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WHAT THE GOOGLE SETTLEMENT REALLY MEANS TO MID-SIZE PUBLISHERS

A. MARLIN: Thank you very much for coming to “The Value of Free: What the Google Settlement Really Means to Mid-Size Publishers” and how to establish rights screens with authors when you’re selling books in chunks. My name is Adam Marlin. I’m with MetaComet Systems. On my left is Brian O’Leary, and in the middle is Laura Dawson. On the right is Dave Marlin.

First, we’re going to each introduce themselves for a minute. We’re going to have questions just to give a sense as to what your interest level is and what you’d like to hear about as we go so we can tailor our presentations to that. We will then speak about this Google settlement in one session, establishing rights in chunks in another session, and then the very end to questions about anything.

And just lastly, inside the packet is a feedback form. We just ask that you please fill that out. And also there’s a lot of information to cover, so if we don’t get to your question, please just write a question on here, and we’ll get back to you, if not with the exact answer, with how to find that answer.

So with that said, please, Brian, go ahead.

O’LEARY: Hi. I’m Brian O’Leary. I’m the consultant for publishers and media. I’ve worked in both magazines, books, and as well with associations. And there’s a little bit of information beyond that on my bio.

A. MARLIN: And we have bios of each (inaudible).

O’LEARY: A really good picture of me.

DAWSON: You’re smiling. My name’s Laura Dawson. I’m also a consultant to book publishers primarily, but also to library service providers as well. And likewise, I’ve got more info in my official bio, and my website is ljndawson.com.

A. MARLIN: And she’s also the author, of course, of *The Big Picture*.

DAWSON: Yes, yes.

A. MARLIN: The blog. (inaudible) –



D. MARLIN: My name is David Marlin. I'm the president of MetaComet Systems. We help companies manage their royalty and rights administration and distribution to their authors, and I'm going to focus on that aspect of this for this discussion.

A. MARLIN: Thank you very much. So to just open it up briefly, are there any particular questions that people have (inaudible)? We'll give you a lot of information, but (inaudible) questions.

DAWSON: Just any – just that your concerns that you're bringing.

F: I have heard that the Department of Justice was thinking of challenging the settlement. Is there any later information about that?

M: I don't think we know anything beyond that, but that has been reported.

M: (inaudible).

M: Yep.

A. MARLIN: Inside the packet you'll find a more extensive presentation that's been put together, but Brian will start us off (inaudible).

O'LEARY: And please feel free to jump in with questions.

DAWSON: Yeah.

A. MARLIN: Yeah. Feel free to jump in with questions. This is meant to be interactive.

DAWSON: Except for Don.

(laughter)

O'LEARY: I think people are pretty familiar with the Google Book Search history. It started in 2004 where Google started to scan books, initially creating an agreement with several university libraries, larger university libraries. Authors Guild and then later AAP sued Google in 2005 to stop, feeling that it was an infringement. And they reached, after a lot of back and forth, an agreement last October. The agreement was supposed to be ratified by the time this conference took place. It was initially going to be the beginning of May. That's been extended at least four months to the beginning of September. And there's been, even beyond the DOJ, potential inquiry into it. A lot of different parties have either raised objections or



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concerns or issues with the settlement, and that's one of the reasons that the judge extended the comment period before rendering a final decision.

Also, the settlement itself is interesting because it creates a Book Rights Registry, which is effectively an independent entity, even though it's funded with money that Google earns on search revenue. It's going to be a separate entity that will hold metadata as well as rights data for published works, rights data in the cases where the rights data is actually known. There are about, by most estimates, about 6 million titles that would be either in print, the 5 million that would be in print and under copyright – I'm sorry. In print, under copyright, which would be about 5 million of the six, or public domain, which is about a million that would be included in that settlement.

Ad revenue that's earned against that searchable content when it exists would then be distributed, with a little bit more than a third going to the Book Rights Registry and then to book or content owners. And there are some interesting models that are planned for institutional and consumer purchase. One of the things that's interesting about it is it – the current model is I think pretty well understood. You can retrieve content snippets. If you click a book or a book that is searchable under Google, you return some portion of it. You can put limits on how broadly or how narrowly that comes back. But what's proposed under the Book Rights Registry is essentially a license to institutions, to libraries and the like. Libraries will get one seat for free and then can buy more if they choose. The second piece is it's going to give consumers an opportunity for direct download of digital content for purchase.

The thing that's also interesting – it's not specifically planned but it's on the table – is that there may be some other models that grow out of the Book Rights Registry, specifically print-on-demand from digital files, which doesn't exist right now, custom publishing, aggregated content, as well as potentially subscriptions. So there's a lot of different things that might occur. Those aren't given, and BRR would have to both develop them – or approve them and then develop the capability to offer them.

