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Interview with Cory Doctorow For podcast release Friday, February 26, 2010

- M: 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. For more information about Beyond the Book and Copyright Clearance Center, please go to www.beyondthebook.com.
- Q: Well, we're going to play a little bit of The Price is Right today on Beyond the Book. Welcome to the program. This is Chris Kenneally, your host for Copyright Clearance Center and now I want to say something that I'm going to guess has never been said before. Cory Doctorow, come on down. (laughter) Cory Doctorow, it's a pleasure and a privilege to have a chance to speak with you. Welcome to Beyond the Book.
- A: My pleasure too, Chris. Thank you very much for having me.
- Q: Well, we're delighted to have you with us and we should tell people briefly, although it may go without saying, that Cory Doctorow is an activist science fiction author and co-editor of the blog, Boing Boing. He is known in many quarters for his political activism around digital freedom and open rights. He's the former European Director of the Electronic Frontier Foundation, a civil liberties group that defends freedom in technology law, policy, and standards, and he's a co-founder of the UK Open Rights Group, currently campaigning on the government – the UK government's digital rights bill, which I believe is called Digital Britain, and we have you on the program today to help us understand a little bit more about what we're calling at Beyond the Book, the ebook wars, and specifically around a column you published in *Publishers Weekly* very recently, which is called The Price is Right and that's taking a look at how pricing is really determining the approach that companies like Macmillan are taking with ebooks and there's also certainly the concern that Amazon has as it tries to promote ebooks. So I'll ask you to characterize this discussion as you did in the PW column, Cory. Tell us about this. What's the tension here?
- A: Sure. Well, I think that there's lots of nuance, but at the most kind of abstract 10,000 foot level, this isn't a fight about whether ebooks should cost more or less, and I think that's what's been lost here, is that this is really a fight about whether you think the profits lost to low ebook prices will be made up by new ebook readers, that's the demand elasticity hypothesis, or whether you think that the best



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way to maximize profit from ebooks is to ensure that existing readers are charged the largest amount that we can get out of them and that's the price discrimination hypothesis and without being too kind of general about it, the internet businesses have historically been characterized by this belief in demand elasticity. That somewhere out there, there's some new customers who will come into the tent if you change your prices to make them welcome, and this has been a great strategy for the internet because the internet itself has always been growing.

So whatever it is you're doing on the internet, chances are there's going to be more people around who might want to do it in a year or two or even a few months, whereas stable, mature businesses like publishing, which is an extremely mature, 15th century business that's been going continuously since, they tend to act as though they've got all the business that they're going to get and they focus instead on maximizing the profit from the people who already know about their wares. It's not like there are people out there who have never heard of books, who are going to be surprised to discover that books exist the way that there are people even a couple of years ago who were being surprised to learn that Google existed, and so publishing has really focused on that.

Q: And in your column for *Publishers Weekly*, you don't necessarily identify one side or the other as wrong. In fact, you say that, if you will, and we're kind of using the Amazon as representing one side of things and Macmillan, the publisher on the other side, but you say that they're both right. Macmillan should be worried about losing control over its destiny and at the same time, Amazon is very optimistic about pricing as a way to bring in these new readers.

A: Yeah, I mean I think they're both right and I think that Macmillan has hardly been a slouch in the developing new business realm. I mean especially some of their more really savvy, net savvy divisions like Tor, who published my novels. Those guys really, really do get the importance of bringing new readers in and of doing attractive pricing and attractive marketing and attractive PR to attract new readers. So it's not like one of these companies is all about price discrimination and the other one is all about demand elasticity. I mean Amazon is now proposing to price ebooks at zero cents or one cent and Macmillan isn't proposing that the hardcover window should last for years and years or boycotting the internet.

I mean Macmillan's been doing more ebook, internet-y stuff, taken as a whole, than I think anyone, except maybe Penguin, who got some very good people in the form of Jeremy Ettinghausen and his crew, but really, they both understand this. What this is really a fight about at the end of the day, in terms of the pricing stuff, is where you think the knob should be set. You know, should it be turned a little more to the right, towards price discrimination or a little more to the left, towards demand elasticity? And I think for me, the thing that I hope to bring to this debate



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is an understanding that it's not just about the price because Macmillan is worried not just that the price is going to get out of its control or that it won't maximize its profits in the short term, but that Amazon is able to dictate prices to it and that it's not good for Macmillan's business not to have control of that very vital piece of its overall economic strategy, its overall business strategy.

