

Author Reversion Rights: How Changes in Copyright Ownership Affect the Distribution of Works

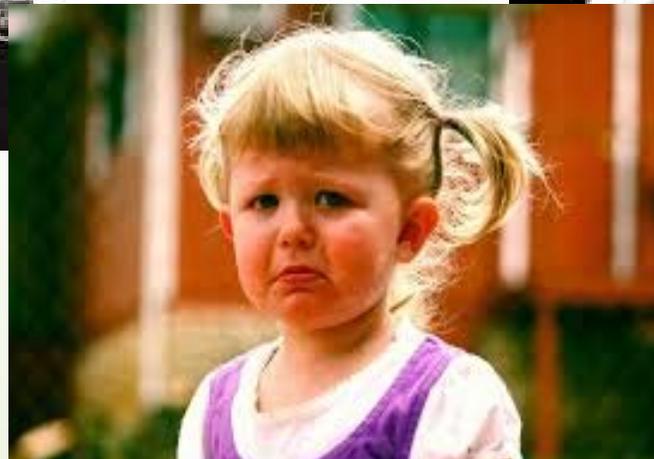
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The Idea of Reversion . . .



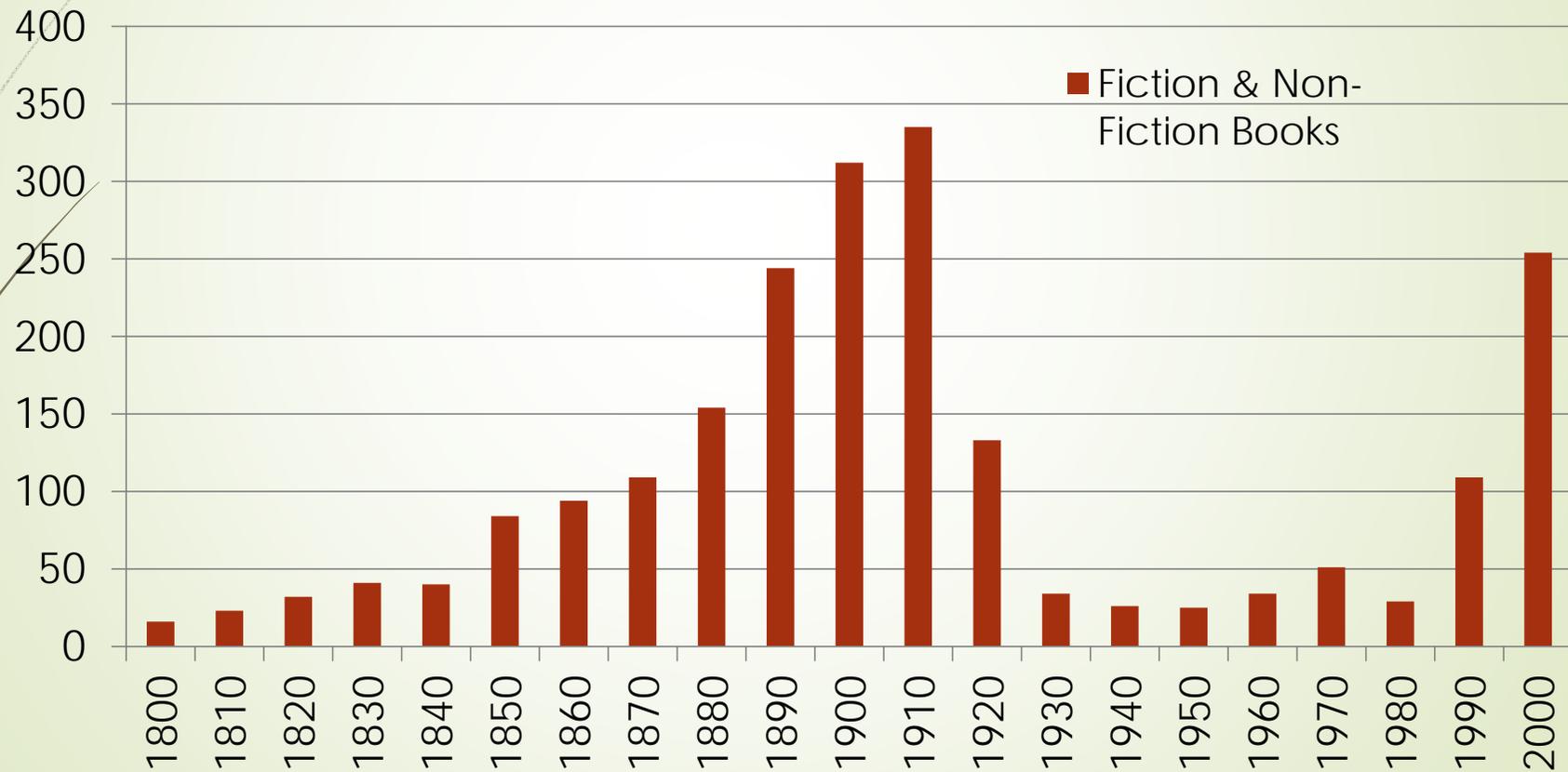


Reversionary Schemes

- ▶ **Post-1978** US regime: Automatic reversion at year 35 to author or heirs.
- ▶ **Pre-1978** US regime: Reversion to heirs after 28 years if the author dies before year 28 (death-contingent reversion).
- ▶ Commonwealth and Spain: Automatic reversion to heirs 25 years after the death of the author.