Although clearly, it's a big shift. If you think about the notion of taking 6 million books, if 2 million are essentially the universe of books in print, as it is right now, and you add 6 million to that, and then you give somebody a print-on-demand capability, it's a big shift in the market. I'm a fan of print-on-demand, but I think it could legitimize that as a technology, but it's also clearly going to affect existing book publishers.



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And part of the question that we were asked to – that Dave and Adam asked us to answer was, what’s the implication for mid-sized publishers? And I think one of the things is that with a lot of content coming back to the market in some way, shape, or form. It’s not necessarily going to be that there’s going to be a lot of sales of any one of those 6 million titles. But if you think about the impact on the mid-size, it’s obviously going to strain – the book market is now going to grow by five times. So you’re going to see significant pressure particularly for the mid-size publisher on mid-list books that are not necessarily going to be as visible or as easily marketed as they have been in the past.

The other thing that’s – in effect, we think mid-size publishers should think about for these books is you have to obviously enhance the value of existing content in annotation and other aspects that would make it useful and searchable. For the other piece, that Laura’s going to talk about is different views of the same content. Chunking might become more important, and rights, obviously, becomes really important.

There’s a chart that’s a little bit hard to see on the small scale, but it kind of gets at (inaudible) this piece of it here. In effect, it (inaudible) –

M: It’s on Page 2.

O’LEARY: Thanks. This particular chart is just kind of an indication of what happens in our view in the marketplace. As the long tail kind of lifts up a little bit, in a relatively static market, the middle of the curve comes down. So bestsellers continue to sell quite well. The long tail comes up slightly, and you get incremental sales on the Nth book, but it comes largely at the expense of the mid-list titles. And that’s potentially a source of great pressure for publishers who are putting out books of that size.

A couple of things that we’ve thought about in terms of getting ready to prepare. One is that you obviously want to think about more uses. Google’s putting potentially different business models on the table, like print-on-demand and subscription. It doesn’t mean you have to work – you can work with them and through them, but also you might enable a variety of other models for existing books, and also chunking content. But fundamentally, the work that Laura and I have been doing – it seems forever.

DAWSON: It is. It will be forever.

O’LEARY: And I just found out she had a blog.



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(laughter)

O'LEARY: On XML and agile content comes to play here because, fundamentally, if you're going to do a lot more with existing content, the current model of create a book, print a book, see what other uses might exist isn't going to fly and you're going to have to be faster and more flexible in that regard.

Metadata is going to be really important. Particularly if you want to play ball with Google and be part of the Book Rights Registry, your metadata has to be in good shape. Most book publishers have solved that problem, at least in the trade space. ONIX is a good tool for that, but if you haven't been actively marketing your content through the trade space and you haven't really paid as much attention to what your metadata looks like, that could be a roadblock for effective –

F: Could you define metadata?

O'LEARY: Sure. In this case, it's the ONIX-level data, title-level data for things like book, author –

(break in recording)

[recording skips forward, apparently]

O'LEARY: – my view on whether the settlement passes, and I kind of punted, but I think the settlement as proposed won't pass, but a settlement will occur. But if it fell through, I still think the same advice –

(break in recording)

[recording loops back]

O'LEARY: – of a trade publisher, they're pretty wide – it's pretty much accomplished, because Barnes & Nobel won't take a book that has poor quality metadata. But if you're not working through the trade space, you might not have good metadata in place.

The same thing's true of rights. And rights, actually, are a form of metadata but they're its own can of worms. Who owns content, or more specifically, who owns each piece of content that you put into Google will become a much bigger deal. Book Rights Registry has set as its ambition a goal of actually cataloging where known all rights.

DAWSON: To all content.



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O'LEARY: Yeah. And I wish them luck in doing that, and I'm glad it's not my project – or I wish it were my project. Then I wouldn't have to work anymore.

But the reality is that obviously if you want to gain the revenue that Google might offer through search, you're going to have to know where that revenue should go. And if you own the rights, great. If you own rights and owe money to somebody else in that regard, keeping close track of that is important. They'll need to know and you'll need to know.

And one thing that Adam and David have asked me to think about is what happens if the settlement falls through. It is still an open question. DOJ might challenge it. Things – I think it's – Adam asked me in the 9:00 session – which I thought was cruel – what the over and under was in my view on whether the settlement passes, and I kind of punted, but I think the settlement as proposed won't pass, but a settlement will occur. But if it fell through, I still think the same advice that we've given today makes sense. There's at least a million public domain titles that would come online. That's a 50 percent increase in the universe of books in print. And I think that that's going to make vertical niches, annotation, and preparing your metadata and rights even more important.