And also Amazon I think – what Amazon isn't saying is the reason that they want to lure people into buying Kindle books is because the Kindle is a roach motel. The contracts that you click through when you buy a Kindle book and the DRM that's on most Kindle books make it technically and legally difficult, if not impossible, to move your Kindle library to a competing device, which means that the more Kindle books you buy as an individual reader, the more you're going to have to give up if you decide to throw away your kindle and buy someone else's device because Amazon is only going to let you use their licensed equipment and I think that if I were Macmillan, the strategy that I would be pursuing wouldn't be to confront on price, because I think that when readers hear that an old 19th century media giant wants to charge more for things on the internet, they immediately think of the record industry and it's hard to drum up a lot of sympathy for that position and you've seen a lot of people I think online going, oh, this is just another greedy dinosaur company and I don't think that that's a good characterization of Macmillan.

So instead, I think I would have gone for a much more politically savvy front to fight Amazon on and that would be fair terms on Amazon Kindle books, where they would just say, look, we aren't going to window the ebook. We're going to window the ebook on publishers who refuse to – or on distributors who refuse to let us price it the way that we want to. We have other distributors in the form of Barnes & Noble and all the other people who sell digital books, who we're going to sell the hardcover – the book to when it's out as a new hardcover, to sell as ebooks at the price that we like and what we demand from Amazon is that Kindles be set up so that they are a more open platform, so that you can move your Kindle library onto competitors' devices and vice versa, so that just like you can read your books sitting on anyone's chair, you should be able to read your ebook on any one screen.

I mean the screen isn't the important thing here and I think that that would have made them look like unequivocal heroes, right? It would be very hard for Amazon to spin that any other way and it really would have highlighted the important issue here, which is that Amazon is saying that you shouldn't be allowed to own books anymore. That you should be forced into this license regime for books where you throw away all the consumer law that says that when you buy a book, you get a bunch of rights with it and replace it with this unilateral contract that runs to thousands of words and that's full of things that no one would ever voluntarily



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negotiate, you know? If you were sitting across the table from them, but it's a take it or leave it offer.

Q: Right. It's interesting to think of Cory Doctorow offering sort of political consulting advice to a publisher like Macmillan because it's – I don't know – surprising, given what I know about you, but it's fascinating because what I believe you're saying, and this has been said by others we've been speaking with, is that the reaction by some in the blogosphere, as you characterized it, sort of saying that Macmillan is a dinosaur, is a misplaced reaction, that they don't – people who are saying that don't understand the publishing business itself and you as an author certainly seem to grasp that defending publishing is probably an important piece of this.

A: Well, you know, I think that the extent to which the dinosaur appellation has some validity is just that it's a big organization and it doesn't turn on a dime, right? Holtzbrinck is Macmillan's parent company, it's gigantic and it doesn't move as quickly as a three person shop. So in that sense, they are big and they lumber a little, but at the same time, of all the publishers that I know, the number of really clueful, net savvy, geek friendly people who really, really get it and really, really want to do right by it, starting with the folks at the top and all the way down through Tor and so on, I'm blanking on Fritz's surname. It's Fritz Attaway, isn't it? Is that right?

Q: I'm not sure myself actually, but I certainly know that –

A: Their digital guy. I was just about to say Fritz Hollings, but that's the Senator. (laughter) But yeah, no, Fritz Attaway is the CTO of the Motion Picture Association. Christ, I'm sorry, Fritz, if you're listening to this. I'd forgotten your surname, but the number of great digital people knocking around inside of Macmillan who get listened to, who have discretionary budgets, who get to launch exciting new projects, it's very large, right? So I think that Macmillan isn't – Macmillan may not be as nimble as three guys in a garage and of course every organization that was making money the old way stands to lose something, right?