- ▶ EU sound recordings: Reversion after 50 years, *if* the publisher is not making the work available.
- ▶ Germany: Various complex schemes allowing reversion at year 2 or 10.

Might Reversion Help Increase Distribution?

2317 New Editions from Amazon by Decade of Initial Publication



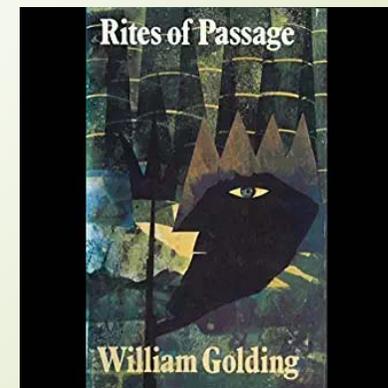


Testable Hypotheses!

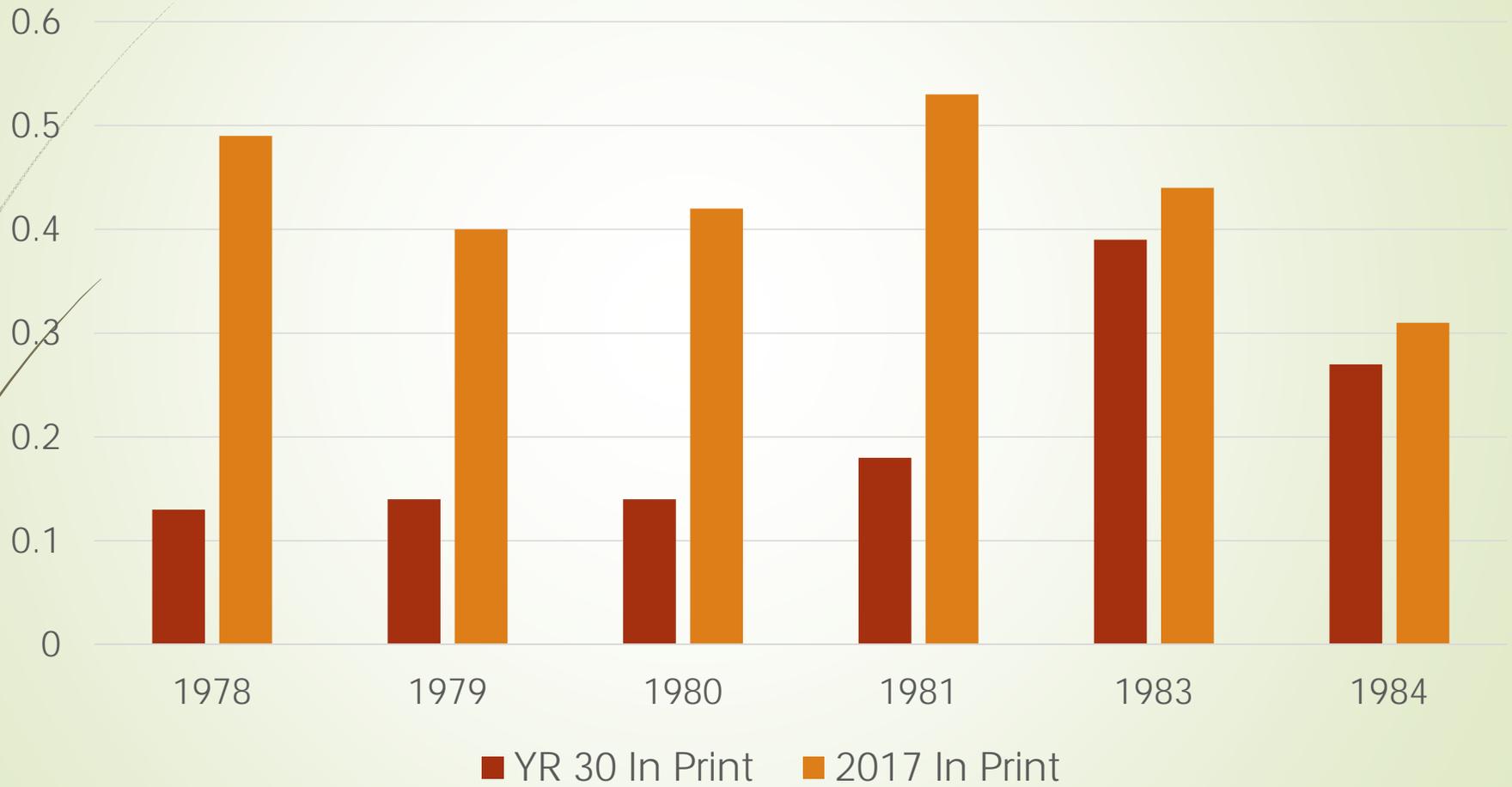
- ▶ Will out-of-print works published in 1978-1981 come back into print when the author regains her copyright? At what rate?
- ▶ If an author dies prior to year 28 after publication, are her pre-1978 works more likely to be in print in the US? At what rate?