It always makes sense to be on top of your rights, particularly if you want to sell titles well. It's sort of our elephant in the room, in a lot of ways. Virtually every publisher has storage boxes and file cabinets. Maybe if they're lucky, they've scanned all the contracts. But it's not well-organized and it's certainly not married to the content. Ultimately, you want to get to that point, and I think this settlement, whether it goes through or not, it's going to put pressure on publishers to have a much better handle on what their content is and what they're going to do with it.

That's kind of the high-level.

A. MARLIN: David, do you want to speak to the rights component of this at all now, or do you want to (inaudible)?

D. MARLIN: Well, as Brian alluded to, the rights component – and I saw a lot of heads nodding. The rights component, it really is a – it's a huge can of worms and it'll be great if it can be tackled, but there's so many challenges to it.

The Book Rights Registry offers really, I think, the potential in many ways to revolutionize the industry. Whether it will reach that potential is up in the air, but it provides a mechanism for creative entrepreneurs or existing businesses to take your content and use it in creative new ways and monetize it for you in ways that maybe you hadn't thought of. The rights aspect of that is tremendously challenging



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for a lot of reasons. One reason certainly is there's no standard way, widely-accepted standard way of identifying rights. So your system, you might say French foreign language rights, you tag that as FFL, but the Book Rights Registry might call it CDE or something. They'll come up with some crazy – and Laura will be able to add it to her blog as –

DAWSON: As another acronym.

D. MARLIN: – another acronym, yeah. So there needs to be a standard, some kind of way of standardizing that.

And then just the complexity of it. Many publishers, especially in the trade, don't acquire universal rights to their titles. They acquire hardcover, paperback, but they don't acquire foreign language, foreign country, serial. There's as many rights as you can think of. And so how do you manage that?

One of the things that I think that we'd encourage publishers to do – we being MetaComet – I don't want to put words in your mouth – but is to think this through in future contracts, because this BRR, the Book Rights Registry, is going to be something that you're going to have to deal with, and it's going to be kind of a pain in the neck for content that you don't – that you already have. But if you can address in your future contracts, you might save yourself a lot of effort. You might be able to put something in where you say, we will retain all rights for BRR and give you 50% of the revenue or something, or 10% of the revenue, whatever you negotiate.

So there's a lot of challenges related to the rights component of it. And if you can simplify it like that by saying, let's just give us, the publisher, the rights and we'll market it for you and promote it for you, then you open up a lot of doors in terms of how you can monetize that content.

A. MARLIN: If people have questions, it's very helpful to (inaudible) address the questions. What questions or concerns do you have?

M: Are you saying that a separate clause, contract clause, that says and BRR rights will be (inaudible)?

D. MARLIN: That's a good question. Obviously I'm not a lawyer, but I've read a lot of contracts, being a royalty person, and some contracts – it's amazing the way contracts can be worded. Some contracts very clearly delineate most of the commonly accepted rights. Some of them do things like for hardcover, we'll pay you X, for soft cover, we'll pay you Y, for everything else, we'll pay you 50%. So



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I think if you – you need to work this out with legal counsel, but I think if you put a clause like that in there for BRR use, you save yourself a lot of potential future headaches. Again, this is all in its infancy, so we don't know where this is going, but trying to think it through and see where we'll be in ten years, that kind of a clause I think could save you a lot of grief.

M: (inaudible).

F: I think that's the problem in (inaudible).

D. MARLIN: Yes. And it obviously depends what genre you're in. The STM folks –

DAWSON: It's work-for-hire, a lot of it.

D. MARLIN: Yeah. And also those authors will love it. They don't usually have agents and – whereas in the trades, it's going to be a much bigger challenge.

A. MARLIN: (inaudible) up front.

F: What percentage could you possibly assign of an unknown magnitude of rights? How can you possibly sign (inaudible) at 50% if you don't know what (inaudible)?

DAWSON: Exactly.

D. MARLIN: Right. You could put some timing clauses in there, so for the next two years.

F: (inaudible) renegotiation a few years (inaudible).

D. MARLIN: Right. No one knows where this is going.

F: That's the problem.

D. MARLIN: Right. But at the same time, if you don't – it's almost – Brian's worked with piracy. It's in some ways analogous to this. If you make your work hard to be made available, then it's harder to monetize. It's harder to make money off it.

DAWSON: If it's not discoverable, people can't find it.

D. MARLIN: And if the rights aren't easy to overcome for someone who might want to use it, then they're not going to use it.



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A. MARLIN: Anybody else (inaudible)? Do you have a question (inaudible)?