It's inevitable that if you're making money the old way and you change something, that you'll probably lose some of that old income and you're kind of hoping that you're going to get some of that new income and in the meantime, after you've let go of one vine, you're reaching for the other one and what that means is that institutionally, those organizations always have people within them whose jobs and whose role relies on making money the old way, who are going to be somewhat resistant. Maybe they'll be very visionary and go, I'm going to try and move laterally within the organization into the division that looks like it's going to make money from the new thing, but generally, without saying anything specifically



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about individual people at Macmillan, I'd bet cash money that there's someone in Macmillan, who when they hear ebooks, goes my gosh, my job is endangered and who worries about it and depending on how much weight that person swings within the organization, it acts as drag.

So I think that that's true, but it's not unique to Macmillan and it's not a characteristic of an entertainment business, it's a characteristic of any business that's being disrupted by technology and for businesses being disrupted by technology, I think Macmillan is performing superbly, certainly much better than the rest of the entertainment industry. You know, you look at a movies, music, and games.

Q: Right, and we should say we're on the line from London with Cory Doctorow talking to us about The Price is Right and ebook wars and we hope, in just a moment, a bit about some thoughts to do with copyright that I think will challenge some people's notions, but I want to go back to make the point, and I think this is very clarifying for me, which is that authors and publishers and others who have a stake in this business, have to be very thoughtful and they can't simply respond along this kind of categorical pricing discussion. It has to be much broader than that about the entire business. Do I have that right, from your perspective?

A: Yeah, I think that we've taken our eye off the ball here and the ball, in the case of Macmillan, is to what extent is it going to be the master of its destiny going forward, with both digital and non-digital books. I do touch on some other things in the column, some other ways in which Amazon has gained a lot of market share and one of them is this very, very good affiliate fee program where they allow bloggers and other people to make links to Amazon and then they pay them a commission based on anything you buy when you follow one of those links and this has been a real godsend for all kinds of people who do all kinds of projects online. It's been a real source of income. For me, it is too. I sell 25,000 books a year that way on Amazon. For comparison, when I was a bookseller in a regular, small mom and pop bookstore, the whole store was selling 15,000 books a year.

So this has been great for everyone, except for other booksellers and publishers, who now find themselves with Amazon's market share growing and I think that publishers could really help to make the online marketplace more competitive by making it easier for people to embed links to lots of different vendors on their site and the proposal is somewhat technical, but basically I suggest that they make a little JavaScript library that bloggers and other people could use so what when you link to a book, it automatically turned it into a little pop up that let the reader choose which online book seller they were going to buy from and embedded the blogger's affiliate ID to all of them and I think every blogger I know would love to use that because it would mean more money because you'd be giving your readers



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the choice of which bookseller to use and it would certainly reduce the extent to which Amazon is the dominant bookseller online, to stem that tide and get more competition in.

Q: Right, and it also is a challenge too to the business because of course so much of it relies today still upon brick and mortar stores and they have a stake in that piece of the business, so to use your image about sort of letting go of one vine while trying to grab the next, that's an interesting switch and a thoughtful suggestion I think and we'll be interested to see whether anybody takes it up because to have all that power in one hand or a few hands would not be good for the business as a whole. Can I –

A: Sure. Can I just say one more thing about that?

Q: Sure.

A: Every major trade publisher I know is working on some kind of direct fulfillment system using e-commerce. So they're trying to figure out how to sell books directly to readers, physical books directly to readers at one stage or another of the game, and to be honest, none of these have been very successful to date. It's kind of hard to do that stuff and I think that that puts them into much more direct competition with brick and mortar retailers than what I'm suggesting and what I'm suggesting is technically a lot simpler for no other reason, that doesn't involve integrating with a post office, who are notoriously – as a former shipping clerk for a bookstore, I can tell you that fulfillment is hard and so I'm surprised that booksellers aren't looking at this kind of stuff where you hire a couple of software engineers, keep them around, right? Don't just put them on contract. Keep them around year round, put them on a retainer so that they're always looking at how people are using this library, always tweaking it, always improving it.

And that budget is, to my mind, so much smaller than the budget for trying to figure out how to do direct fulfillment and would I think do a lot more to spread out the publishers' risk than figuring out how to do some direct retail from their websites.

