

# THE COST OF COPYRIGHT REVISITED: IDENTIFYING COMPETITION EFFECTS IN SMALL BOOK MARKETS

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*A growing number of empirical studies measure how extended copyright terms negatively affect the number of book titles in print. Many of these same studies also demonstrate significant differences in the pricing of bound volumes, ebooks, and audio books editions of public domain and copyrighted titles. At least one study has shown that audio books are more likely to be made from public domain titles. All research to date, however, has been conducted in large English language book markets. The present study measures the availability and pricing of books (bound, ebook, audiobook) in two small, non-English book markets. Although copyright generally maintains a strong effect on pricing in Finland and Sweden (with the exception of Finnish bound volumes), the effect on in-print status suggests a significant “small markets” effect.*

## 1. Introduction

Recent empirical studies convincingly conclude that long copyright terms come with significant costs to the public. Compared to their public domain counterparts, copyrighted works demonstrate diminished distribution of older works, higher prices, and fewer derivative works.<sup>1</sup> These studies, however, have been conducted mostly in large English language book markets which are characterized by numerous highly competitive independent presses that exploit the free availability of public domain works. With 1.35 billion speakers worldwide,<sup>2</sup> the English book market is large enough to attract significant investment by a wide variety of publishers. As soon as an English

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<sup>1</sup> See *infra* sources cited in notes 6 & 19-31.

<sup>2</sup> See Statista, *The Most Spoken Languages Worldwide in 2021*, available at <https://www.statista.com/statistics/266808/the-most-spoken-languages-worldwide/>

language novel falls into the public domain, multiple publishers are poised to bring it back into print, leading to a positive “public domain effect” on pricing and availability.<sup>3</sup>

Contrast this with smaller Nordic markets where only 5.4 million people speak Finnish as a first or second language and where approximately 9 million speak Swedish.<sup>4</sup> Clearly, the markets for Finnish and Swedish language books are rather limited. Moreover, high levels of English fluency in Finland and Sweden mean that sellers of books written in local languages must compete with English language texts, further shrinking demand. Small markets may discourage publishers from entry and blunt the positive public domain effect seen in English language book markets. Whether copyright has strong effects on distribution, pricing, and the production of books in much smaller, non-English speaking markets is an open question.

The present study shows that Finnish and Swedish language book markets behave differently than English language markets in interesting and significant ways. For example, the positive public domain effect on in-print status is not seen in the Swedish market, and public domain bound editions in Finland are priced similarly to their copyrighted counterparts. Overall, however, the measurable cost of long copyright protection is significant in both Finnish and Swedish markets. Acknowledging this cost is important, but international agreements<sup>5</sup> foreclose the possibility of reducing copyright term length to an economically justifiable level. Nonetheless, measuring the cost of copyright can bear on how policymakers think about recent measures

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<sup>3</sup> See Paul J. Heald, *How Copyright Keeps Works Disappeared*, 11 J. Empirical Legal Studies 829 (2014).

<sup>4</sup> Institute for the Languages of Finland, *On Language*, available at [https://www.kotus.fi/en/on\\_language/languages\\_of\\_finland#Finnish](https://www.kotus.fi/en/on_language/languages_of_finland#Finnish).

<sup>5</sup> See Berne Convention for the Protection of Literary and Artistic Works, as amended on September 28, 1979 (minimum term of protection life-of-the-author plus 50 years); Agreement on Trade-Related Aspects of Intellectual Property Rights, The TRIPS Agreement (1994) (same).

proposed to weaken copyright, like author's reversion rights<sup>6</sup> or expanded exceptions for users<sup>7</sup> and follow-on creators.<sup>8</sup>

## 2. Empirical Evidence on the Cost of Copyright

Several recent empirical studies measure the effect of copyright protection on the availability (in-print status and library ebook lending) and on the price of bound volumes and ebooks.<sup>9</sup> Related work has examined the comparative use of popular public domain and copyrighted songs in movies,<sup>10</sup> the use of public domain photographs on Wikipedia,<sup>11</sup> and the relative exploitation in audiobook form of public domain and copyrighted novels.<sup>12</sup>

*2.1 Availability.* The first study to directly compare the availability of similarly situated public domain and copyrighted books tracked the in-print status of bound editions of 334 bestselling

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<sup>6</sup> Both Canada and South Africa are considering reverting copyrights back to authors 25 years after a transfer. See Paul J. Heald, *The Impact of Implementing a 25-Year Reversion/Termination Right in Canada*, 28 J. Intell. Prop. L. 63 (2021).

<sup>7</sup> See Niva Elkin Korin & Neil Netanel, *Transplanting Fair Use Across the Globe: A Case Study Testing the Credibility of US Opposition*, 72 Hastings L. J. 1121 (2020).

<sup>8</sup> The EU Infosoc Directive provides numerous exceptions to copyright that member states may adopt. See Tito Rendas, *Exceptions in EU Copyright Law: In Search of a Balance Between Flexibility and Legal Certainty*, available at <http://copyrightblog.kluweriplaw.com/2021/04/26/exceptions-in-eu-copyright-law-in-search-of-a-balance-between-flexibility-and-legal-certainty-part-i/>.

<sup>9</sup> Barbara Biasi & Petra Moser, *Effect of Copyrights on Science: Evidence from the WWII Book Republication Program*, 13 Am. Econ. J.: Microeconomics 218 (2021); Paul J. Heald, *The Impact of Implementing a 25-Year Reversion/Termination Right in Canada*, 28 J. Intell. Prop. L. 63 (2021); X. Li, Meghan Macgarvie, & Petra Moser, *Dead Poets Property: How Does Copyright Influence Price*, 49 Rand J. of Econ. 181 (2018); Imke Reimers, *Copyright and Generic Entry in Book Publishing*, 11 Am. Econ. J.: Microeconomics 257 (2019); Jacob Flynn, Rebecca Gibling, & Francois Petitjean, *What Happens When Books Enter the Public Domain? Testing Copyright's Underuse Hypothesis Across Australia, New Zealand, the United States, and Canada*, 42 U. of New S. Wales L. Rev 1215 (2019); Paul J. Heald, *How Copyright Keeps Works Disappeared*, 11 J. Empirical Legal Studies 829 (2014); Paul J. Heald, *Property Rights and the Efficient Exploitation of Copyrighted Works: An Empirical Analysis of Public Domain and Copyrighted Fiction Bestsellers*, 93 Minn. L. Rev. 1031 (2008).