F: This is a little bit off, but one of the things that I've been trying to find out here is what are the other big publishers doing with e-books as far as – are they splitting 50-50 or –

DAWSON: Every publisher is doing it differently. There are no rules right now. It's something that agents are playing a big part in negotiating individually for their authors.

F: Are you seeing it going in any direction?

D. MARLIN: Well, there's a little bit of a – the model I think that publishers are trying to push is 25% of net, if I recall.

M: (inaudible).

D. MARLIN: No, I'm just looking at Laura because I know that she's – Soho Press has seen a big uptick in e-book sales, and I'm kind of curious – if you don't mind, putting you on the spot a little bit, what you're seeing in that.

F: We have three different ranges right now. We were more generous in order to get rights to books we didn't have rights to when we saw the need for them, and we were splitting net at 50%. We went to 25% when Random House inadvertently (inaudible) the industry, which of course (inaudible) letting them know that the Random House split was going to be 25 and 15, and (inaudible), too.

(laughter)

F: And some agents will take it and some agents won't. It really is individually (inaudible) clause in every contract, which is why it's so hard – going to be so hard to standardize any of these things. Most contracts, if we have translation rights, we have them worldwide. Sometimes it's except for France or the Francophone countries. (inaudible). You (inaudible) say it's always X or Y.

And the newest thing, which is being pushed by publishers, and some agents will just treat it as an additional unit of the printed book and so you get the same split, the usual split (inaudible) I think if I mentioned 10-12.5 (inaudible) and usually it'll be at 15 for the additional units of the electronic book. But that is not standard by any means. Some agents don't want that. They want more because you don't have printing costs.



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D. MARLIN: And Laura, are you talking of list, percent of list, or of net?

F: No, of receipts.

D. MARLIN: Oh, of receipts. Because the whole concept of list price royalty terms becomes an issue as well. There's no such thing. If some random entrepreneur starts to start some site and use your content and give you money, that's not – there's no list price there. Or subscription-based services. If someone starts a crime site, for instance, that's subscription-based, there's no list.

F: If Amazon changes its policy, (inaudible) any moment the elephant decides (inaudible). And so I think time is (inaudible).

DAWSON: I think you're right.

A. MARLIN: One question was raised the last session. I thought it was a pretty good one. What about books that are not so-called subject to the settlement yet or are already out there being searched? What's the effect of the settlement on those books that Google already has?

O'LEARY: Public domain or under copyright? (inaudible) –

A. MARLIN: I think –

O'LEARY: This would be the under copyright.

DAWSON: It was, yeah, like indeterminate copyright. They didn't know who the rights holders were.

O'LEARY: Yeah. I think – and what came out of that was a discussion and question was if there's a question about who owns the rights, it's best to claim the book because the revenue earned against the searches for that content will go somewhere. Because essentially, BRR has not decided – it doesn't exist yet, so I'm projecting it. But if you think about Copyright Clearance Center as an example, they accrue a lot of revenue against content and then distribute that against what they perceive to be the uses of those content. It's not on a transactional basis, but an attributed basis. And it's likely that BRR will be the same, so that if you have a lot of books in the settlement that are earning revenue, that they're found on search but they're not earned, that revenue can't go anywhere. It's going to be redistributed among the people who are party to it. So it's in your best interest to make sure your books are claimed, because that way you'll get the revenue. But it's also the case that



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you'll get a bigger share of the revenue because the stuff that isn't claimed will come to you as well.

So I think that it's the strongest argument available for being aggressive and making sure that even if you're not sure you own the rights or the author owns the rights, claim it and then work it out, because then at least the money will be coming to you.

M: Is that orphan works or is that something that –

O'LEARY: That's essentially the orphan works question. Because the orphan works revenue goes somewhere.

F: What about the timing of the claim? We were going to put off starting the claiming process until the settlement – once (inaudible). Because that's – the deadline is still January 5, 2010.

O'LEARY: Yeah. I think that it would make sense to go ahead with it. It's not necessarily an endorsement of the settlement. It just is the claiming the work.

DAWSON: Yeah. You might as well.

F: Yeah, we've got our list and it's going to take a lot of work (inaudible). A lot of work.

F: And you've got to take your (inaudible). It's not only the people (inaudible). We have a lot of works up there (inaudible) that need to be (inaudible) not to us. They never sold (inaudible) the right. So you've got to claim or you're going to find you're subsidizing Penguin.

O'LEARY: Which probably needs the help.

(laughter)

D. MARLIN: And then to just really mess with your head, as one of the people in the earlier session brought up, what do you do with anthologies where there's multiple –

F: Yes.