Data Source #1: 454 Books Reviewed in the NYT Review of Books from 1978-84

- ▶ Books published in 1978 (53), 1979 (63), 1980 (59), 1981 (62), 1983 (106), 1984 (111).
- ▶ Mix of fiction and non-fiction; bestsellers and less notable books . . .
- ▶ How often do we see examples like William Golding, *The Rites of Passage* (1980) (Booker Prize winner):
 - ▶ Out-of-Print in 2010
 - ▶ US Reversion to author in 2015
 - ▶ In-Print in 2017



Percent Increase in Availability by Publication Year





Is it All About eBooks? Not really . . .

- ▶ Percent of sample in eBook form in 2017:
 - ▶ 1978-81 = 28%
 - ▶ 1983-84 = 25%
- ▶ Percent of sample available as eBook only:
 - ▶ 1978-81 = 8%
 - ▶ 1983-84 = 3.5%



Data Source #2: 819 Books Published by 60 Bestselling Authors

- ▶ All authors had at least one end-of-year *NYT* top-ten bestseller.
- ▶ Authors died between 1973 and 1999, allowing for an analysis of 28-year death contingent regime and the 35-year automatic reversion regimes.
- ▶ 345 copyrights reverted to the author; 474 copyrights remained with the publisher.
- ▶ 303 reverted under the 28-year death contingent rule and 42 under the 35-year rule



Does Reversion Make a Difference? For example . . . Helen MacInnes (1907-1985)