<sup>10</sup> Paul J. Heald, *Bestselling Musical Compositions and Their Use in Cinema (1968-2007)*, 6 Rev. Econ. Res. on Copyright Issues 31 (2009); Paul J. Heald, *More Music and Movies: What Box Office Data Reveals About the Availability of Public Domain Songs in Movies (1968-2008)*, 9 Rev. Econ. Res. on Copyright Issues 31 (2012).

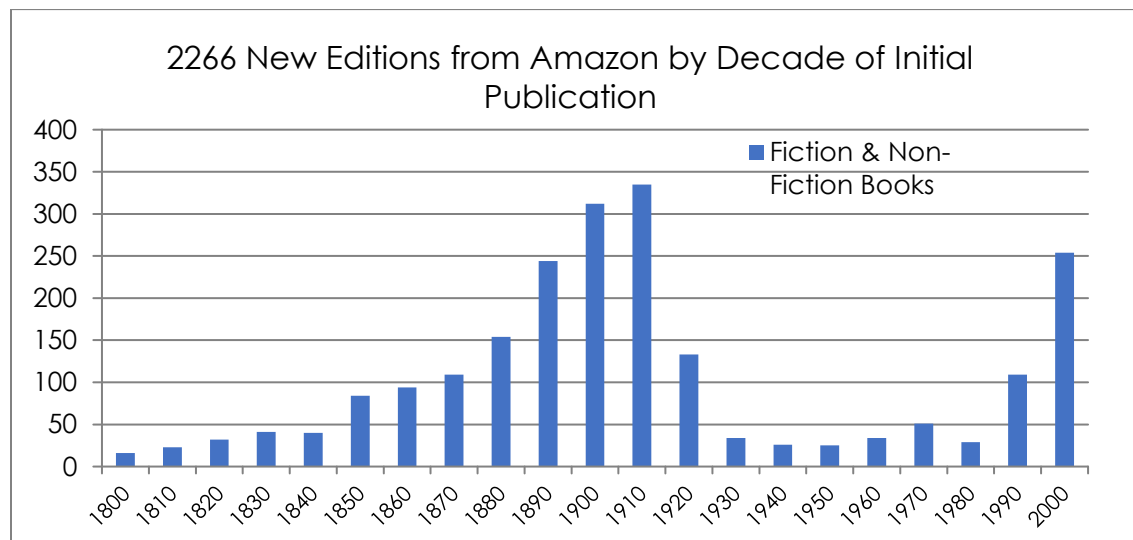
<sup>11</sup> Paul J. Heald, Kristopher Erickson, & Martin Kretschmer, *The Valuation of Unprotected Works: A Case Study of Public Domain Images on Wikipedia*, 29 Harv. J. of L. & Tech. 1 (2015).

<sup>12</sup> Paul J. Heald & Christopher Buccafusco, *Do Bad Things Happen When Works Fall Into The Public Domain*, 28 Berkeley J. of Law & Tech. 1 (2013).

American novels originally published between 1913-32.<sup>13</sup> The 168 books in the public domain (those published from 1913-1922) at the time of the study (2006) were in print at a 98% rate, while the 166 copyrighted works were in print at a significantly lower rate of 72%.<sup>14</sup> A follow up study in 2014 looked at the same titles in ebook markets and found that only 27% of the copyrighted titles had been digitized, while 94% of the public domain titles were available as ebooks.<sup>15</sup> A more recent study of books from the same era by Imke Reimers confirmed the positive effect that public domain status has on in print status and the number of editions available for each work.<sup>16</sup>

In 2016, a different methodology sampled 2266 new editions of book titles on the entire Amazon virtual bookshelf rather than focusing on historical bestsellers.<sup>17</sup> At the time, all works published in the US before 1923 were in the public domain, and the graph below dramatically illustrates the relationship between in-print status and legal status.<sup>18</sup>

Figure 1



<sup>13</sup> See Heald, *Property Rights*, *supra* note 9 at 1039.

<sup>14</sup> *Id.* at 1040.

<sup>15</sup> See Heald, *Disappeared*, *supra* note 9 at 852.

<sup>16</sup> See Reimers, *supra* note 9 at 257.

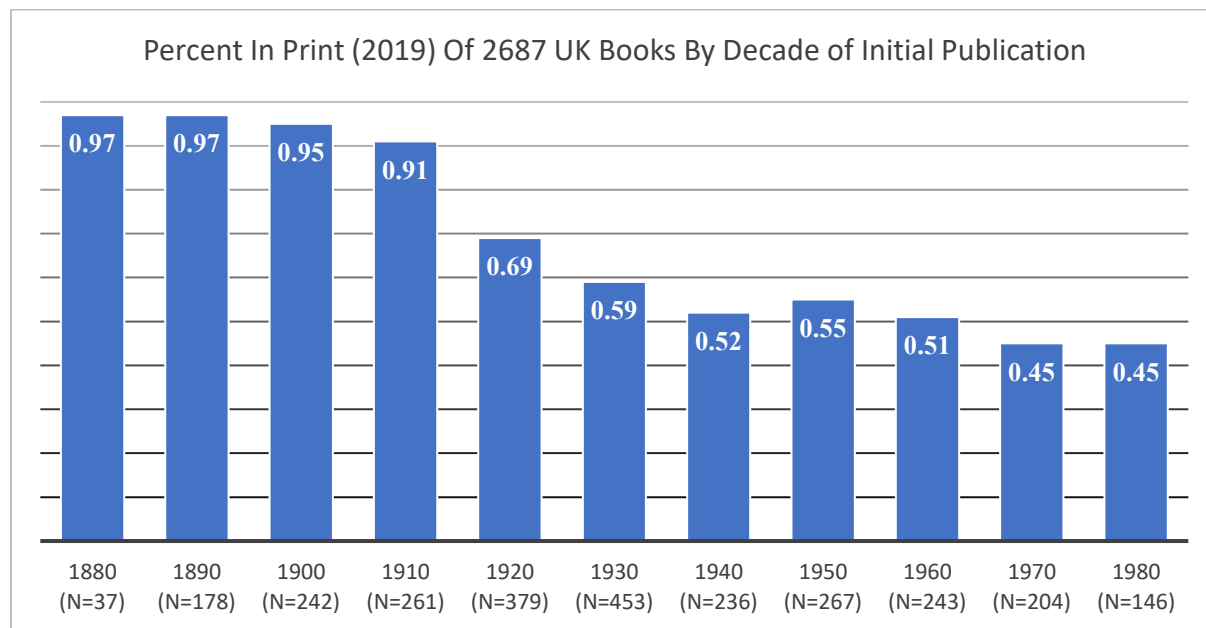
<sup>17</sup> See Heald, *Disappeared*, *supra* note 9 at 833-36.