(laughter)



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M: Aren't you glad you missed the earlier session?

F: (inaudible) it's always referred to in terms of author versus publisher.

DAWSON: No, it's not.

F: (inaudible) is very relatively clean-cut what you (inaudible).

DAWSON: Yeah, yeah. That's the (inaudible).

F: (inaudible)

DAWSON: Yeah, absolutely.

A. MARLIN: Is there another question over here?

O'LEARY: I don't want to leave you discouraged. It's a good opportunity, but as you point out, it requires work.

F: Well, is there (inaudible) a system that will handle all this (inaudible)?

M: Absolutely.

(laughter)

F: (inaudible).

M: We'll work something out for you, Laura.

M: (inaudible) so thank you for that (inaudible).

M: I want to hear about chunks.

A. MARLIN: I think now we will move on to the next part, which is how to establish rights (inaudible) authors when you're doing – you're selling books in chunks, and Laura will start us off.

DAWSON: Yeah, we had sort of (inaudible) a little bit with the anthology issue. Components of anthologies are just one aspect of the whole chunking problem. The chunks essentially are the components of a book that are saleable. So if you have a travel book about Europe, you can break it up into France and Italy and sell just those components. You can break it up into the various cities and sell just



those components. You could break it out even further and do only churches of Rome or only fountains of Paris or what have you. Any component that's tradeable.

Excuse me?

M: I said I'd like that book.

DAWSON: I can get you carousels of Paris.

M: Yeah, (inaudible).

DAWSON: And you can take it down to the level of charts, of illustrations, of recipes, of very concrete components of a title. And if you're going to start republishing that and making new products out of that, which is something that we've been recommending through the Start with XML project, you're going to have to have your rights information pretty straight on what you have the ability to do with those components.

Essentially what we're recommending is that when you're tagging your chunks and determining what is saleable and what's not, to make sure that you're tagging the rights information along with all of that. Does that make sense?

M: We're competing with David Baldacci.

DAWSON: Yeah. And we've got some suggestions about how to tag, what to tag, what makes a valuable chunk, what doesn't.

But if you look on I think it's Page 5, Brian's got a really great chart there that we used in the Start with XML project about the value of chunkable content and what types of books can be easily chunked and what types are much more difficult and probably not worth doing. Something like a novel, you're not going to chunk very heavily at all, but a cookbook or a reference book or a travel book, obviously there are lots of different ways you can reuse that content, and those are the kinds of titles that you're going to have to be careful with when it comes to the rights.

O'LEARY: This also – this kind of gets at a triage opportunity, because if you've got a lot of books and different types of imprints, if you start to look through this list and you thing, all right, this one has a high chance of reuse, a lot of different chunks, and putting money and time into fixing both the content and flexibility and the rights makes sense. If it's a relatively simple book and doesn't have a big opportunity outside a long-form novel –



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DAWSON: You can let it go.

O'LEARY: Then at least put it to the back burner, because there's an order in which things need to be sorted through.

DAWSON: So as we're moving forward in the publishing process, right now the way a lot of publishers are working, they've contracted for one manifestation of a particular book, usually the hardcover, and then they contract differently for the paperback and all the other different rights, sub-rights. They've got their contract usually. It's on paper and is stored somewhere offsite, and if another opportunity to use that contract comes up, then some poor little intern has to go to the offsite storage facility and rifle through a bunch of boxes filled with mouse droppings to find the one contract. I've done this work.

(laughter)

M: I'll be all right.

DAWSON: That's OK. So as you're acquiring new content, you want to make sure to keep your interns happy and make your contracts such that you don't find yourself in that position.

The chunk sales are increasingly more important as content is getting more and more fragmented and distributed on a fragmented level, so particularly – and we keep harping on the XML workflow, but it's really useful because you can store the rights with the actual content, and it's all digitized and it flows nicely through the MetaComet system.

O'LEARY: Yeah. If you think about the work required to track at a title level rights and royalties, and it's fairly significant, you move to a chunk content sales or –

DAWSON: It's exponentially.

O'LEARY: – or distributed through Google sales, the current approach just doesn't work.

DAWSON: It breaks.

O'LEARY: And so a different and more granular approach to managing and tracking rights has to be put in place. That system I don't think exists today, but we're really – and when you think looking forward what are you going to do, we have to start coming up with solutions to that problem.



DAWSON: Yeah.

D. MARLIN: There's a lot of money left on the table if we don't.

M: What are you seeing, David, from large and mid-size small publishers that deal with this? Are they doing this yet? Are you seeing this (inaudible)?

