A Publishers' Lunch with Michael Cader
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CADER: It's nice to be here with all of you. If any of you have worked with Chris much, you know that he's really still a journalist at heart, so everything always turns into a cascade of very interesting, penetrating questions, so one provocative topic leads to five questions which lead to 20 questions which lead to 100 questions.

And it sort of continued up until this morning. We said, oh, we just talked about this in there, if you can work that in. So that's kind of how we came up with the at best loosely organized theme, which is really just to use a bunch of news developments from the last two weeks as a lens looking forward much broader and more deeply at some of the issues that you guys are reckoning with both here today but also back in your businesses in general.

What else do we need to get out of the way? It's going to be a trade-focused discussion here. I know a lot of you aren't from the trades. Trade is where I live, so it's the thing I can speak about with the greatest conviction, and Chris has showed me that even those of you who don't work in the trade side of the book business professionally are obviously enthusiastic readers and like most folks, are interested in what's happening to that side of the business.

When it comes to headlines, there've been lots of announcements. You've heard some today. You read them in the papers every day. I think the big headline for most of us that stands out from all the others is quite clear. I'll give you a hint if you can't guess. It rhymes with Oogle Ooks ettlement.

So bearing that mind that disclaimer about the podcast audience on this topic in particular, what I have to say is speculative and completely hypothetical. It's just a what-if kind of scenario, or as Sarah Palin would say –

So here's my larger thesis. The Google Book settlement is a lot like the health care debate right now. It's much easier to be opposed to some part of it than in favor of all of it. So mostly what we wind up hearing is the anger and concern of those that are against it. The exact proposals are complicated and hard for most people to understand.

But the issues themselves aren't going away. They're only going to get larger and larger, and perhaps less like the health care issue, something is going to come out of this dispute.

Making it worse, I think, is that the press in general has taken what would best be called an unsophisticated or un-nuanced approach to covering the case, again, much like health care. They want the easy story. They don't want the deep story. Opposition and controversy naturally get headlines. Negative views have to be portrayed as building, because that's all they can do. Otherwise, they've gone away. That's not a story. So we get this false dichotomy where you're offering pro and con viewpoints as if this is a political campaign and there has to be the illusion of balance between two sides.

But in going to two sides for comment in a dispute like this, what you wind up with is a lot of inflammatory rhetoric of opposition flourishing, whereas the proponents and those involved tend to strike a more moderate course because it's not in their interest to be parading their case in public. They're parading their case where they're supposed to be, which is within in the courts.

Again, what you wind up with is a lot of people misinterpreting this as some kind of political campaign instead of what it is, which is a class action resolution. Everybody wants to rush in and declare the latest pronouncement a sign of trouble, or as we've heard in the latest rounds, a death blow. As far as I can tell, there've been six death blows in the last month, and to quote Monty Python, it's not dead yet. Very much to the contrary.

There are a few reasons I think I keep getting asked to talk about the settlement. First and foremost is obviously because it's so essentially important to the paradigms of business for many folks. Another is that apparently I'm one of the few people brave enough to have read the settlement in its entirety multiple times and have now also done the same for the more than 400 or so letters, briefs, opposition memorandums that have been filed with the court, which my Pacer bill is going to be huge. I can't wait until I get the credit card bill from the court system.

The other, I think – and I hope – is that in trying to understand the settlement, some of the opposition to the settlement and share those aspects with my audience, I've tried very carefully not to take a position on it. And it seems to me that most people, whether they've actually declared a position or not, who have been writing about it, are writing from a particular vantage point or point of view, and I think at some point, that

poisons your ability to be open to what's next and be able to share and interpret that information for your audience.

Of course, there's good reason not to be entirely pleased with the settlement, right? I don't think any of the parties who created the settlement are entirely pleased with it. Again, that's not a story we often hear. But it's a compromise. It's a compromise in a civil lawsuit and it's a compromise between one defendant and two different groups of plaintiffs, and the plaintiffs did not necessarily have interests that are aligned all the time. So it's easy to be against this thing.

The big question, of course, and the one that Chris really threw out and it's on everyone's minds now, is what happens from here.

Obviously, things got a lot more complicated with the filing from the Department of Justice recently. Although, seen in a different lens, it actually got a lot simpler because what happened is, Justice clarified the issues for the judge. They clarified the issues for the parties. They had used their brief as impetus to get the parties to the settlement table again, weeks before Justice made their filing. And so, you can say that it made it more complicated, but you can also say that it basically charted the course for where this is going to go.