<sup>18</sup> *Id.* at 839.

Books initially published from 1930-1990 were found to be rarely in print, while older public domain titles from the end of the 19<sup>th</sup> century were much more likely to have a new edition for sale on Amazon. Adjusting for the fact that many fewer books were published in the 18<sup>th</sup> century era of hand-typesetting greatly accentuates the positive public domain effect.<sup>19</sup>

Studies looking beyond the American book market tell a similar story. A study<sup>20</sup> of UK fiction considered 2687 novels from authors who were listed both in the *Oxford Companion to British Literature*<sup>21</sup> and on the Wikipedia “List of English Writers” page.<sup>22</sup> Unlike the US copyright term for pre-1978 works, determining copyright status in the UK is a moving target because protection lasts 70 years after the date of the authors death. Even so, the chart below tells a clear story about the correlation between copyright protection and in-print status.<sup>23</sup>

Figure 2



<sup>19</sup> See *id.* at 843.

<sup>20</sup> See Heald, *Impact of Implementing*, *supra* note 9 at 63.

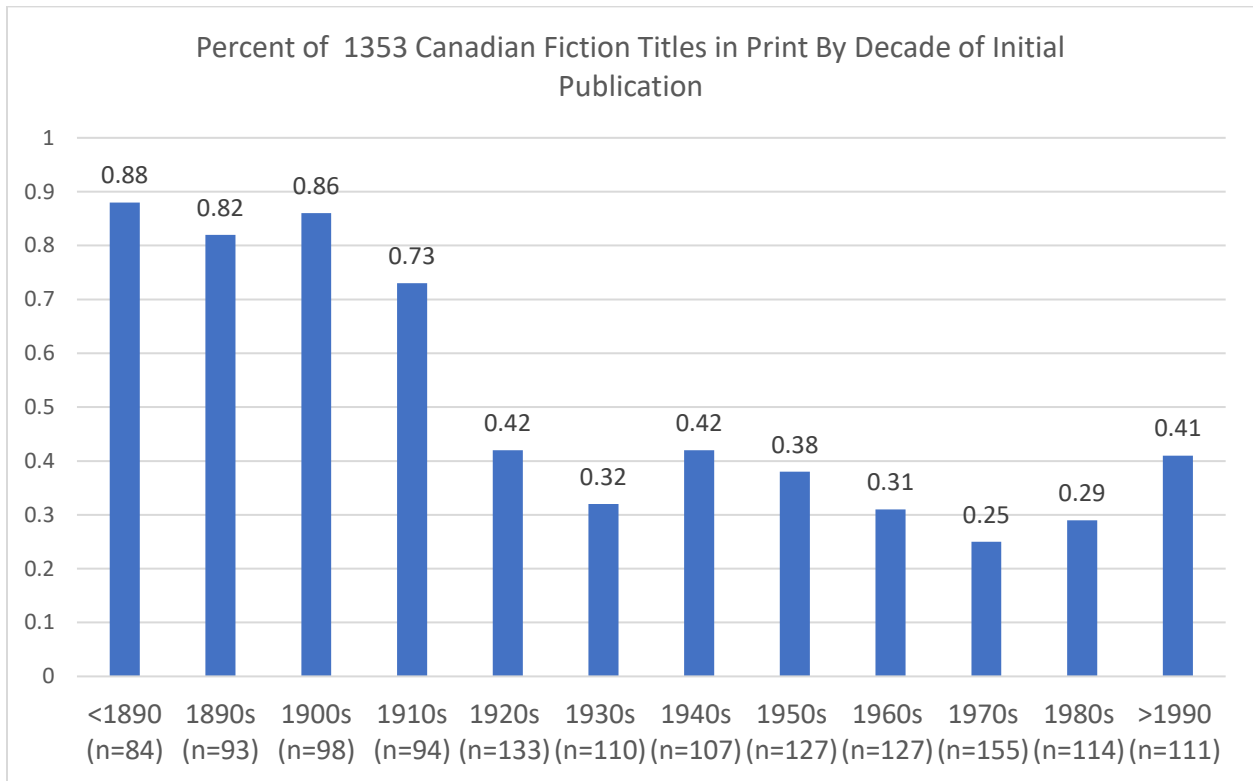
<sup>21</sup> Dinah Birch (ed), *Oxford Companion to British Literature* (Oxford, 2009).

<sup>22</sup> See Wikipedia, *List of English Writers*, available at [https://en.wikipedia.org/wiki/List\\_of\\_English\\_writers](https://en.wikipedia.org/wiki/List_of_English_writers).

<sup>23</sup> See Heald, *Impact of Implementing*, *supra* note 9 at 73.

Data on 1353 Canadian novels, collected from authors who are listed in the Wikipedia “List of Canadian Writers”<sup>24</sup> page shows a similar pattern.<sup>25</sup> More recent novels, still protected by copyright, are less likely to be in print.

Figure 3



Irrespective of nationality, methodology, or author sample, the data uniformly has suggested that long copyright terms keep works from the last half of the 20<sup>th</sup> century “disappeared.”