D. MARLIN: No, I don't think people are thinking about this yet because it's so new. But I think now is the time to really – again, it all is just potential. It's all making the assumption that the Book Rights Registry is going to happen, which I think it will. It has to happen because it – again, it represents so much potential for the industry to monetize its content, so it's best if you can think how to put those into your royalty contracts with your authors. The ideal thing – again, I don't know how feasible this is because of the agent issue, but it's to say, let us just deal with anything from BRR, and you can keep your film rights and whatever, but let us deal with – or you own it. But if you don't clearly delineate it, then you're leaving money on the table because it's going to be hard for someone to use it.

O'LEARY: One of the pages that's titled Migrating to XML Best Practices, this actually – we circled a handful of items that are the kinds of things that we should think about when trying to manage rights and royalties. One is obviously it's an editorial decision on what to chunk. It has to occur at that level. But you want (inaudible) editors at least, because they're the folks that should have a sense of both the intimate knowledge of the content and its applications in specific markets.

Laura mentioned before integrating rights information with content. Currently not done. When we did our surveys, it's just virtually never done. It's very possible using XML, but it's not currently common practice. But if you're going to see more granular sales of content or if you just want to better track rights information, having that kind of integration is important.

Separate standalone rights systems are a useful tool, but at a granular level, they'll have to adapt to begin to read rights information for chunks.

Working with authors to tag for meaning. It's nice to be able to do it earlier. Editorial development in that regard is important.

And then, you don't want – going back to that two-by-two matrix, you can't do everything, so you want to think how likely is this to be reused in components versus just a single form, and then you kind of marry that likely potential downstream use to what you do.



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And the last piece is that there are solution providers. Obviously, MetaComet's one, but across the board in different segments, and the slide that follows that shows you some of the segments. Even if you're not hiring the vendor, they're at least a source of information and knowledge. But particularly, if you do hire the vendor or you're going through an RFP, that's an opportunity to gather information and figure out what's the current thinking about the state of the market and where it's going. Because these systems have a lifespan of years, not one or two but 10 or 20, you really want to be thinking not just blue sky but as broadly as possible about potential use of the content before you make a purchasing decision.

DAWSON: Yeah, because the ground is shifting so quickly that 10 to 20 years is a lifetime.

D. MARLIN: Oh, yeah. Are you certain there are other vendors, Brian?

(laughter)

M: Laura.

F: I haven't (inaudible) deep enough into the materials, but I wondered if you had an answer to these questions. Are these chunks going to be sold at a set rate imposed by the BRR individuals?

DAWSON: No.

F: How are they going to be priced? Is that covered at all in this paperwork?

O'LEARY: No. In our paperwork or in –

F: (inaudible) the massive documentation that's printed out that's sitting on my desk.

O'LEARY: No. There are two things that I (inaudible). One is that the settlement agreement itself is relatively silent on the mechanics of how these downstream uses that it currently only on the drawing board might work, and certainly not when it comes to pricing. It would be likely that it would be set by the publisher and they would become essentially like a – whereas CCC is just a transmittal, the Book Rights Registry would be in effect a go-between and more automated than CCC. But there's no pricing.

F: (inaudible) on this particular issue because sometimes we license permissions. Some permissions are very valuable. Some permissions (inaudible) we're willing



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to let you use this. So but wasn't there some \$65 for something in there (inaudible)?

O'LEARY: It doesn't ring a bell.

D. MARLIN: That's – oh, I'm sorry. You can go.

DAWSON: Oh, you ahead.

D. MARLIN: Well, this is the short version of the agreement. This is without any attachments. It's 147 pages, but with the attachments, it's 400-plus pages. But there is a section in here. So Google is initially – there's a lot – as part of the settlement, they're putting \$134 million. You know it, Jim, right? Is it \$134.1 million or something into this pot to pay publishers for content that's already been used. And I think that \$60 figure is from that. I think that they're going to pay \$60 per work. Something like –

M: \$65 per click that (inaudible) and were (inaudible).

F: And our interpretation of that is that it's a fee for the illegal scanning of (inaudible).

(laughter)

F: It's not a royalty. So (inaudible).

F: That isn't their future establishment of value as far as –

DAWSON: No.

O'LEARY: (inaudible) it's really – it's a pass-through for prior work as part of the agreement.

M: And the more I think about it (inaudible) a few times, and so I remember any pricing is going to be less to the publisher and Google has not (inaudible)

DAWSON: Well, that's right.

M: (inaudible) equal price.

DAWSON: Yeah. Then it really becomes an antitrust issue even more than it already may be.



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F: So basically, what would you do (inaudible) the industry that this particular chunk is or this particular –

DAWSON: We're pricing it at – it's just like you would with the list price of a book.

M: So how granular should the chunks be?