Q: Well, again, thoughtful proposals on that score and from somebody experienced in the bookselling business. Of course authors are often telling publishers how to sell their books, but this is business advice from a man whose had some experience doing that directly and it's –

A: Well, yeah. I'm a former traditional bookseller, a current electronic bookseller, a current small book publisher, and a novelist and a nonfiction writer. So I feel like



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I've got a – you know, I don't think I have all the answers, but I think I've got a pretty in the round perspective on this.

Q: Right. Well, and I want to turn to you to help us with this column you wrote for *The Guardian* on copyright and some interesting thoughts there. Copyright companies, individuals, and news, and you talked about the purpose of copyright, a subject we care about a lot at Copyright Clearance Center, and I'll just read from the column. It says copyright's purpose is to promote participation in culture. Can you expand on that and what your thinking on copyright is like these days and how perhaps a new paradigm for copyright could compliment some of the developments that we're watching in the ebook space.

A: Well, sure. So like if you look at the foundational materials on copyright, particularly things like the Progress Clause of the U.S. Constitution, what you see isn't something that says, copyright exists to ensure that artists make money. In fact, if that were its purpose, we could already declare it to have failed because it's never succeeded in making sure that most artists make money. I mean look at poets, right? Give them another million years of copyright and a copyright pike with which they could disembowel people who violated their copyright, and it's not going to make more money for poets, right?

Q: (laughter) Right.

A: So it's never really been that. If you look at the Progress Clause, it says words to the effect of to promote the useful arts and sciences. In other words, in order to make sure that we get more copyrighted stuff, we create this regime of exclusive rights to increase the likelihood that people will sit down and make stuff, either because they can drum up investment because they have an exclusive right that they can sell off, or because they feel like they may make the investment themselves and then sell the product of that and I think that that's a reasonably good strategy for getting stuff made. It's not the only strategy. People who claim that without copyright, no one would make anything, don't really do themselves a service.

I think that that's a pretty weak argument for copyright because when you look historically to all of the works that were created before the first copyright statute, the Statute of Anne, I mean you have some pretty nice works that were created without any expectation of exclusive rights from the Sistine Chapel on and also subsequent to that, you've got – as I've said, you've got a system in which a lot of people don't make any money and continue to make stuff. If the reason that you sat down to write a novel is because you expect that you're going to get rich from it, my advice to you as someone who teaches a lot of writing is get another job



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because you're probably not going to. (laughter) And that's, again, not a copyright problem.

Q: So what is copyright?

A: So what I think copyright is for is as a system, to encourage people to make stuff. And the way that it – the narrow realm in which it operates, it's supposed to be the supply chain of the entertainment industry, so in order to regulate what happens when writers and agents, distributors, publishers, teamsters, theatrical exhibitors, and everyone else who's involved in creating and disseminating entertainment product and exchanging money for it, what copyright tries to do is regulate how their interactions take place and it's not a coincidence that copyright is well suited to that because most of the copyright statute today basically was drafted by taking what it was those companies were already doing and turning it into law. So taking practice and turning it into law.

That's how they knew it would probably work, right? Because it was already in place. It was the order of the day and it just became enshrined. Now the problem is that at the time that copyright was conceived of, making copies on a scale that was detectable by rights holders was a necessarily industrial practice. So in other words, if you were going to print books, make movies, make copies of movies, make copies of records, you would have to yourself be a big corporation or a corporation of some size and it wasn't a big deal to expect you to learn and follow some pretty complicated rules of the road. If you're going to buy a million dollar record factory, you can spend \$5,000 on a lawyer to tell you how to operate it safely, just like you'd spend some money on an engineer to make sure that no one gets caught in the record presses.

The problem is that making a copy is no longer a good rule of thumb for detecting when something industrial is going on. We now make copies every time we do stuff on the internet. The internet does its work by making copies. When you read that article on *The Guardian*, unless you actually bought a copy of the newspaper somehow in America, if you read it online, not just one copy of that article was made, but dozens of copies of the article were made between all the caches and places where it was stored, both temporarily and in the longer term. There were lots and lots of those copies made and the idea that this very complicated body of law needs to be consulted every time one of those copies is made doesn't make any sense, and what's happened is we've started to try to retro fit copyright law as a system to govern everything that we do that involves making copies of works that may attract a copyright and that's everything we do on the internet and that includes getting healthcare information, staying in touch with your family.