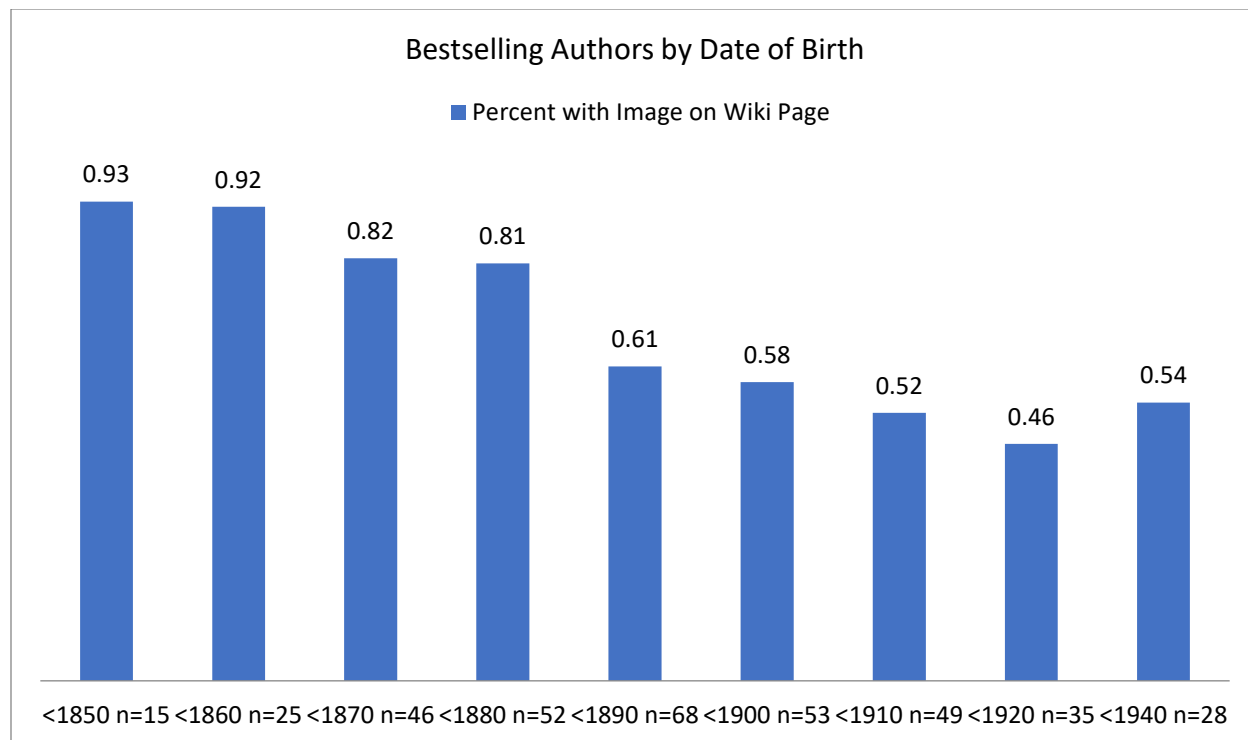
Other studies have looked beyond the market of books for sale. A recent study of library e-lending practices by Flynn, Giblin, & Petitjean finds that “titles are actually less available where they are under copyright [and] that competition apparently does not deter commercial publishers

<sup>24</sup> See Wikipedia, *List of Canadian Writers*, available at [https://en.wikipedia.org/wiki/List\\_of\\_Canadian\\_writers](https://en.wikipedia.org/wiki/List_of_Canadian_writers).

<sup>25</sup> See Heald, *Impact of Implementing*, *supra* note 9 at 74.

from investing in older works.”<sup>26</sup> In music markets, two studies confirm that public domain compositions are just as likely to be exploited in films as copyrighted compositions from the same era.<sup>27</sup> Finally, a study of the frequency of photographs on the Wikipedia pages of bestselling authors suggests that availability of images is also effected by copyright status.<sup>28</sup>

Figure 4



Why do more recent authors have fewer images on their Wiki pages? The best explanation is that the copyrighted status of modern photographs limits their use.<sup>29</sup>

2.2 *Price Effects.* Study after study confirms that copyrighted books are more expensive than their public domain counterparts. In the market for new bound editions, much of the price

<sup>26</sup> See Flynn, Giblin, & Petitjean, *Testing Copyright’s Underuse Hypothesis Across Australia, New Zealand, the United States, and Canada*, supra note 9 at 1217-18.

<sup>27</sup> See Heald, supra note 10.

<sup>28</sup> See Heald, supra note 11 at 16.

<sup>29</sup> *Id.* at 16-19.

differential can be attributed to the need for the publisher to pay a royalty to the authors. However, in ebook markets, we see evidence of true monopoly pricing.

The purest comparison between the price of public domain and copyrighted books can be found within the same series of books offered by the same publisher. For example, a study of US Penguin Classics showed Random House charging 50% more for its copyrighted titles than for public domain texts in the same series of editions.<sup>30</sup> In Canada, bound copyrighted Vintage Classics (Random House) cost about 50% more per page than public domain Vintage Classics;<sup>31</sup> South African copyrighted Vintage Classics (Random House) cost 33% more per page.<sup>32</sup> These differences balloon when the price of ebooks is compared. Canadian Vintage Classic copyrighted editions cost 2.6 times more per page than the public domain books in the same series.<sup>33</sup> South African copyrighted Vintage Classic ebook titles are twice as expensive.<sup>34</sup>

In a cross-publisher comparison, Reimers found copyrighted bound volumes priced at up to 35% higher.<sup>35</sup> In an historical study of books published between 1790-1840, Li, Macgarvie, and Moser, found that doubling the term of copyright was associated with a 50% increase in the price of copyrighted works.<sup>36</sup>

When one considers the effect of competition on ebook pricing, the public domain/copyright gap widens even more. The study discussed in Figure 2 (UK authors with an entry in the *Oxford Companion*) showed an average low price of £1.3 for public domain ebook titles and £4.34 for copyrighted ebook titles when data was collected from publishers of all

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<sup>30</sup> See Heald, *Property Rights*, supra note 9 at 1048.

<sup>31</sup> See Heald, *Impact of Implementing*, supra note 9 at 75.

<sup>32</sup> See Heald, *South African*, supra note 9 at 83-84.

<sup>33</sup> *Id.*

<sup>34</sup> See Heald, *South African*, supra note 9 at 83-84.

<sup>35</sup> See Reimers, supra note 9 at 257.

<sup>36</sup> Li, Meghan Macgarvie, & Petra Moser, supra note 9 at 181.



editions.<sup>37</sup> Canadian data, used in Figure 3 above, shows the widest price discrepancy--an average low price of \$1.89 for ebooks and \$11 for copyrighted titles.<sup>38</sup> In a comprehensive study of prices paid by libraries in the US, Canada, Australia and New Zealand for four sorts of e-lending licenses, Flynn, Giblin, and Petitjean found that libraries often paid two to three times more for the right to digitally lend copyrighted ebooks to their patrons.<sup>39</sup>

*2.3 Audiobook Production.* The only study of the effect of copyright on the audiobook market finds that audiobook publishers are more likely to make audiobooks from 166 public domain bestsellers initially published from 1931-22 than from 168 copyrighted bestsellers published from 1923-32.<sup>40</sup> This is not surprising, given that no permission is needed, nor licensing fees paid, to produce an audiobook from a public domain source. An audio comparison by human subject listeners on the Amazon Mechanical Turk found that copyright status had no effect on the quality of the reader hired to produce an audiobook.<sup>41</sup>

### **3. Methodology of Present Study**

Although findings from US, UK, and Canadian book markets are remarkably consistent, intense competition between numerous English language publishers may be accentuating distinctions between public domain and copyrighted books.<sup>42</sup> Therefore, this study examines two smaller markets, for Finnish and Swedish novels, using methodologies similar to those discussed above.

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<sup>37</sup> See Heald, *Impact of Implementing*, *supra* note 9 at 75.