Now, figuring that out means taking, again, a subtle reading of the brief from Justice rather than a simple reading of their brief. The brief is extensive. I don't know if anybody here has gone through it, but it really does two things.

On the one hand, it sets out the very particular problems that Justice has with the settlement and that Justice is empowered to do something about. That is a rather limited set of issues. On the other hand, it very conveniently summarizes basically all of the objections before the court and it does so in summary fashion, even though Justice really doesn't have call or jurisdiction to do much about these other issues. But law is their business, so they prepare a brief in which they're looking at things.

I think a lot of people haven't interpreted the fact that Justice has gone and summarized all these issues, and saying, well, Justice has taken a position on all of this, which again, to me is an un-nuanced view of that.

The other thing to keep in mind here is the peculiarities of class action lawsuit. As I said, people want to see this as a political campaign. It's not, right? It's not a referendum, it's not a poll, it's not a vote. We've had lots of polls and surveys being done to see what people think of it. It doesn't matter what people think of it, because no one's ever going to get a chance to vote on it. It goes before the court.

In class action suits in particular – this is a very strange area of the law, right? – the judge's primary charge isn't so much to evaluate every aspect of the settlement and decide if he or she likes each part of it. The judge's primary job in a class action lawsuit is to look out for the people and companies who comprise the class members. A few plaintiffs are representing many. A settlement has been reached, so the judge's primary job is to decide if that settlement is in the interest of all those members of the class, since only a few got to be at the negotiating table.

The charge specifically is to see if the settlement is, quote, fair, reasonable and adequate to those class members. Now again, that doesn't mean that all the class members have to like it. The fact that a bunch of class members have objected doesn't mean that the agreement might not be seen as fair, reasonable or adequate to those class members.

In fact, it provides for ways for them to opt out and not participate. So it's very easy to say, well, it's great that you don't like it, but had you been there negotiating, what you would have negotiated for was don't. So I see that option in here. You're interests have been provided for.

Drilling down even more finely, the judge is supposed to look at a set of nine points that are known as the Grinnell factors. Anybody here ever heard of the Grinnell factors? It's a classic part of second circuit class action law. I'm going to read out the Grinnell factors for you, which I only found out about after talking to a bunch of different class action lawyers. Here they are, and this is the basis on which, when the judge hands down an opinion, it will include an evaluation of these nine factors.

One. The complexity, expense and likely duration of the litigation.

Two. The reaction of the class to the settlement.

Three. The stage of the proceedings and the amount of discovery completed.

Four. The risks of establishing liability.

Five. The risks of establishing damages.

Six. The risks of maintaining the class action through the trial.

Seven. The ability of the defendants to withstand a greater judgment.

Eight. The range of reasonableness of the settlement fund in light of the best possible recovery.

And nine. The range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

You get the basic idea. This is really the lens that any judge is supposed to take in deciding whether this settlement can go through.

What else do we know about where the judge may be on this? Well, from the brief ruling handed down so far and the very few rulings that have been issued over the last few months, one thing we know is the judge isn't going to let this go on for very long. All the parties wanted to see the hearing postponed from October 7. The judge said, fine. This won't be the final hearing, but you're going to show up October 7. We're going to find out where you are and send a clear signal that this is not going to be a renegotiation that's going to go on for months and months and months.

Each ruling says this thing's been going on for four or five years now. Everybody's had their chance. Let's bring it to a head.

Now, that says to me there's no room for this renegotiation to be a ground up one, right? The settlement that we have is the basis from which everyone's working and the renegotiation will change portions of that, but most likely just change enough portions to make it acceptable rather than a re-think of the whole thing, which again, is what some people are looking for. I don't see any signs that that's going to happen.

As I said before, part of what's important in that Justice Department document is the things that they took off the table, the stuff that I think they've said basically are going to be OK with the judge whether or not Justice likes them in and of themselves.

Now remember, most judges like to rule as narrowly as they can. Most judges don't like to make very broad rulings that are subject to reinterpretation or being overruled. In particular, if this judge stays with the case, he wants to leave it in neat, tidy order because he's going up to the Appeals Court that will review this case if it works its way there.

So what's off the table I think is almost as important as what's still on the table. One thing that's off the table clearly is that I think Justice has cleared the way to say this doesn't interfere with what Congress is doing. One of the big bones of contention with orphan works issue is is this settlement somehow rewriting law. Is it a legislative action disguised as a judicial action?