DAWSON: Whatever is saleable independently. It's got to be able to stand on its own. It's got to be able to support an audience. And it's up to each individual I would say editor working in conjunction with the marketing folks. That's how those packages are going to be designed.

O'LEARY: (inaudible) if you were doing a cookbook, the sellable, the granular breakpoint would be a recipe. Or if you were doing a travel book, fountains of Paris. But I think you probably – in books like that, you would tend to – your taxonomy would even be even more detailed because you would want to track, for example, ingredients in a specific way or a preparation method.

DAWSON: Right. That way, you could determine, OK, our chicken recipes are seriously selling. We're going to put more editorial and marketing effort behind chicken.

O'LEARY: People may buy one thing, but you tag below that so that –

DAWSON: Just for tracking.

M: Wouldn't that potentially make for a big drop in revenue for mid-size publishers because now people have to buy the whole book to get that, and they'll eventually be able to just buy this one section.

O'LEARY: Well – maybe.

(laughter)

F: (inaudible) copies going out of the book.

O'LEARY: The answer is, I don't know. That is the great unknown, and that's part of the issue we face with digital content in general.

DAWSON: Yeah, it's not just a mid-size publisher problem.



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O'LEARY: I think that if people were – if people are looking for a travel experience, a cooking experience, the things that an effective cookbook publisher does is sell an aspect of the experience that you can't get simply by downloading the recipe. Even the notion of selection, of perusing. On the other hand, if you want to know how to braise chicken, it could be a really effective substitute. So it's somewhere in the middle.

D. MARLIN: Yeah. Like, you download a Taunton recipe and, wow, this is a great recipe. Maybe you'll associate – maybe you can brand it so that people will want to go back to Taunton for more. Who knows?

DAWSON: The other thing about –

O'LEARY: (inaudible) always to go back to Taunton.

D. MARLIN: Yeah, exactly.

DAWSON: The other thing about chunking, though, is it allows for more licensing opportunities that with a book, as a discrete object, you can't necessarily do. So at Taunton, you guys are licensing to Epicurious? Yeah.

M: You have (inaudible). What do you (inaudible) something (inaudible) at the beginning.

(laughter)

M: All I said was (inaudible).

(laughter)

M: You really shouldn't put him on the spot like that. He's not good.

M: (inaudible) We're a (inaudible) publisher and we're how-to and we have lots of illustrations and we have (inaudible) in each book and so this (inaudible) opportunity for us. And we see a lot of ways to chunk as deeply as we can go and then recombine those things for a custom title on a particular topic or a licensing agreement with somebody else. And so it's a huge job for us.

M: It's a huge opportunity.

O'LEARY: I think that the substance of your question is an important point, too. This business is changing, and it has changed and it will continue to, and you can sort of



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ride that wave and figure out how do you continue to develop or not. And there's a valid argument to staying with the current publishing model and working it to the best of your ability. We're not pitching that angle. It's not because it's a bad angle, but just because people want to prepare for what the world looks like with Google. That's why you're here this morning. They are both – you can stay a print publisher or a predominantly print publisher, or you could start to adopt this. But if you adopt this approach, you may start to cannibalize some of your existing business, and that's just – that's going to be –

DAWSON: It's part of the process.

O'LEARY: It's a question of do you do it or do you run the risk that somebody else does it?

One thing I didn't point out in the last session that I think is useful, there's a link on the last page to – it's the first link on that list – to Bill (inaudible) paper on the Google settlement. Bill and I don't do any work together, but I just found it to be a really useful resource and a good overview. It's deeper than we can get into in this session, and I'd encourage you to download it and take a look if you have an opportunity.

D. MARLIN: And if you're really interested, the actual settlement, while long – the first part of it anyway is really quite readable and understandable before it gets into all the legalese. The library section's a little complex, but the publisher's section, the first 60, 70 pages of it is good info.

M: Are there any other questions?

M: You're all thinking David Baldacci?

(laughter)

M: (inaudible).

M: Nicholas Sparks, too.

M: What are you seeing in terms of the complexity? What do you see happening with the complexity of royalty versus what's going on now given this? And are you seeing any indication of increase complexity with e-books as just a precursor to what this could mean?

D. MARLIN: I think in terms of royalties, the actual administration of royalties –



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M: Rights and sub-rights.

D. MARLIN: – probably won't change much. It's the rights aspect of it and how you calculate those royalties and getting all those agreements now where there's – it's mind-boggling the complexity, and who knows even if it's solvable. It's the kind of thing I think is worth trying to attack, but there's so many aspects of it that need to be attacked. There has to be standardization so that what you agree to will fit in the tags that Laura was talking about and somebody else will understand what those tags mean, so that there has to be standardization. And not – theoretically, there's an infinite number of ways to use content, so how do you standardize infinity? And then you have the anthology issue, and so it really starts to get mind-numbing.

