



**Interview with Peter Brantley
Director, BookServer Project, Internet Archive**

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Welcome to a podcast of Beyond the Book, a presentation of the not-for-profit Copyright Clearance Center. Copyright Clearance Center is the world's largest provider of copyright compliance solutions, through a wide range of innovative licensing services and comprehensive educational programs for authors, publishers and their audiences in academia, business and research institutions. Become a fan of Beyond the Book on Facebook and follow us on Twitter. Subscribe to the free podcast and never miss a program at www.beyondthebook.com.

KENNEALLY: Welcome to *Beyond the Book*. This is Chris Kenneally, your host, from Copyright Clearance Center, looking forward to a spirited discussion today with someone who has some very insightful views on how the e-book publishing dynamics are something of importance to authors, not just in terms of making their books available, but how they can make a living by them. Joining us now is Peter Brantley. Peter, welcome to *Beyond the Book*.

BRANTLEY: Thanks, Chris.

KENNEALLY: It's good to have you here, Peter. And we'll tell people briefly about you. Peter is director of the Internet Archive's BookServer project, a not-for-profit digital library. He previously served as executive director of the Digital Library Federation, and he is a member of the board of directors of the International Digital Publishing Forum and a co-founder of the Open Book Alliance, and somebody whose thoughts are followed closely on his own blog, which is the Shimenawa blog at peterbrantley.com, as well as his tweets. His Twitter ID is naypinya – N-A-Y-P-I-N-Y-A – there on Twitter.

And Peter, we've been following some things you've been writing recently on your blog. With regard to some specific issues, all of which we'll get into, but I think they point to a larger question, which is the place of authors in this new digital world, where e-books may become the predominant form that books are available in.

What interests you particularly about this moment? Are you concerned for authors' future at this time?



BRANTLEY: Well, I guess I wouldn't say I'm concerned about the future of authors, per se – to twist the words around in a slightly different way – but I think that authors have something to be concerned about as we move into this transition into a digital future.

And let me take an example of one of the blog posts I did recently, which related to what we call in publishing the Wylie incident, when the agent Wylie came in with a proposal to publish independently digital book editions of some very well-known backlist titles and, citing Random House, which has a history of being very much engaged in attempting to defend, as a publisher, its perceived rights over materials that it's worked on with its authors, and citing Random House to protest that it actually had the rights to publish them digitally. It just hadn't bothered to do that yet.

And I think what's interesting there is that we're seeing a landscape of e-books, of digital books – digital content, more broadly – erupting fairly suddenly, with new modes of production and new means of distribution for that content. And at the same time, all of the material that's been produced over the last 10 or 20 years is – I wouldn't say up for grabs, but it's certainly up to be defined in that world.

So when you've got an existing book that was published in a very different technological frame for production and distribution, those books have to be examined in the light of current technologies.

And as we do that, some of these rights struggles are becoming much more evident. And so how authors try to navigate and arbitrate what their rights are for exercising their ability to recreate their product in a digital environment is something that's very much a topic of the day, and very much a struggle between authors, agents and publishers, who are attempting to delineate where the boundaries are in that.

KENNEALLY: Well, in fact your point about the boundaries is one I wanted to pursue. And that is the way the boundaries are blurring, are no longer as distinct and separate as they were. Publishers published, agents represented the transaction between authors and publishers, and authors were concerned about getting their words in the proper order, if you will. And with the digital environment, it's possible for an author to self-publish. It's also increasingly the case that agents are seeing themselves as potentially publishers of the authors they represent. That really seems to me to make things – it would make me nervous.

BRANTLEY: Yeah. It also affords tremendous new opportunities for people to come in with new business plans and services, and that's exactly what we're seeing here. I



think we're seeing two different kinds of transformations. One is in roles. And as you stated, it's clear that a lot of the historical province of publishers has now been removed or – often-used word – disintermediated from their proprietary lock.

A lot of the functions that publishers have historically done can be done elsewhere. So again, in terms of, for example, producing a work digitally and then distributing it on the Net, those functions don't need, per se, a traditional publisher for them to be enacted. There are means that individual authors can do that. There are means, certainly, for agents to broker conversations on behalf of authors and then deliver those services for them.

So there is this tremendous shift in if you look across the workflow of traditional publishing, where those activities fall and who can absorb their function in the coming days.

And I don't think – to be clear – that what we'll see is sort of a re-shifting so that workflow component A gets moved from publisher to agent, and workflow number B gets moved from agent to author.

I think what's happening is that these things are becoming more sort of flattened, more capable of being reached for and utilized by any of the actors that are involved in the chain of production of creativity and the dissemination of information and art.