It has legislative effects, perhaps, for the parties involved, but it's been established that it doesn't set legislative precedent, both by Justice and the

hearings before Congress. It's going to be very easy for the judge to say, I'm uncomfortable letting private parties construct interpretation of copyright law, but nothing in here inhibits Congress from acting. And if Congress chooses to act or is compelled to act by this, Congress can do so and a Federal judge isn't going to stand in their way.

Justice also took off the table the argument that this is an abuse of class action litigation as a remedy to a solution. It is an ambitious solution and it was a substantial question. Can you take resolution of a particular dispute and not just cure it or remedy it, but turn it into the basis of an agreement among the litigating parties to work together? That's not how class action usually works.

It's unusual it's been challenged, but Justice has served up an opinion that, although unusual, it's not unique and it is OK, in their view.

The other big question was how big a foot is Justice going to put down about antitrust. There, they left the door open. They said, we don't know yet, which is the logical thing for them to say because how can you have antitrust in a market that doesn't exist yet?

So again, it gives the judge a lot of leeway to say, this is going to be under close supervision. The judge could require a consent decree. There are various limitations the judge could put in place to make sure that this is monitored, supervised, and doesn't become an antitrust problem.

Justice, the judge could say, you know what, Justice can always act. Nothing here keeps them from bringing action when and if they feel it'll be appropriate.

So what are some of the things that are going to be on the table, since we've talked a little about what's off the table?

On the class side, first up is the composition of the Book Rights Registry, given that more than half of the books to be scanned in languages other than English. I think it's clear that the original proposed governance of the Registry was inadequate on its face. And in fact, privately, all the parties have said, well, you know what? The Book Rights Registry is allowed to reconstitute itself as soon as it's established and the board's going to get bigger than eight because there are all kinds of people who have to be represented and the board's going to have advisory boards, even though they might not have power. When they went before the European Union at the beginning of September, they said, oh, OK. We're going to give two out of these eight seats to an author and a publisher from countries outside the U.S.

I think it's a pretty safe bet that we're going to see that formalized in whatever their renegotiation is, and we may see it broadened more than the parties have indicated so far, because clearly, there are a lot of interests at work here. They're trying to balance effective governance versus proper representation. But clearly, at the outset, they were not adequately representing all the people who stand to gain revenue and have interest in how this huge body of material is managed.

Also before the European Union, Google again clarified that when they were talking about whether works were commercially available or commercially unavailable, which is the determining factor in whether it's an opt-in book or an opt-out book, they said, oh, for those books in foreign languages, if it's commercially available in the home territory, then we consider it as active.

That is, in fact, not what they had said previously, even though they say it is what they said previously. Expect clarifications like that to be put into words rather than just left in statements before government bodies.

As we talked about before – we talked about the foreign objectors. They're taken care of. If they want to get out, they can get out.

The notice provided to class members has been extremely controversial. It does seem to have been inadequate by most standard measures. Again, we've talked about how the judge is really looking out for the class. There are very specific requirements about how hard the parties are supposed to work to find, identify and notify each and every potential member of the class about what's going to happen.

I think also the database provided by Google could clearly be considered inadequate. It's very hard to get people to register for rights and decide whether to opt in or opt out if they can't access the body of works in question. The electronic database would not even provide you a confirmation if you opted out. You had to do so in writing and ask for confirmation in reply, so I think there was a lot of clumsiness to the system there.

Interestingly, there probably would have been a second opportunity to opt out, regardless. Because again, if you look at the history of class action litigation, the judge almost always gives a second chance. No matter what the deadline was, the judge wants to make very sure, OK, everybody knows we're serious now. This is going to go through. Here's one last chance.

So we're going to get at least one last chance, and in fact, probably two last chances because any changes to the settlement will probably require some form of notification. That notification, with luck, will be better than the first round. With luck, the database will be better. And then, again, if this gets

approved, expect still one more round where everybody gets yet another chance to say, no don't include me.

It's an interesting timing question, though, because if Google's not ready to make this database better, that may be the biggest slowdown in seeing this whole thing go through. The judge could very easily say, well, this is fine, but until the data's good, we can't be determining the rights and the status of all these parties. Nobody talks about it much, but it seems to me that that's one of the significant sticking points, at least when we get down to timing.

We talked about pricing and competition. That's really Justice's business.

There's the third-party selling issue. Here again, as people probably know, Google went before Congress and changed their position. They said, oh, yeah, we're going to let other people sell this stuff, too. Not what the settlement says. So that's a substantial piece that's going to get expanded upon.