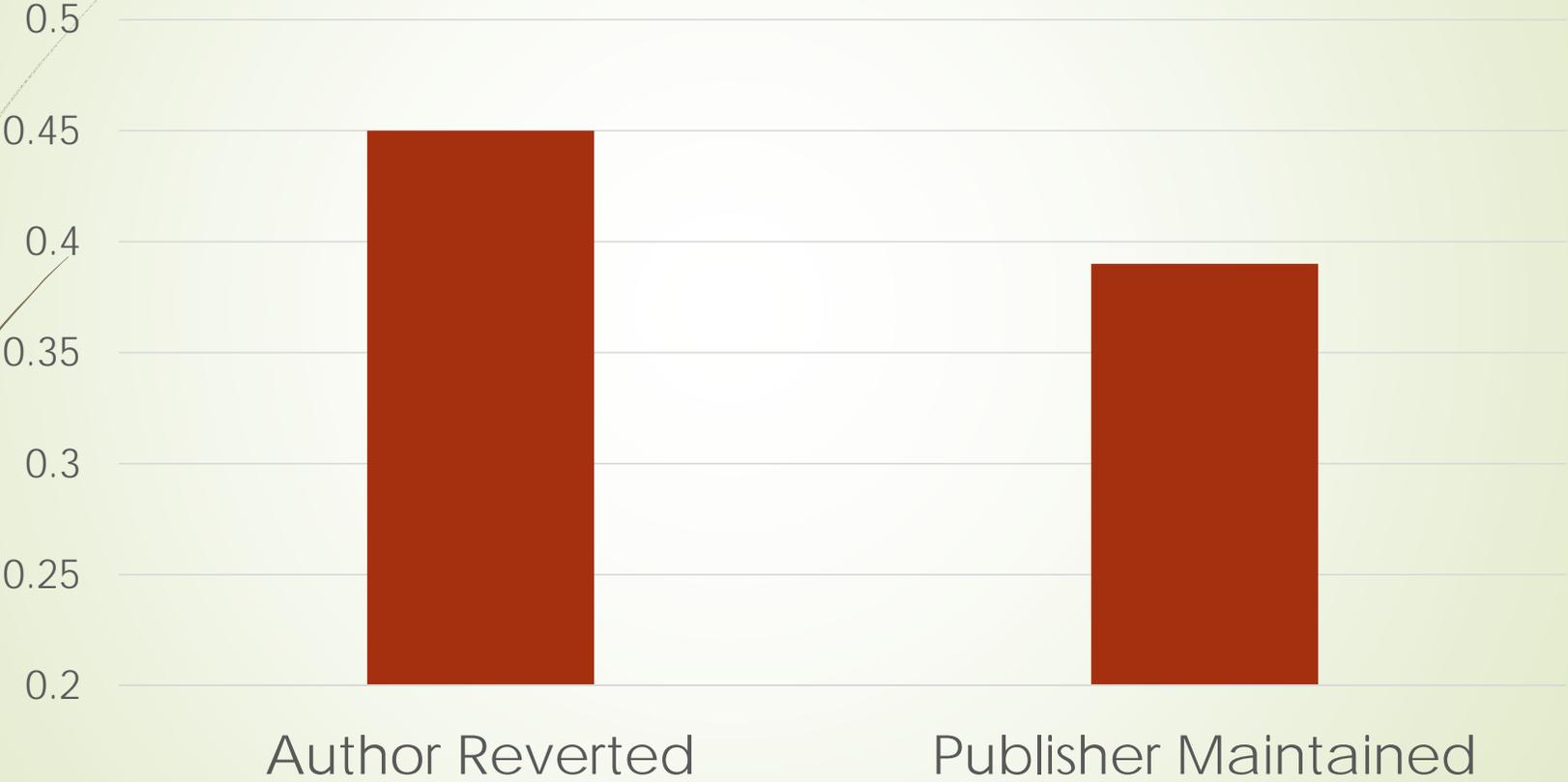
► Published before 1957:

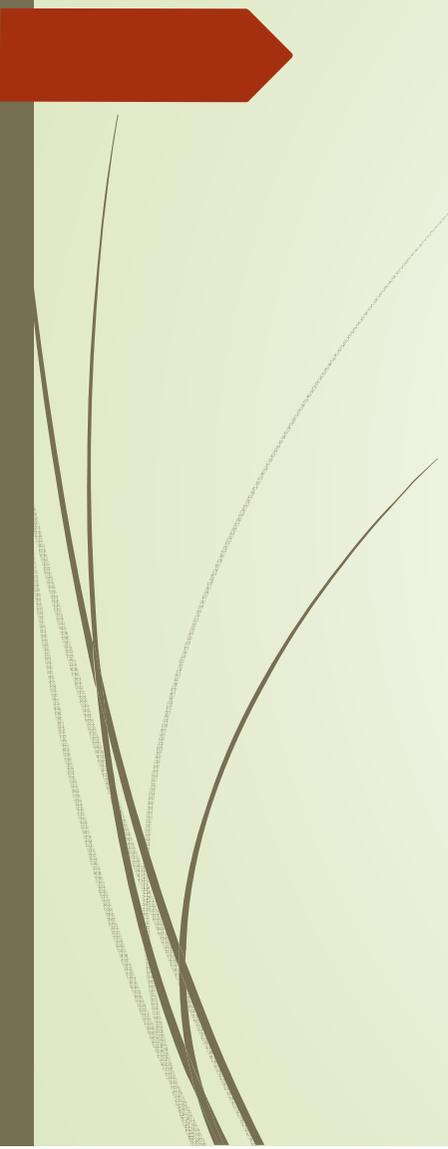
Above Suspicion
Assignment in Brittany
Horizon
Friends and Lovers
Rest and be Thankful
Neither Five Nor Three
I and My True Love
Pray for a Brave Heart