<sup>38</sup> *Id.*

<sup>39</sup> Flynn, et al, *supra* note 9 at 1242. The authors studied four types of licenses, including those conferring the right to permanently lend a title to one patron at a time (“OC/OU”) and also those that limited lending by time or by the number of total borrowers. They found consistently higher prices for copyrighted titles, although the findings for Australia and New Zealand were more muted than in the US and Canada. *See id.* at 1243 (in the US “OC/OU titles averaged USD9.06 compared to USD28.63 (p<10–24) [and in Canada] OC/OU titles averaged USD14.17 compared to USD28.63 (p<10–15)”).

<sup>40</sup> Buccafusco & Heald, *Do Bad Things Happen*, *supra* note 12 at 22.

<sup>41</sup> *Id.* at 26-28.

<sup>42</sup> Reimers, *supra* note 9 at \_\_\_\_ (noting the role of competition in pricing differences).

We first assembled lists of Finnish and Swedish authors from Wikipedia which maintains lists of author web pages for virtually all nationalities. For example, the “List of Finnish Writers” contains approximately 300 authors,<sup>43</sup> while the “List of Swedish Writers” contains approximately 250 authors.<sup>44</sup> The authors were initially identified from English language Wikipedia which may have resulted in a universe of somewhat more prominent authors. Specific data about Finnish and Swedish authors was then scraped by fluent research assistants from the authors’ Finnish or Swedish Wikipedia biographical web pages. Given that the market for older non-fiction works is not as robust as the market for fiction, we identified novelists with the goal of gathering an adequate number of public domain and copyrighted works for comparison.

The relevant copyright term in both jurisdictions is life-of-the-author plus seventy years, meaning that works by authors who died before 1952 had all entered the public domain at the time of the study. Since the lists were dominated by authors alive or unborn as of 1952, we first gathered data on the authors who died prior to 1952. In the case of Finnish authors, we then proceeded alphabetically by author to generate a comparably-sized universe of authors who did not die prior to 1952. Then, for each author, we collected the following data: name, birth date, death date, book titles, year published for each title, ebook price, bound volume price, audiobook price, paperback price (Finnish authors only), and in-print status. When more than two prices were offered, the lowest price was used. In an attempt to limit author fixed effects, no more than the first 15 books listed alphabetically by any single author were collected. Finally, we also counted the number of Wikipedia page visits per author over a two-year period to help control for relative author fame

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<sup>43</sup> See Wikipedia, *List of Finnish Writers*, available at [https://en.wikipedia.org/wiki/List\\_of\\_Finnish\\_writers](https://en.wikipedia.org/wiki/List_of_Finnish_writers).

<sup>44</sup> See Wikipedia, *List of Swedish-Language Writers*, available at [https://en.wikipedia.org/wiki/List\\_of\\_Swedish-language\\_writers](https://en.wikipedia.org/wiki/List_of_Swedish-language_writers).

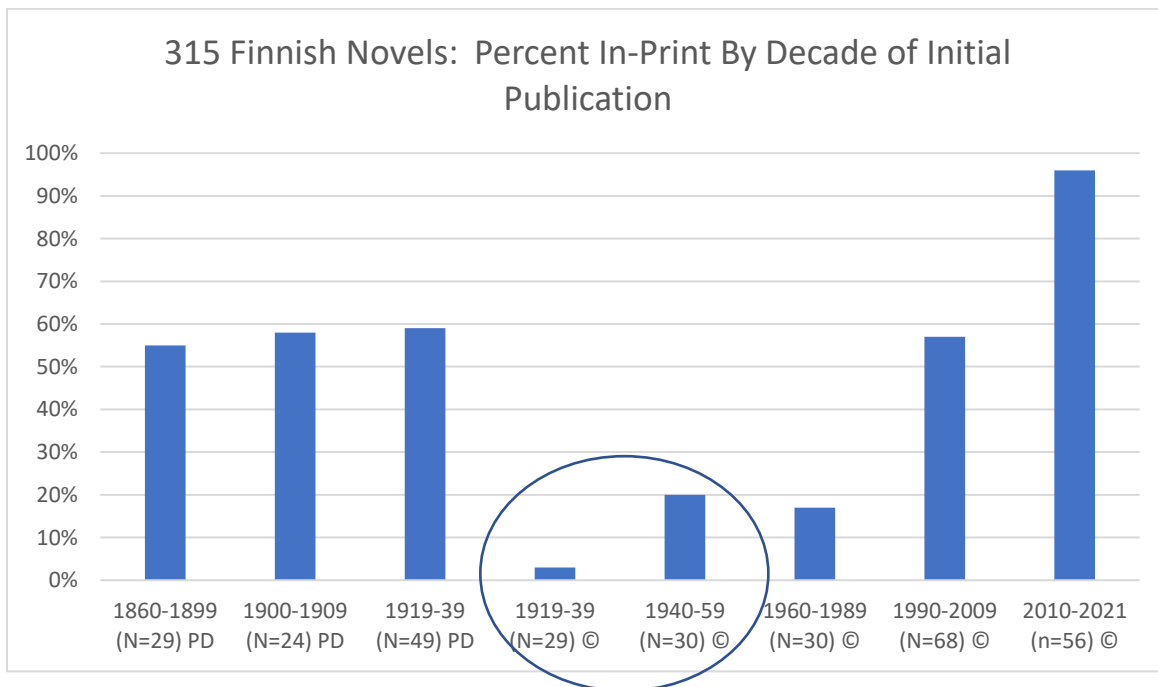
and the effect it might have on in-print status. Our final data consists of 51 Finnish authors and 315 unique novels, and 66 Swedish authors and 440 unique novels.

#### 4. Summary of Findings: Finnish and Swedish Novels

Although the data collected from Finnish and Swedish book markets confirms the existence of public welfare costs associated with copyright protection, novels in those markets exhibit some significantly different characteristics than their English language counterparts in terms of availability and price.

*4.1 Availability: Finnish Titles.* Of the set of 315 Finnish language novels, 58% of the public domain titles (1860-1939) were in print as compared to 49% of the copyrighted titles (1919-2021). If the most recent titles from 2010-2020 are subtracted, making a comparison of older titles to older titles, then the in-print status of the copyrighted works drops to 32%. The distribution can be seen graphically below.

Figure 4



Titles published between 1919-1939 (circled) contain titles that are in the public domain and also titles protected by copyright.