They also said, we might let other people sell subscriptions to libraries and institutions. That's a big might, and that's a big might that's going to have to get clarified pretty quickly.

And those things are going to have to have revenue splits associated with them and business relationships associated with them. It's probably all going to come out of Google's share, so maybe it won't have to be iterated that much, although again, if they're letting third parties in, everybody needs to know how this works and the what-do-you-pay-the-retailer is a huge question, which all of us are facing and dealing with in lots of different circumstances. So again, that's not an easy one to solve.

Google has been talking to some of you in this room about how they do that for the in-print version of the same product, right? Google Edition. They'd love to empower retailers all over to carry the Google version of these electronic works, but there's only 100 percent to go around. It's not the producers. And it's going to come out of Google's share and they're still trying to figure out can they get anything more from the publishers? How much are they willing to give up? How is this all going to work?

Google's most favored nation protection against future competition is likely to get thrown out.

The pricing aspects will probably stay but could well be subject to consent decree or some other form of supervision that will more or less keep the parties honest to what they're promising in terms of the pricing. And as we

said, once this is established, Justice can come back in. They can decide that this is a market that needs further alteration.

Another place that I think is pretty sure to change is this disposition of proceeds from the unclaimed works. Again, it seems patently unsustainable that it's in the interest of – that opt-in rights holders get to profit from monies earned by stuff that isn't theirs, for rights holders who can't be located. It clearly is being asserted as running afoul of all kinds of state laws and it potentially runs afoul of all kinds of other principles as well.

I don't think it's an essential facet of the agreement, and in fact, it's already been suggested that those funds should be disgorged for one of the Registry's primary purposes, which is to locate those rights holders so that whatever money remains can be given to them. And that purpose, obviously, serves the ultimate good that the settlement is trying to achieve anyway.

Now I have to try to read my own handwriting.

I think that's the main range of what we're going to see happen. There are more dramatic suggestions in the Justice document and from talking and both listening to some of the parties, I would be highly dubious that we're going to see dramatic things like the opt ins and the opt outs reversing places, that the basic nature of how these mechanisms are going to work and what's involved is going to change.

Of course, the irony is that some of the things that Google's being forced to do in this renegotiation dovetail completely with where the company's strategy has gone since they achieved this settlement. They've now proposed formally where they want to go with the Google Edition, which is made possible, really, by the settlement existing and by there being some kind of rapprochement between Google and publishers in general.

And in fact, that may be where their ultimate interest lies anyway. We've also seen Google start to iterate this cloud strategy. They're now less concerned about what's on their servers or what they scan or what they've gotten from you under a partner contract. They want to be the trusted cloud partner, which is their vision of how they outflank everyone else in this space. You can't trust Amazon with your e-book files anymore because apparently they disappear overnight. Will you trust a new third party, a startup company, when you buy your book and know that it's going to be there?

There are obviously huge obstacles to Google getting to the strategy that it would like to embrace, but they're making it ever clearer that they've got a much larger strategy on the roadmap here.

The other thing that a lot of people who criticize Google miss I think is that more or less, they've already won, right? They have gotten a lot of what they always intended to get. They will likely get more than they ever dreamed possible if the settlement goes through or if the settlement doesn't go through but they get to establish Google Edition.

Worst case, they get to keep doing what they were doing while litigation ensues for anywhere between five to 10 years. And of course the corollary is that in working so hard to achieve a settlement, the plaintiffs have conceivably wrecked their case going forward. This case will be much harder to prove and establish if it has to get re-litigated because there are substantial class status questions. And the class was only approved for settlement purposes. It wasn't approved for litigation purposes.

The classes have gone from saying everything has to be permission-based to buying into a system in which everything's opt-in unless you chose to opt out. There are all kinds of other problems. These are surmountable. Money and time and clever lawyers can overcome almost any obstacle, but it's easy to see how Google has achieved the bulk of what they ever hoped to achieved almost regardless of the outcome here.

I'm going to move on to other things. Do people want to talk about the settlement more or ask questions, or should I just scurry along?

Audience Member: Exactly how many orphan works exist?

CADER: 1,800,072, give or take a million to 1.5 million. And do you mean English language orphans or all language orphans? (laughter) With luck, we won't have to argue about how many orphans there are, right?

OK. So we've gotten Google out of the way. Thank goodness. Now we can move on to only slightly controversial issues, which involves everything else that's happened in the last couple of weeks.

There's been a lot of news the last couple of weeks, and that's sort of part of what stimulated trying to figure out what to talk about today. For me, that's an average day at the office, right? I need news every day. I need new stuff happening so I have something to talk about.