Published after 1957:

North of Rome
Decision at Delphi
The Venetian Affair
Home is the Hunter
The Double Image
The Salzburg Connection
Message From Malaga
The Snare of the Hunter
Agent in Place
Prelude to Terror
The Hidden Target

Percent In Print in 2017 (n=819)





A Little Twist . . . Second reversion moment!

- ▶ 427 of the 474 books that did not revert at year 28, later reverted to the control of the author's estate in year 56.
- ▶ Books that reverted in year 56 were in print at a rate of 39%
- ▶ Books that never reverted were in print at a rate of 40%
- ▶ Total for all books that reverted = 42%
- ▶ **Still insignificant**



Possibilities for Lack of Significance?

- ▶ Authors' estates monitor status differently than authors?
- ▶ Obscurity and complexity of the 28 and 56 year regimes made monitoring more costly?
- ▶ Books in data set too much older: Average age = 1950.
- ▶ Hmm . . . yet 40% in print . . .



Something interesting in the data . . .

- ▶ 143 (30%) of 476 total in print books were eBook only, and 122 (85%) of solo eBooks were published by independent presses, not the original publisher.
- ▶ **“ Open Road partners with authors, estates, and their agents to digitize, design, distribute, and market their backlist books electronically. In 90 days an author's backlist works can be brought to market with new digital covers and promotional materials and made available widely on all ebook reading devices.”**

Random House, Inc. v. Rosetta Books, LLC, 283 F.3d 490 (2d Cir. 2002)

Kurt Vonnegut



- ▶ Court finds that under standard form publication agreements, authors, not publishers, own copyrights in eBooks.
- ▶ Essentially a surprise reversion of rights to authors!



122 “Rosetta” Books . . .

- ▶ Are they in print because of the rights reversion caused by *Rosetta*?
- ▶ Are they in print because of the 28-year and 56-year reversion?

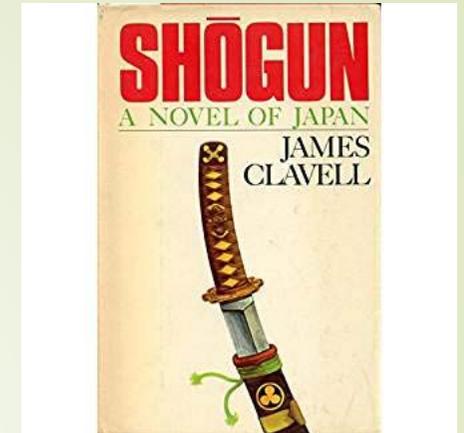


Data Set #3: 421 Books that at some point cracked the *NYT* bestsellers list from 1974-81 and 1983-86.

- ▶ Three groups:
 - ▶ 1974-77 governed by 28-year death-contingent reversion rule
 - ▶ 1978-81 governed by absolute 35-year reversion rule
 - ▶ 1983-86 = no statutory reversion.
- ▶ In Print Status in 2017? Market demand curve?
 - ▶ 1974-77 = 81%
 - ▶ 1978-81 = 88%
 - ▶ 1983-86 = 88%

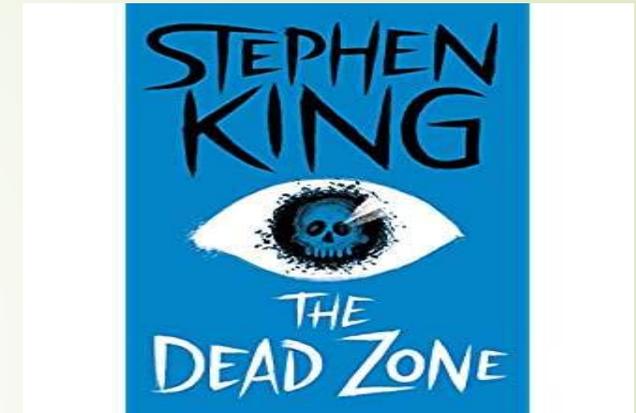
Bestsellers with 1974-77 Initial Publication (n=122)

- ▶ After adjusting for 9 "Rosetta" eBooks . . .
 - ▶ 60 books reverted with 85% (51) in print in 2017
 - ▶ 62 books did not revert with an 68% in print rate in 2017
- ▶ Are authored-reverted books only in print due to the change in status?
 - ▶ 15/42 (36%) were NOT in print in year 25 after publication, just before reversion



Bestsellers with 1978-81 Initial Publication (n=129)

- ▶ All reverted, by rule of law
- ▶ Drum roll please



- ▶ In year 30 after publication, only 24% were in print.
- ▶ In 2017, 88% were in print!