And so we'll see sort of a new emergence of dominant forms, I think, in the years ahead. It may be more likely for agents to do publishing. Maybe it'll be more likely for authors to do publishing directly. It may be – I think more likely – more the case that authors will do a certain kind of publishing directly, and other kinds of organizational entities do other kinds of publishing that's perhaps more ornate or sophisticated or complex. But where those things will fall out is very much up for grabs right now. So that's one – I want to say that that's one kind of change.

And the other kind of change that we can't lose track of that very much folds into that is a change in how we understand content, because with this digital transformation, what we're seeing now is sort of a race to digitize the backlist.

My friend Bob Stein at the Institute for the Future of the Book once called it a digital up-list of our analog culture.

But with that transformation in sort of print to bytes is an opportunity to enhance, alter, change. And what we're seeing now is also the creation of new editions that



are potentially significantly different than the prior version of a content used to be – or how it used to be represented.

And so it's not just that authors have an opportunity to create trans-media works that are new and fresh with new material. They also have an opportunity to create trans-media works that are new and fresh from old material, and, again, trying to work through how those things are created, distributed and how the rights are arbitrated for that content is a big challenge.

KENNEALLY: Well, it is a big challenge. It's a business challenge. It's also potentially a legal challenge. How concerned are you that much of this is going to wind up in the courts?

BRANTLEY: I think that we'll see a fairly small amount of this actually involve significant court cases. That said, I think that we'll see some very important rulings coming down in the future. But I don't see – I don't – I would not foretell a future that is litigation-rich, necessarily, for a variety of reasons.

I think that, first of all, the existing or prior culture is not typically litigation-oriented, because of the dependencies between the actors – the publishers, authors and agents. I think, secondly, because the roles are often amorphous and shifting, that arbitration of those roles is going to be much more likely in real life than going to the courts.

KENNEALLY: So you would say that negotiation is more likely than litigation? I mean you brought up the case, going back to 2002, I think, where Random House and Rosetta Press got into a bit of tussle over very much the same issue. And it was set aside by the judge. It did not continue. They eventually found some way to move forward. So your suggestion is that publishers, authors, even their agents as well, may find a clearer path to success to negotiate rather than to litigate?

BRANTLEY: Generally. You see patterns here. I mean obviously, as I mentioned earlier, we've seen Random House be very aggressive and defending its perception of its held rights. And that may be the case again.

In the initial Rosetta ruling, it never reached a formal decision. An injunction was denied, and so there's a precedent there that's guiding but not necessarily decisive. That kind of litigation may yet emerge in the future. But there's a little bit of a race against time. I think that, with every day, every week and every month, we're seeing new ventures established. And people begin to embark on different ways of trying to define what the future will hold. And I think, as the days go by, more and more of the uncertainty will end up being worked out through business plans,



models and in online and offline discussion. So I'm hopeful that the number of significant court cases is actually not that high.

I would also suggest that in many ways, although I've been very instrumental and very engaged in the discussions around the Google Books settlement that, in its own way, that that's also a negotiation, and that what happened there was that there is an effort actually to pull away from explicit litigation and into negotiation through a class action settlement.

Now obviously I and many others think that the settlement that's been proposed should not be approved and that it's a misuse of class-action law for it to move forward, but clearly that there was interest among the parties in avoiding a showdown.

And I think part of the reason that many of us in publishing and publishing-related sectors want to avoid showdowns is because we understand, at least innately, that things are shifting really fast. And so that the utility of a ruling is going to age really quickly. And so rather than spend a lot of time, energy and resources in obtaining a definition whose value may not hold for more than a couple of years due to shifting technology, shifting capacity for people to author, create and distribute works on line – let's just talk it out.

KENNEALLY: It's a really good point, and I think your take on the Google Books settlement case that it was – it began as litigation and kind of moved towards negotiation, under the guise of this class-action settlement, is a really well-taken one. And we'll all have to wait and see what the judge thinks. And it's anyone's guess at this point, but a ruling is expected soon, although in court cases soon can mean anything at all. But the point about negotiation is one that's, I think, well-taken.

You also bring up, in a separate blog post that caught my eye, about the pricing aspect for digital books, and in particular some of the terms that a player who wasn't part of the original scheme of things – is not specifically a publisher, and agent or an author, but Amazon, a distributor, is now playing in setting pricing rules and kind of pushing authors, and indeed some publishers as well, into certain corners that they might not find themselves comfortable. Talk about that.

BRANTLEY: OK. And I would say, actually – and then I think that suggests an area where we might see litigation. And let me pull back on that at the end of that. But so essentially what Amazon has done is they have initiated a self-publishing program, and they have moved toward an adoption of what's often called an agency



pricing model. But they've also sort of spiced it with – in the self-publishing program – with a most-favored-nation clause.

And essentially what the most-favored-nation clause says is, as an author, if you put something up within the fairly constrained bounds of our program in terms of suggested pricing and so forth and if that work is made available by some other vendor of e-books at a lower price – at a discount – then we will treat that discounted price as our price to make that work available for sale. So you, as an author, are not able to sell that work for any cost lower than what Amazon would provide.

