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In this age of digital disruption, we often hear that copyright is “dead” — too archaic to keep up with the technological advances that enable widespread distribution of cultural content, from movies and music to books and other traditional print publications.

These cries come from all sides of the copyright debate: content owners, who feel exposed by technology that allows for easy access to their works (sometimes without payment); technology providers, the new digital middlemen who are displacing content owners as distributors; and also from consumers, who say that copyright law acts as a barrier to their use and enjoyment of cultural content.

Nevertheless, there are signs of progress in the digital copyright wars, and reasons for optimism as we look ahead. Recently, Google, Inc. announced the proposed settlement of class-action lawsuits brought by book publishers and authors’ groups with respect to the search giant’s Google Book Search program. If approved in a hearing this June, the settlement will create winners on all sides, setting a significant and positive precedent for resolving cutting-edge copyright issues.

Google launched a large-scale book digitization initiative in 2004, entering into agreements with certain publishers to digitize their copyrighted works and make them available through Google’s website. A short time later, Google began entering into similar agreements with a number of large libraries, intending to digitize the entire contents of their collections and make the resulting database searchable through Google’s Internet search engine. Several libraries provided *all* their holdings for the project, including not only public domain material, but also books still subject to copyright protection.

Maintaining that the project was subject to

the “fair use” doctrine, Google did not obtain permission from individual book publishers. As a result, the Authors Guild and the Association of American Publishers filed class actions alleging copyright infringement, seeking to prevent the project from moving forward. It was a classic confrontation of the digital era, pitting the new technology provider against traditional rights holders. The cases also presented significant questions under U.S. copyright law: whether Google’s large-scale digitization could qualify as “fair use” or amounted to unbridled infringement.

As the litigation ambled along, rumors of an agreement began to emerge. Late last year, the parties announced a proposed settlement, in which Google has agreed to pay \$125 million to compensate authors and publishers, pay legal fees, and establish a centralized rights management organization — the Book Rights Registry — to track use and distribute royalties to authors and publishers whose works are used in the program.

The proposed settlement represents a landmark example of a voluntary, collective licensing solution that will benefit all stakeholders.

For its part, Google will add a substantial program to its arsenal of powerful search tools and databases, furthering its reputation as an innovator. Authors and publishers will gain from the exposure provided for millions of older book titles, which could translate into substantial new digital revenue streams where there were none, effectively granting a second life to out-of-print books. And individual consumers will benefit from an enormous new pool of data, all easily accessible from their own computers or through their local public library.

There are parallel developments in other media industries. Despite the well-publicized

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travails of the recorded music business, for example, Warner Music Group’s Atlantic label has become the first to generate more than half of its revenues from digital endeavors, as opposed to CD sales. A growing portion of those digital revenues comes from “public performance licensing,” a veritable battleground in which music labels are fighting with Internet radio stations and webcasters over the royalty rates that should be applied to the business of digital broadcasting.

Recently, the parties reached a détente of sorts by passing legislation to facilitate a voluntary agreement that would end years of wrangling and set new royalty rates for the digital performance of music. Similar to the Google agreement, the music royalties will be administered by a third-party rights agency charged with monitoring, collecting, and distributing royalties. Behind this debate sits Section 114 of the Copyright Act, providing the backbone of a potential settlement.

Our creative industries are in the midst of a digital revolution. The waters remain murky, and the challenges constant. Undoubtedly, further legislative changes will be called for. But calls for dramatic copyright reform are overblown. Progress is always halting and uncertain, but ever since its inclusion in Article I, Section 8 of the U.S. Constitution as a means to promote the progress of the useful arts, our nation’s copyright law has proven a model of flexibility and strength, providing the basis for reasoned agreements that represent progress.

The digital highway is slowly getting paved (and monetized), to the benefit of all stakeholders. There is promising progress on the digital frontier, and copyright deserves part of the credit. ■

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