You guys need it to be quieter, probably, so you can focus on your strategy. And I think that's one of the problems that a lot of people in this transitional phase are having, is how to filter all those daily developments. Which ones should you pay attention to? Which ones are paradigm shifts? Which ones are iterative? Which ones are a waste of time and money? Where's the

larger strategy in all of this? What's the noise? What's the stuff that matters? What's going to be around tomorrow?

Here's one of the overarching themes that I tend to see. For most businesses, the temptation is to meet change, even enormous change, with a series of incremental experiments and adjustments. You feel like you're accommodating what's happening, but you're standing on solid ground. It's logical, it's conservative, you preserve your legacy business and you lay some seedlings and you see what comes up in the forest.

That's great for iterative transitions. It's terrible for paradigmatic change. The small, incremental approach in the face of paradigm change almost always fails. It's just a question of how long you're stretching out the failure. It's the business equivalent of the frog that boils slowly and then one day, no more frog.

Of course, I'm influenced by personal experience. Starting 10 years ago, as Chris explained and some of you know, I had this perfectly good legacy business called being a book packager. And I inadvertently at first, to be quite honest, started winding it down in favor of what at the time seemed to be this risky startup Internet venture, providing information to publishing professionals electronically.

Some people look at that transition and see it as being very jarring. The other way to look at it though, if you look under the hood a little bit, is that Publishers Lunch and publishersmarketplace.com really deploy the same basic skill sets that I was exercising as a book packager in collecting and curating information and focusing it on a particular theme for a particular audience.

The medium through which it was expressed changed. The audience coalesced from being scattershot on 20 different properties a year down to the same basic audience again and again and again.

So you can look at it and say it was a total transformation or you can look at it and say I figured out how to take what I was always doing and rethink it and reformat it into the same business but in a different paradigm. And I think that's more or less the macro trick that everybody in this business has to try to figure out. What of your skill sets, your intellectual property, your human resources, your capital resources – what do you have that's of essence? What survives, what persists and what's the either legacy or completely brand new form that makes that sustaining long term?

So this is one potential news spot to try to make this a little bit specific. Earlier this week, as you probably read, Disney Publishing announced this initiative called disneydigitalbooks.com. They're basically taking – right

now it's about 500 titles. They intend to expand it to be the better part of their list. It's a browser-based access, all you can eat available for a single subscription price. So $8.95 a month. You can subscribe month to month or they give you a break, $80 a year.

I'm a huge fan of subscription models in general and think they've been relatively untested by most folks on the trade book publishing side of things, and in fact, some of the seedlings of my own business came a decade ago when I first heard my friend marketer Seth Godin, who a lot of you probably know, talking about what he called the intravenous permission of magazine publishers.

It is basically an OK from a customer to engage in this continuous, wide open – thank goodness, paid – relationship with them until they say stop. And once you get them to say yes, it usually takes a lot to get them to say stop, and it's very easy along the way to keep trying to retain them. And so it's a fact, no accident a lot of Web businesses have gone that subscription model.

It's certainly been a key to the success of my business. It's not present very much in trade but we can see it in Science Direct. We've got Andrew here from O'Reilly, which with Pearson has been fabulously successful with Safari Online. I think Safari is your third largest customer overall? Is that still the case?

ANDREW: Second.

CADER: Second now? That's a pretty strong statement.

So what I did is look for other signs of life on the trade side of subscriptions just to give you some other models and ideas to think about.

On the book selling side, one is from powells.com They've got this cool program they started about a year and a half ago. It's called Indiespensable. It's sort of like a book club, so they take a selected book, but they package it in some very special edition. So it has a signed bookplate, it has drawings from the author, it comes from multimedia. They work very hard so that each package is in fact precious or special or unique.

They started with a modest goal. I think the first one, they had about 200 subscriptions available. They now can move 1,000 units or more of each of these packages. For an enterprise their size, that's a huge shift, and it also reinforces their core mission to their core customer. We're going to be selective. We're going to do interesting things. We understand you as a reader. We're going to bring you special values.

But they charge more than retail price for these packages and they sell each one out, so all the parties participating are happy.

The small presses have been driven to subscriptions I think a lot faster than the big publishers because they need them to survive. So, McSweeney's was probably earliest and probably quirkiest, but we've now got companies like Open Library, which publishes works in translation, Featherproof Books which does these very cool high-production value books, and many other small presses are starting to see subscriptions in fact are a lifeline.