Interestingly, a simple 2x2 contingency table cross-tabulation of the entire data set showed no significant correlation between legal status and in-print status. Since this was not a purely random sample of titles, it is possible that one set of titles were published by more famous authors that benefit from a “popularity” effect unrelated to their legal status. In order to control for the relative popularity of all authors in the sample, the number of Wikipedia page views over a two-year period for each author was counted. Each in-print novel was then credited with the two-year total of page views for its author. The public domain books averaged 28,234 pages views per title, while the copyright books averaged 27,420. Eliminating the ten most popular and the ten least popular authors resulted in no change in the correlation analysis; however, eliminating the fifteen most popular and the fifteen least popular authors showed that the public domain novels remaining in the data set were more likely to be in print.<sup>45</sup> This finding is based on the comparison of only 94 copyrighted and 63 public domain titles, about half of the total of 315 books in the complete data set.

Test	Value	Significance	Interpretation
Odds Ratio	1.94	95% CI = (1.01, 3.72)	The odds of a public domain book being available is roughly 194% of the odds of a copyrighted book being available. The odds ratio is significant as the 95% confidence interval does not contain 1.
Pearson Chi-Square for independence	4.05	p-value = 0.044	P-value is smaller than 0.05. Thus, there is a significant dependence between legal status and availability of a book.

A more convincing analysis of the Finnish data accounts for the relationship between the age of a title and its in-print status. Not surprisingly, the older a book is, the less likely it is to be in print. Age was not a variable accounted for in the analysis above. Once book age is accounted for, one can model the decay over time in the availability of the copyrighted novels and fit a logistic regression model to predict how many public domain novels would be available under the modeled condition. Once the effect of age is accounted for, we find a strongly positive effect on availability associated with public domain status. By fitting a logistic regression model on all the books with availability as response and book age and PD status as predictors, the coefficients for 310 observations are as follows:

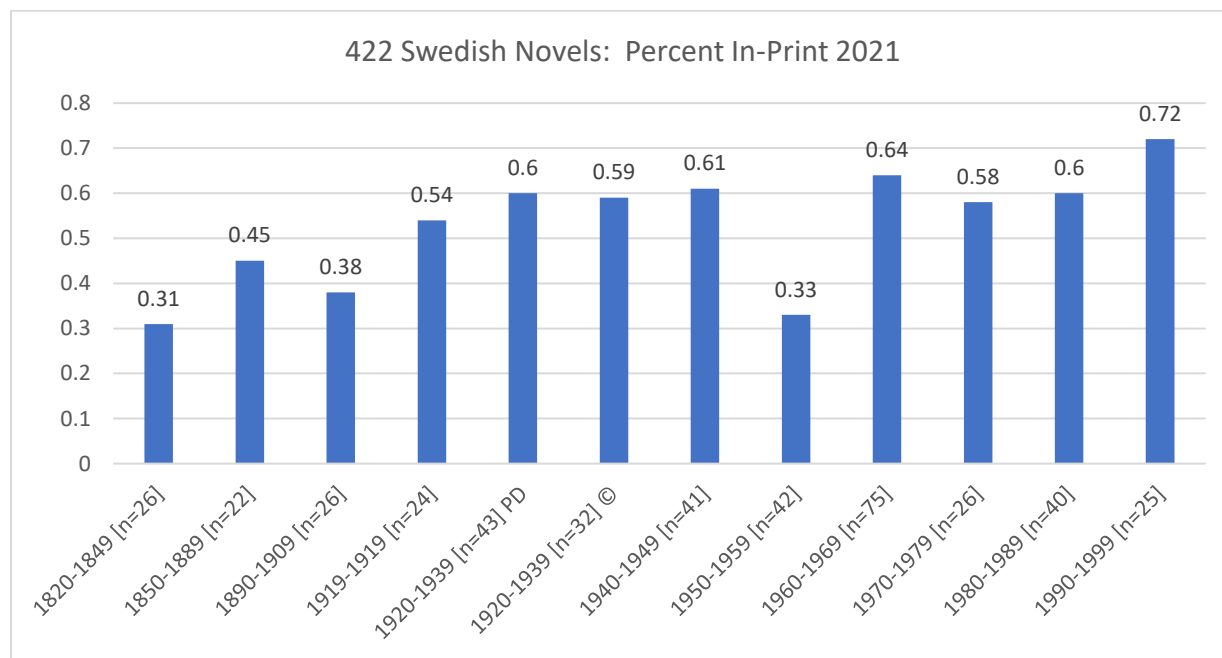
	Coefficient	P-value	Exp(coefficients) = change in odds	Interpretation
Book_age	-.046	.000	0.955	With an increase in book age by a year, the odds of a book being available decreases to its 95.5% value.
Legal_code 1 = PD 0 = Copyrighted	3.971	.036	53.057	A PD domain book has nearly 53 times the odds of being available compared to the odds of it being available if it were a copyrighted book.
Constant	1.618	.000	5.042	

From the above table, the logistic regression is:  $\log(\text{odds of book availability}) = 1.618 - 0.016 \times \text{Book age} + 3.971 \times \text{Legal code}$  (Enter Legal code as 0 for copyrighted books and 1 for PD domain books). If we use the above equation to predict the availability of the PD domain books by changing their legal status, we find that only 1 of the PD domain books is predicted to be available, and out of the 43 PD domain books that are not available, none are expected to be available if they

were copyrighted.<sup>46</sup> This second approach provides a much more convincing positive correlation between public domain status and availability.

*4.2 Availability: Swedish Titles.* Swedish titles followed a somewhat different pattern. Of the 149 public domain Swedish language titles, 50% were in print in 2021, while 57% of the 291 copyrighted titles were in print. In order to increase the comparability of age cohorts of both subsets, the data on copyrighted works does not include books published after 2000, which are in print at the highest rate.<sup>47</sup>

Figure 5



<sup>46</sup>

		Predicted_availability after legal status change from PD to copyrighted		
		Not available	Available	Total
True availability	Not available	43	0	43
	Available	55	1	56
Total		98	1	99

<sup>47</sup> See Figure 4.

