensing ebooks and whether they are getting value for their investments (compared with printed books). They also face serious public relations problems as they are squeezed between the expectations of a growing number of their patrons and marketplace realities about price, availability, and qual-

ity of delivery services. Responsible libraries of all types must consider the preservation issues thoughtfully, even if they ultimately conclude (as many public libraries may well) that preservation isn’t the library’s mission.

The real crisis will come when we see substantial amounts of important material published *only* as ebooks, when ebook-only publications become a significant component of the cultural and intellectual record. There is a real and largely unaddressed need to better understand the changing nature of this record. One step that we should be taking is to develop a way to measure the amount of electronic-*only* publication that is happening in various markets each year as a collaborative effort among publishers, authors, distributors, and libraries.

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There are already some disturbing indications. We are seeing a modest renaissance of the novella form enabled by the economics of ebooks; these are not being produced in print. There are a few very important author-published ebooks—Laurie Garrett’s *I Heard the Sirens Scream* is a good example—that limped into print only late in their distribution. The music industry has long been regarded as the canary in the coal mine for the content industries, and here we see digital-only works are rapidly gaining ground. The day of reckoning is likely not too far off.

At that point, if we have not come to reasonable terms about ebooks, both the access and preservation functions of our libraries will be gravely threatened, and as a society, we will face a profound public policy problem. It is in everyone’s interest, I believe, to avoid this crisis. ■



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