Because oftentimes, their whole audience is very small, and oftentimes, it's the same customer or likely to be the same customer more than once. So if they can get buy-in from that customer, they can support a whole season. They can support a whole list. They can plan a minimum print run that's sustainable for their activity.

Over in the U.K., Bloomsbury is testing the waters with an annual subscription plan just for libraries. We've seen paid library models in other situations. I think we're probably going to see more of that pretty soon.

Once upon a time, audible.com basically kept from going out of business when they switched to a subscription model. Selling the stuff one at a time just wasn't working, and their main job was convincing a customer, it's OK, you're going to like this. And then holding onto that customer wasn't so bad, but also reminding that customer, you like this. Buy some more. Subscription plans solved a lot of those problems for them.

Also on the retail side but in a different way, we've seen a sort of subscription membership approach that's helped keep institutions like Book Passage and Kepler's in California alive, and a lot of other bookstores are starting to look at that model, where again, they identify their core customers, figure out what they can – how much do those customers want them around, what are they doing for those customers that's special enough that makes them want to pay more than the retail price of a book, occasionally, and they're building their businesses around serving those core customers.

I think we're going to see that expanded idea of subscription – what we used to call patronage – expand a lot. I think we're going to see people who want to sponsor or become patrons of writers or particular works, or commission poems or stories or other kinds of writings from professionals. It's just the nucleus of a business idea, but I think we're going to see a lot more of that out there very quickly.

There's all different kinds of fans out there for the products that we create, for the writers who create those products, for the institutions that sell those

products. And a lot of the art is going to be segmenting out those folks and serving their very different needs at very different sets of price points.

Of course, patronage is really just the fancy word for fan club, right? We know that passionate fans drive the careers of many authors, but precious few have organized and catered to those fans in a consistent and businesslike fashion. We know it works in all kinds of other fields, but for some reason, it's been seen as off the table when it comes to books.

And yet, you want them to come to that reading, you want them to buy a ticket, you want them to want the signed edition. We harness the fan club mechanisms frequently, but again, in a typical one-at-a-time, title-by-title fashion instead of making it more organized.

I think people have probably mentioned consultant and my pal Mike Shatzkin earlier today. He's been working with the CCC a lot. Among his complimentary forecasts for the future, he too had said recently, the selling of individual items is largely going to go away. Subscription models will be common for content in general.

Having sold you on it, we should also be reminded that subscriptions aren't a magic bullet. They don't always work. And they may not work at grand scale. Also in the news this week was an announcement that a company that used to thrive on subscriptions but failed to keep pace with changes in the world has yet again hired a new executive. In this case, I'm talking about Direct Brands, which is the name of the company that owns the Bookspan book clubs as well as the music and film clubs. They've now finally gone and hired a new CEO who comes – lo and behold – from the Internet world, having worked at iVillage.

Now, for 10 years, Bookspan and its constituents have been trying to formulate an effective Internet strategy. In the announcement, interestingly, they admitted to having 6.5 million active members. Of course, it was just two years ago that they claimed to have over 20 million members, so we have some idea what's happening to the size of that business.

But that points to what I think is another commonly misunderstood aspect of the Internet. Obviously, any digital transition has a lot to do with really understanding what works well on the Internet.

So ever since Amazon and eBay and Google and a small cluster of other successful large-scale companies emerged from the Web, people got the idea that that's what the Web's good for, that it's supposed to span these gigantic enterprises that are going to transform our lives.

If you step back, what you find, I think, is that it's spawned a handful of those, but that the rule is in fact the opposite. What the Web does is it hugely advantages small companies over big ones. Everybody looks the same on the Internet. It's like the famous cartoon of the dog, but in corporate form. You go to a well-constructed home page and you have no idea how big the company is, how well capitalized it is, how many employees it has, what its station is in its industry. You evaluate it for what it is. All the traditional barriers to competition fall away and those barriers are the ones that usually favored entrenched, large companies. So you can no longer rely on those structural and financial boundaries that kept your legacy businesses walled in.

And of course, as we all know, the Web is also frictionless, too, so the movement from one company or one Web page to another is essentially instantaneous. If you're not being held where you are, if you're not being served where you are, you're gone like that and you're probably never coming back.

So that's another problem to put on your plate. Every big company is basically perpetually vulnerable to tiny companies they've never heard of that have great ideas or great content or great technology or some other proposition that's of value and interest to their visitors and their consumers.