Reverse Drum Roll (a little)

- Bowker's Books in Print did not track eBooks until about 2011, so let's credit publishers with keeping an additional 27 books in print around year 30 in eBook form.
- So . . . rat-tat-tat . . .
- **In year 30 after publication, only 43% of the 1978-81 cohort were in print.**
- **By 2017, 88% were in print!**

Is this just an eBook effect?

- 38 of 114 (**33%**) of **reverted**, in-print books from 1978-81 were in eBook form only.
- 39 of 150 (**26%**) of **non-reverted**, in print books from 1983-87, were in eBook form only.

KINDLE DAILY DEAL

Never miss a Kindle deal

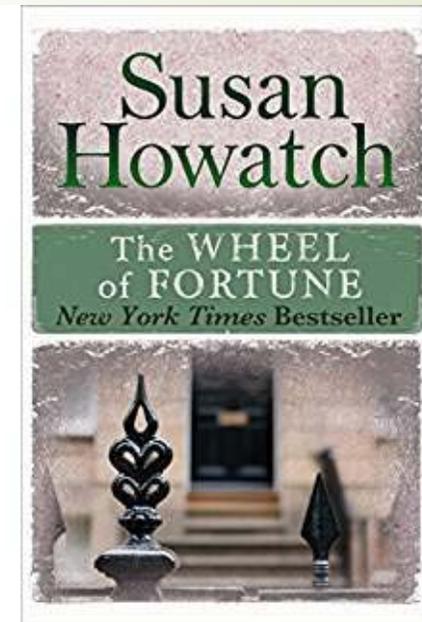
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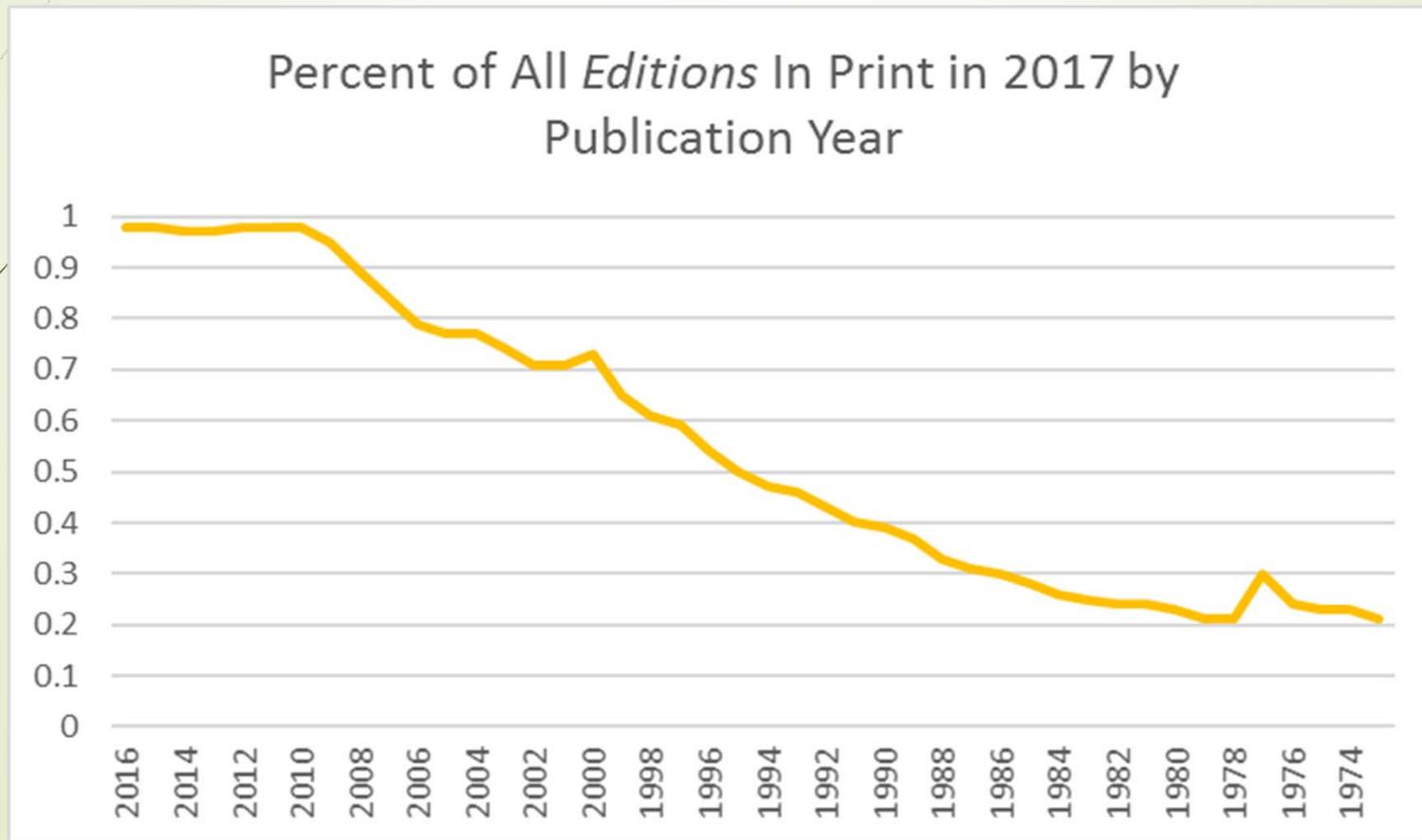
Kindle Daily Deals [See more ▶](#)