And the problem is that many other retailers are not necessarily following an agency model, so they want to be able to discount pricing to be competitive. And Amazon is essentially saying, you know, you can't be competitive on pricing. We want the lowest available price in the market. And so essentially it forces a competition on services.

So on one hand that might be good. Well, you know, common pricing, let's compete on another playing ground, which is services. But the factor that would be instrumental in this case is the fact that actually Amazon happens to hold an overwhelming portion of the market for digital books, so they claim, at least, and no one has any reason to suspect otherwise.

So when you have a dominant actor saying, essentially, we have some control over pricing, then there is potentially a problem. And it's that – it's the nature of these most-favored-nation clauses that tends to raise the curiosity of attorney generals and justice departments, and indeed a couple of state AGs, at least, have announced that they would like more information from Amazon and from Apple about these kinds of agency pricing deals.

And I think that, when we see these kinds of pricing arrangements emerge in specific programs like self-publishing, we're seeing large dominant actors in e-book distribution trying to define places for themselves where they can extract the most revenue for their operations – understandably enough.

But the issue here is, to get back at the earlier point of this is where litigation may emerge, is that this is all new terrain. And so what we see is these companies entering spaces that are not – whose business practices are not well-defined and attempting to impose new structures in areas where perhaps law does not speak presently. And so, if there was to be litigation, it would be in areas like this, where a corporation tries to make a – or establish a foothold in a new way of defining how business should operate in a digital realm for this kind of material. And under



certain kinds of terms, I think courts or governments may decide that that's an abuse of an understanding of how the law should work in those areas.

And that, in the same way, I think I should note, is how the Google Books Search settlement is seen as an abuse of class action, that how that settlement – how the terms or goals of the settlement might emerge is, in the perspective of critics, not through that kind of discussion but through, in that case, a legislative dialogue. So it's a misappropriation, a sort of an over-cleaning of right in a particular domain and through a particular vehicle or operation that many of us feel is inappropriate. And so we may see companies trying to chart futures for themselves that courts say, mm, can't do that. That's not an appropriate mechanism by which you can establish control over certain kinds of business operations.

So I think this area is something that authors need to be aware of and need to consider what their perspective on these kinds of pricing and distribution challenges is, or are, in the coming weeks and months.

KENNEALLY: Well, I want to say I appreciate your raising these points because I think generally authors are very excited by the opportunity that the digital environment presents them. And I think they sense a kind of freedom in it. But it's almost a point of be careful what you wish for here. Authors are seeing more of an opportunity to do things without the encumbrance of the traditional publishing channels and all. And yet they are walking into situations where they really need to be very careful about the terms and about the implications for their future.

BRANTLEY: Absolutely. And in the Amazon situation, as an example, it's a case of small pieces of candy being handed out, and yet there are consequences to that. And in the case of the self-publishing model of Amazon, because pricing can be ratcheted back down, due to the most favored nation clause, by a dominant market actor, the incentive for authors is to only sell through Amazon in order to protect that pricing.

And so there is this feedback loop on structures like that, which inhibit competition in an open marketplace. And that's the kind of unexpected or un-foretold result, from the perspective of an author, that's not useful to have in an open, competitive marketplace for digital content, where ideally authors would be able to expose their works to the broadest possible number of distributors under the terms of their choosing or their agents' choosing and with as much diversity as they want.

And it's that motivation that led the Internet Archive and Adobe originally and several other independent actors in the open e-book community to establish the OPDS – Open Publication Distribution System, whereby people can say, these are



my works, these are the prices that we want to make them available at. This is the set of choices that you have. And that's a more equitable future than the one where we might wind up, where some of the consequences of actions that are being taken now have significant unforeseen consequences.

KENNEALLY: Right. It's about empowerment rather than disabling people. And it sounds as if some of the situations you describe have the potential, at least, for doing that.

I want to thank again Peter Brantley. Peter Brantley is director of the Internet Archives Book Server project. He previously served as executive director with the Digital Library Foundation. He is co-founder of the Open Book Alliance and blogs at his own site, peterbrantley.com – it's the Shimenawa blog there at peterbrantley.com – and tweets online at [naypinya](https://twitter.com/naypinya) – N-A-Y-P-I-N-Y-A. Peter Brantley, thank you very much for joining us today on *Beyond the Book*.

BRANTLEY: Thank you so much, Chris. I really enjoyed it.

KENNEALLY: Well, so did we. And we hope to follow more of this on your blog and on your tweets and perhaps, indeed, ask you back sometime to tell us about the Open Book Alliance and its own hopes for its place in the future world. But again, thank you, Peter Brantley.

BRANTLEY: Thank you.

KENNEALLY: And for everyone at Copyright Clearance Center, this is Chris Kenneally, your host for *Beyond the Book*, wishing you a great day.

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