O'LEARY: I do think, though – because we could describe problems at great length. One of things that – there is not a solution in place today. There are not standards for how to track rights. But that doesn't mean that you shouldn't, for example, take on the (inaudible) of tagging and structuring content with the understanding that over time, some of the things that you did may not be as useful as you'd like them to have been or that they might change.

But, for example, at a minimum, if you were creating in that recipe example, recipes, you would want to create the content in a way that was retrievable. And you could come up with basic things like this is a heading, this is an ingredient, and put boundaries on it. And then that would give you at least the starting point to be able to then track rights information and link it to the actual content.

D. MARLIN: And when it does become standardized, it'll probably be an easy conversion process.

DAWSON: Yeah, exactly.

D. MARLIN: But if you haven't tagged it that way to start with –

DAWSON: Then you have to do all the hard work at that point.

D. MARLIN: Right.

O'LEARY: And the other thing is that the solution doesn't have to be done on the same timeframe that claiming your works is. What we're talking about here is essentially the downstream implication of a lot of content coming online. And the first impact is that long tail sales potentially depress mid-list books. The second



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part of it is that lots of other distribution and sales opportunities may start to complicate or muddy the waters and create opportunities that you'd like to be able to take advantage of. But that second piece is probably ten years away, but it's going to take ten years to kind of get to our current back list and future front list and make it marketable and saleable in those ways.

One of the things, I did a panel at Tools of Change on print-on-demand, and one of the things that we kicked around was what's the tipping point opportunity for print-on-demand? And the first thing that came to mind was this settlement, because if all of a sudden, millions of books are a button away from ordered on print-on-demand, people will get this notion – the Espresso Book Machine's on display here. I don't want to put one in my basement. But all of a sudden, this notion of any book I want, I can get tomorrow or a couple days from now. That's a whole different mindset from the notion that we have right now of there's only a certain number of books that we can get. We have to – we can order them. We at least have the ordering through Amazon. But the notion of just I'm going to get that one and it's going to be made and delivered to me could really open up an entirely different content ordering and content creation market.

F: (inaudible) knows what Google's going to do with this stuff.

DAWSON: Run ads against it.

F: Well, we know that.

O'LEARY: Yeah, they like ads.

F: We know that, but they've got all this scanned content. Some of it is not well-scanned.

DAWSON: Right, exactly, yeah. Some of it is pretty ugly.

D. MARLIN: We do know that they're going to offer subscriptions.

DAWSON: Yes, like a (inaudible).

D. MARLIN: Commercial subscriptions. But what they do in the future, who knows? But I think personally, and this is pure – this is a huge shot in the dark because it's so early, but I think the Book Rights Registry in some ways could represent more of an opportunity than just Google alone. Companies come and go and Google will get too big for its britches one day. But what other people can do with that content



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I think with this Book Rights Registry is exciting. But when is that going to happen?

M: What's your concern about the Google settlement that fosters that question? (inaudible) just people using it for free, downloading for free, or is there something

F: Well, it's that Google is going to have all this, and I think it's libraries are concerned about what is Google going to charge them to use this.

DAWSON: Yes, exactly.

O'LEARY: That's probably, along with fair use, the fundamental objection to the nature of the settlement and it's – this morning, we're kind of focused on implications for certain types of publishers, but it's a big question mark because it will effectively give them a monopoly over this content because no one else is going to be in the scanning business after this.

A. MARLIN: In the five minutes left, I should open it up to any questions from anybody about this. Please feel free.

O'LEARY: You don't have to ask us about these topics. We'll just give you our opinion on (inaudible) or anything else.

DAWSON: Or Brian's outfit. Because it's really quite nice.

O'LEARY: Yeah. Thanks.

O'LEARY: We didn't even talk about piracy.

M: Actually (inaudible). Can you give in a two-minute rundown (inaudible)?

O'LEARY: If people want to stay, they can ask me.

A. MARLIN: (inaudible) published a fascinating study of piracy and the effect on sales. You might want (inaudible) that. So we'll be around here afterwards if you care to keep talking to us, ask us questions.

We do have a feedback form inside the folder. We ask if you could please fill this out, hand it to Jen in the crimson shirt over there. And if there are any questions we did not answer, please feel free to fill that in and put it somewhere and we'll get that (inaudible) answer the question (inaudible) that question back to you.



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O'LEARY: And you also have contact information for Laura and for me, too.

DAWSON: Yes.

O'LEARY: (inaudible) –

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