The graph is striking in a number of respects. First, with the exception of books published in the 1950's, the precipitous decline in availability seen in English language markets during the course of the 20<sup>th</sup> century is not evident. Works from the 1990's are in print at a 72% rate while copyrighted works from the 1930's and 1940's remain in print at a 60% rate. Swedish publishers seem to much more interested in keeping their titles in print. Overall, the data demonstrates no significant difference between the number of public domain and copyrighted titles in print, even after controlling for author fixed effects.<sup>48</sup>

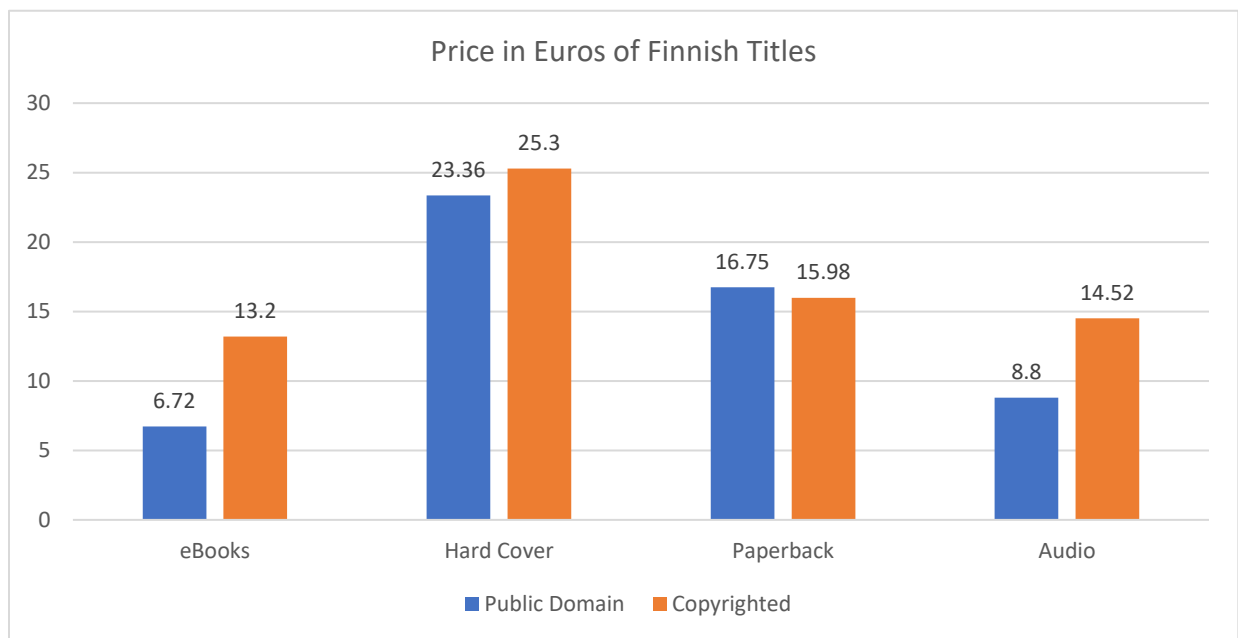
We also do not see a significant upward trend associated with public domain status. Considering only the 93 public domain and 115 copyrighted works from 1890-1959, 53% of the public domain titles were in print in 2021, while 50% of the copyrighted works were in print, an insignificant difference. Public domain titles hold their own against their copyright counterparts, but they do not experience the same startling discontinuous increase in availability as seen in English language markets. Interestingly, the size of the public domain book market in Sweden seems uninfluenced by the relatively higher popularity of older authors in the data set. During the two-year period from October 2109 to October 2021, the in-print public domain titles averaged

Test	Value	Significance	Interpretation
Odds Ratio	0.73	95% CI = (0.49, 1.09)	For a legal status change from copyrighted to public domain, the odds of a book being available is roughly 73% of the odds of a book being not available. However, the odds ratio is not significant as the 95% confidence interval contains 1.
Pearson Chi-Square for independence	2.373	p-value = 0.123	P-value is greater than 0.05. Thus, there is no significant evidence to suggest there is a dependence between legal status and availability of a book.

111,300 author page views, while the copyright titles averaged 75,956.<sup>49</sup> Of course, the author wiki page view proxy for popularity is somewhat circular, given that in-print status may be responsible for increased searching for author information.

*4.3 Price Effects.* Although the positive public domain effect on in-print status found in English language markets is somewhat muted in Finland and absent in Sweden, the correlation between price and legal status remains significant, with the exception the market for Finnish bound volumes.

*Figure 6*



While public domain ebooks are almost twice as expensive as their copyrighted counterparts (6.72 euros to 13.2 euros), the difference in the average price of bound volumes (combined hard cover and paperback) is statistically insignificant. The average price of audiobooks is much closer to the ebook differential, with audiobooks made from public domain titles priced on average at 8.8 euros and recorded versions of copyrighted titles price on average at 14.52. The lack of robust

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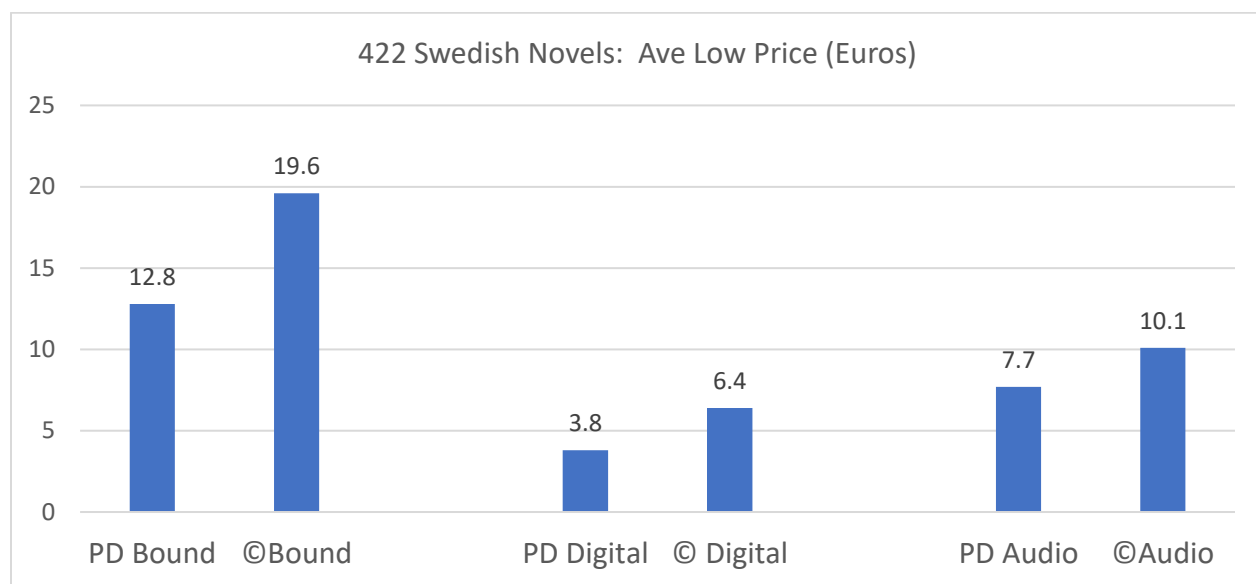
<sup>49</sup> Each in-print title was credited with two-year totals page views of its author.



competition among publishers of older titles may explain the absence of plentiful, low-priced bound volumes. Among a small sample of famous Finnish authors whose works are in the public domain (Juhani Aho, Eino Leino, and Aleksis Kivi),<sup>50</sup> one finds at most only 18 publishers per author. In the US market, for example, a single title, like *My Antonia* by Willa Cather attracts around 100 different bound editions.