Let's jump back to Disney. What have they accomplished here? They're establishing some high-value continuing relationships with their core customers. They're gathering up the folks who love their brand the best and are selling them this all-you-can-eat plan, and they're establishing a relationship that could go on for months or for years from parent to kid, from kid to kid. It goes a long way.

And it will also probably drive print book sales, by the way, because there are some things that you'll see digitally and your kid is going to want to read it a hundred times and you're not always going to want to have the laptop in bed. It both creates a new strategy for them as well as bolstering their existing strategy.

But it's also a practical end-around solution to some of the really messy problems about formatting and release timing and availability that are cropping up in all those instances in which, as publishers, you don't get to control how the marketplace works. You can only put your product out there and then there are intermediary forces that are taking over.

So that's just to sort of wind up subscriptions with, again, a lens on why Disney may be on to something very powerful here.

The other thing, of course, that they're doing right is they're drawing in their core community. Community is a word that gets thrown around a lot in the Internet, and sometimes it just means a bunch of people who happen to look at your feed or your page. But sometimes it means the core customers who sustain your business.

Communities have leverage. Increasingly, we're seeing and hearing strategies that people who – I don't think you can own communities, even though that's what consultants like to talk about. That's the great thing about communities. They don't want to be owned. Communities own themselves. You can serve communities well. You can aggregate communities, you can help facilitate communities and you can help drive communities.

But we've got to go back to Andrew again, from O'Reilly, because also within the last week or so, mighty Microsoft, who ought to have direct access to hundreds of millions of customers for their Microsoft Press products, but apparently don't, announced a strategic relationship with O'Reilly Media, which will distribute their titles in North America, develop new titles with them going forward and also expand upon that distribution platform throughout the world.

Tim O'Reilly, the founder, put the point pretty well on his blog where he was talking about this announcement. He said, quote, that they chose to work with us is a testament to three advantages we have that we bring to the business. O'Reilly is more than a book publisher. We're an advocate, a connector and a community builder. O'Reilly plays the unique role in the technology ecosystem. O'Reilly has been a pioneer in the new world of e-books indeed.

Lots of times – and Andrew gets this all the time – trade publishers look at O'Reilly and say, oh, well, that's fine. They're a technical publisher. That's different.

Sometimes that's true and sometimes, as I think Tim has expressed very well in this quote, which is why I read it, it doesn't matter at all. And what you see is not just the technical publishers but the spiritual publishers and the science fiction publishers. It is, in fact, all in the specialty areas and all in the communities and for those of you from the academic and professional side, the other aspects of the non-trade businesses where lots and lots of businesses are in fact figuring the strategy out very well and understanding that that role of community moderator is a huge part of what drives their businesses.

So part of what I urge trade publishers all the time to do is to think about the communities that they have leverage in. Do you have any communities

where you have leverage? Can you build any? What can you do to obtain that kind of influence? It seems to me that when you're looking at paradigm shift versus incremental shift, that's a core question for publishers to be looking at that.

For a lot of trade publishers, I think that eventually drives to thinking more about customers and more about readers and less about intermediaries and other parts of the process. And again, we see that in what Disney's done.

It also sometimes means thinking more about cooperating instead of just competing. One interesting venture on the textbook side that some of you may know about is CourseSmart, where some of the largest textbook publishers basically got together and apparently didn't violate the law in doing so and figured out that they can sell their products together to the core population of students and have some greater measure of control of how their products make their way into the world online than only by selling them through third parties.

And in fact, it was started by a small cluster of the biggest companies and they're now – sort of like hulu.com, they're now getting buy-in from all the other players. Not everybody wanted to go first, but once established, it's clearly in the interest of other parts of the community. And they're being smart. They did the right thing. They didn't say, nyah-nyah, we thought of it first. We're bigger. No way. They all will survive and prosper together. The more they can serve all the needs of their potential customer in this one place, the better chance they have of having a workable proposition.

On the trade side, you do see it a little bit. Tor recently decided to sell not just their own science fiction and fantasy books but to sell or make available for sale books from all publishers in their area. And they're not even just making them available for sale. I shouldn't diminish what they're doing. They are even highlighting and merchandising and promoting other good books in their field, because what they're selling isn't Tor books. They're selling their expertise in the field.

And that accrues to their own products. It accrues to their blog. It accrues to their site. It accrues to everything they do. And they can benefit in lots of different ways no matter whose book they're selling. A lot of people looked at them and thought, gee, that's smart. Again, you can see how that works in lots of other community or niche-oriented subject areas that are still trade-specific.

So we're finished with that topic. Let's move on to other things in the press.