Bestsellers with 1983-86 Initial Publication (n=170)

- None have reverted by statute
- 150 (88%) in print in 2017, with 24 *Rosetta* books
- Adjusted in print rate = 74%



What about a larger (noisy) sample of fiction?





Rosetta Effect in a More Random Sample?

- ▶ Amazon advanced search for all eBook versions of fiction books “published” in 1987 (n=207)
- ▶ Filtered out all eBooks not initially published in the 1980's (remaining n=77)
- ▶ Of the 77 remaining eBooks published in the 1980's, 22% were published by the author or an independent press.



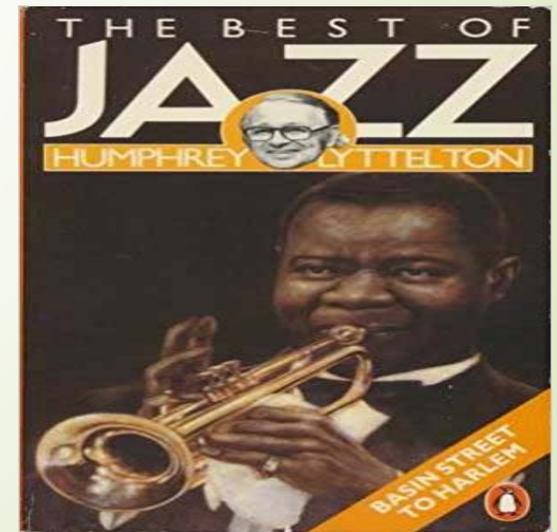
Question: Does the *Rosetta* Effect have a dark side?



- ▶ Maybe Publishers stopped publishing bound volumes because author-controlled eBooks ate into their profit margin?
- ▶ May be unlikely because the publisher owns the bound volume rights and has leverage to ask for the eBook rights for all but very profitable books. e.g. Harold Robbins (no bound volumes) or Kurt Vonnegut (all bound volumes)
- ▶ Not an ongoing problem because publishers have drafted better contracts since 2002.

Question: Do Authors Drop the Ball More than Publishers?

- ▶ How often is a book in print right before reversion and then goes out of print after?
- ▶ Of 181 NYT reviewed books in Dataset #1 still in print that reverted to author ownership, only one book was in print in year 30 and out of at year 2017.



CONCLUSION

- Increased availability is a plausible rationale for advocating author reversion rights
- Clear 35-year rule seems to have greater impact.
- Fiction v. Non-Fiction?
- Advocating author reversion rights is more politically palatable than advocating a roll back in the length of the copyright term, which would create an even more positive effect.
- Various EU and Commonwealth schemes should be tested.