Data on the pricing of Swedish novels looks more like English language markets, with all types of copyrighted work priced more highly than their public domain counterparts.

Figure 7



All of the price differences in Figure 7 are statistically significant.<sup>51</sup>

<sup>50</sup> See Pantheon, *Most Famous Writers from Finland*, <https://pantheon.world/profile/occupation/writer/country/finland>.

		Bound_price	eBook_price	Audio_price
Legal_status 0 = copyrighted 1 = PD	Spearman's Correlation	-0.441	-0.689	-0.374
	P-value	0.000	0.000	0.001
	N	135	214	72

*4.4 Audiobook Production.* The production of audiobooks raises an interesting investment question: Will adequate audiobooks be produced from public domain works, when no producer has the sole right to exploit the work? The only extant research shows that among 364 American bestsellers initially published between 1913-1932, those in the public domain were more likely to have been produced as an audiobook.<sup>52</sup> That study had the virtue of considering a large number of books all published during the same 20-period. Finnish and Swedish data present a smaller sample spread out over a greater length of time. Of 102 Finnish public domain titles published from the 1858-1936, 17% (17/102) had been produced as audiobooks, while 11% (10/89) copyrighted titles from 1919-1989 were being sold in audiobook form. The story from Sweden looks similar and enlarges the sample for statistical analysis. Of 149 Swedish public domain titles, 18% (27/149) had been produced as audiobooks, while 15% (45/291) were being sold in audiobook form. Neither the Finnish nor Swedish data standing alone or combined is statistically significant.

*4.5 Comparison with Large English Language Markets.* The English language book market is massive and attracts thousands of publishers, many of whom compete in the market for public domain titles. Indeed, given that the Google Books Project offers millions of scanned .pdf public domain editions in English for free and Project Gutenberg<sup>54</sup> offers thousands of Kindle formatted public domain editions at no charge, competition is intense, resulting a wide availability of titles at low prices. Many small, independent publishers use the Amazon CreateSpace/Kindle Direct publishing platforms to easily market new bound and digital editions of public domain works in English language markets. As discussed in section 2.2 above, these factors drive significant gaps

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<sup>52</sup> See Buccafusco & Heald, *supra* note 12 at 22.

in pricing, the largest so far identified being in the Canadian ebook market (Figure 3): \$1.89 average price for public domain titles and \$11 average price for copyrighted titles.

The CreateSpace and Kindle Direct publishing platforms, however, only allow their users to sell from Amazon to the US, UK, Australian, Japanese, Spanish, French, Dutch, and German markets. Individuals or small independent presses cannot use these platforms to penetrate directly the Swedish or Finnish book markets. The most popular online marketplace for books in both countries is adlibris.se and adlibris.fi which are not associated with Amazon. A quick comparison of the exploitation of English and Swedish language titles by independent publishers mining the Project Gutenberg free public domain library supports the hypothesis that lack of access to Amazon publishing platforms affects the market. We took a sample of 109 Swedish titles available for free on Project Gutenberg and found that only 21% were available as bound volumes and 16% were available as ebooks on adlibris.se.<sup>53</sup> In a sample of 100 English language titles from Project Gutenberg, 87% were available as bound volumes and 85% as ebooks on Amazon.com (93% were available as either bound or ebook).

The ability of small independent presses to use Amazon publishing platforms to market Project Gutenberg books has two important market effects. First, consumers get greater access to bound volumes, because Project Gutenberg only makes digital versions available to consumers. Second, the ease of publishing invites competition which drives down prices. In our Project Gutenberg samples, the English volumes published on Amazon were priced on average at \$8.63 for bound volumes and \$0.74 for ebooks. The Swedish volumes on Adlibris.se sold for \$22.30 per bound volume and \$4.50 per ebook. The Amazon “platform effect” may help explain two interesting facets of our data: 1. The lack of a positive public domain effect on availability in the

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<sup>53</sup> Of the same sample of 109 Swedish public domain titles available on Project Gutenberg, 48% were available as new editions on Amazon.com and 37% were available on Amazon.se (recently launched in October 2020).

Swedish language market; and 2. The smaller (although still significant) differences in prices between public domain and copyrighted books in both the Swedish and Finnish markets.

Moreover, another major source of competition for public domain titles in English language markets, Google Books, was initially formed by scanning books only from American libraries (plus Oxford).<sup>54</sup> Collections at foreign libraries have since been scanned—for example the Bavarian State Library, the National Library of Catalonia, and the libraries at the University of Ghent and Lausanne—but no library in Sweden or Finland has allowed Google to scan and upload its public domain titles. Although one can find and download some Swedish and Finnish titles collected by American libraries on Google Books or on Project Gutenberg, the universe of titles is, not surprisingly, far from comprehensive. Although this study does not count a title available on Google Books as being “in print,” publishers can, and do, use the online library as a source for their own new editions.

Evidence from Finland and Sweden suggests that in smaller markets with less intense competition, differences in both availability and price between public domain and copyrighted novels are somewhat muted. Even in markets with diminished competition we found no negative correlation associated with public domain status. In fact, the significant effects associated with public domain status are positive (if less dramatic than in English language markets): 1. Lower prices for all public domain ebooks, audiobooks, and Swedish bound editions); and 2. Increased availability of Finnish titles.

## **5. Conclusion**

As far as Nordic copyright policy is concerned, it seems likely that the in-print status of older Swedish and Finnish books would rise if several large Swedish and Finnish libraries participated

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<sup>54</sup> The initial Google partners were the universities at Harvard, Stanford, Michigan, Oxford, and the New York Public Library.

in the Google Books project, thereby enlarging a source of raw materials available for publishers. Library participation, paired with an expansion of the Amazon CreateSpace/Kindle Direct publishing/marketing platform to Nordic countries, would likely increase price competition to the public benefit.

The lessons of this study for the world outside of Sweden and Finland are two-fold. First, like all other empirical studies, Finnish and Swedish data shows negative effects associated with extended copyright terms, so resistance to term extension by life-plus-fifty jurisdictions continues to be firmly justified. Second, the public welfare benefits of exceptions to copyright protection for fair users, the print disabled, or authors lobbying for reversionary rights, may well be contextual. Finnish and Swedish book markets do not behave precisely as English language markets, and further empirical studies are needed to best shape country-specific exceptions to copyright.