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This phone call that we're having is almost certainly traveling over the internet at some point, even though it's not a Skype call. There's almost certainly an internet hop somewhere across the ocean because that's the way that it's all done these days. It's how we do our jobs, it's how we fall in love, it's how we get an education, it's how we do civic engagement, it's how we elect Presidents. And the idea that the rules that were supposed to govern how records get pressed and what agents can and can't do with publishers and so on, are going to be stretched to that, just doesn't make any sense and not only does it not make any sense, it actually endangers those rules because it makes everybody assume that the rules are ridiculous and they're not ridiculous on their face, they make – they're complicated, sometimes they're outdated, but it's not a ridiculous idea that you have a set of rules that says if you're going to adapt one of my books for film, this is how we're going to do the licensing agreement.

It just doesn't make sense that if you're going to adapt one of my books and perform it as a play in your grade five class and put the three minute video on YouTube, that you need to abide by the same rules because kids have been doing that with creative works all along. It's how we become creators and the difference being that we have YouTube now, but that's become such an integral part of education, we can't really tell teachers, oh, if you want to use YouTube or all of this other stuff that is the beating heart of the 21st century, you need to go out and hire a copyright lawyer at \$500 an hour to tell you how to do it and so what we end up doing is endangering these rules by stretching them too thin and as someone who needs some rules of the road, I'd prefer that they be good ones, but some rules of the road, to operate within in order to do my job, I don't want that to happen and I don't think other rights holders should want that to happen either.

- Q: Well, I would say that you're onto something there and you conclude that this notion that all rights reserved is this kind of Draconian rule put in place not only by big publishers, but even by – and you used the example of a photographer posting a picture to Flickr, to the internet itself. That everything that gets done requires permission. What I understand you to be saying is some things may require permission and some things may not.
- A: Yeah, and I think that we can go a long way to clarifying some of that by updating the way that our law works and there's actually coincidentally – I didn't know this was going to happen, but GG Films and Public Knowledge, which is a lobby group on the Hill, have just drafted and published a proposal to reform American copyright law and it's a pretty sensible proposal. What it says is the stuff that we call fair use is two nebulas now, it's very hard for people to navigate. We're going to expand it and make it more concrete and we're going to make it easier for judges and lay people to interpret it and we're going to make it make sense in the context of the digital world and it's a pretty straightforward, short, readily understood set of



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copyright reforms that I think most reasonable people can get behind and I think it's a great first step.

I don't know if it's enough. Arguably, the greatest copyright scholar in America right now is a Berkeley professor named Pamela Samuelson, who is kind of – no matter what side of the copyright debate you're on, everybody goes, Pam Samuelson knows her stuff and Pam just wrapped up this very long study of American copyright law. She went through all the 17 U.S. (inaudible) entire legislative history, all the jurisprudence, and she published a kind of early paper based on her review of American copyright law and said it doesn't make any sense. It literally can't be obeyed. It contradicts itself in so many places. It has gray area in so many places.

The case law is so all over the map and it's at such variance with itself that it's literally impossible to obey and so it may be that GG's proposal of a minor reform to copyright law is a good band aid to take us forward, but if I were interested in that subject – and I am – I would watch Pamela Samuelson's scholarly publications for the next couple of years – and I am – because I think she really is onto something here, the idea of rationalizing American copyright law and making it make sense.

Q: Well, we'll take your suggestion and we'll start following Pam Samuelson too, but in the meantime, we're going to continue following what Cory Doctorow writes and says and I want to thank Cory Doctorow for being on the line with us today from London for Beyond the Book. Cory, it's been a pleasure and we look forward to having you back sometime.

A: It is absolutely my pleasure as well. Thank you very much, Chris.

Q: You take care and when Cory Doctorow says he's a busy man, there is probably nobody busier than Cory, so we're going to let you get back to all of your work.

A: Thanks a lot.

Q: And we'll thank everyone for listening. This is Chris Kenneally for everyone at Copyright Clearance Center. Have a great day.

M: Beyond the Book is an educational presentation of the not-for-profit Copyright Clearance Center with conferences and seminars featuring leading authors and editors, publishing analysts, and information technology specialists. Beyond the Book is the premiere source for knowledge on the latest business issues facing today's dynamic publishing industry, from initial research to final publication and beyond.



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