Sometimes, one of the biggest problems, you've got all this information coming at you and oftentimes, as we demonstrated in Google, the way that

it's interpreted and portrayed in the newspaper that's sitting in front of you and looks very important is oversized or disproportionate to how it might play in your own business or how your customers might be looking at it.

Certainly one of the things that's gotten outsized attention recently is the pricing and release dates in electronic form of precisely three new books. We're talking about Dan Brown's The Lost Symbol, Ted Kennedy's True Compass and now Sarah Palin's forthcoming Going Rogue. This is apparently the most significant issue in book publishing to the average consumer.

I don't think most consumers care or are aware of these issues. Again, for most of them, only a small slice even have access to these products. It is obviously a hugely important issue to be reckoned with for us and it doesn't have clear answers yet, but the way it's portrayed in the popular press I find baffling.

In the case of Dan Brown, as we know, there was a lot of in-house debate, and in fact, left to the publisher, that e-book might not have been made available simultaneously. But the author prevailed because he's Dan Brown. He gets to prevail and he wanted as many books in as many hands as possible more or less at any reasonable price point, because people have been waiting five years for this book. Perfectly valid decision.

In the case of the Kennedy book, well, the author wasn't there to insist, so what we wound up with is the decision to postpone indefinitely. So that tells you something about how the process works.

And then for Sarah Palin, they've straddled a middle strategy, which is the book is being rushed but apparently the electronic file takes longer to rush. What they're really doing is holding it until after Christmas, which is an interesting business decision.

(laughter)

CADER: Dramatic pause. There are a lot of valid business strategies here and there are no clear answers. So the thing that I say to trade publishers – which I think is universal, although other people dispute it too, but I'll try to stay on ground that can be accepted – is whatever decision you make, I think those decisions are being communicated very poorly. And so the accidental or logical effect is it kind of makes book publishers look bad in front of their consumers.

In the case of Harper, they came close. They said they were postponing that e-book until December 26 to maximize sales of the hardcover. What if they had said they were postponing it to maximize sales of books through

bookstores at the most important time of the year for keeping these bookstores alive? Which is completely valid, very useful and very important and seems a little bit less about their particular and not necessarily transparent interests in favoring one format and one set of readers over another. There are a lot of different ways of expressing this.

I understand the impulse to, quote, unquote, defend the price point just as I understand or just as I think most people understand, ultimately, the hard cover price point can't be defended. It's not up to us to defend it. The marketplace sets prices. We get to suggest prices.

And consumers, they see the irony that 40 to 45 percent off at a mass merchandiser and online is just fine. Free promotional electronic books are just fine. The publisher wants to give me more and more all the time, so there are all the bestsellers on Amazon and Kindle. But 60 percent off, out of the question. We draw the line there.

These things aren't clear to the folks on the other end. So whatever your strategy is, I'd urge you to try to make it clear to the customer, to the extent that this is going to get covered, what your strategy is and why in a way that you think they can understand.

Now we get to segue over to Mark's presentation, which was another piece of news. He showed you Vook. You probably read about it in the paper today. What's interesting to me – I'm not going to talk about the technological aspect, but I think it's really important from a pricing aspect: $6.99. We can't afford to allow $9.99 e-books of hard covers that we've already advertised our investment in, but brand new products, five- to six-figure budgets just to make the film, ground up commissioned works? $6.99.

I think that's terrific, because it shows to me that as they're experimenting with this new product, they're understanding price is significant and they're willing to price to market, not price to legacy cost of operating their business. And in fact, the price is even going to be lower at Apple because there's going to be a promotional discount there.

So we can all come up with our own ideas about whether the format itself is going to take off or not, but I think they've taken an important step in the pricing aspect and granted, to a large extent, they're conformed by Apple's market because the app is probably going to drive a lot of this. But it's not even $9.99. It's $6.99. This is the top price you could get on Apple and still get away from it.

So I think that's brave and innovative of them and we don't have to look at the P&L but we can wish them well that they can move enough units at a lower price to give them the courage to go back to do more of this.

The other funny part of course is everybody's been arguing about whether Dan Brown's e-book sales were good or not. Were you surprised? Well, we don't know the number but we are now arguing about whether the number was good or not and as big as you expected and bigger than the print book or lower than the print book. And the argument cascades and it keeps ping ponging back and forth online.

Was it 5 percent? Was it 10 percent? We don't know the exact number, particularly if we're looking at domestic sales. It is a relatively small percentage of total sale. It is probably the biggest sale yet for an e-book. It is probably a substantial portion of the sale through one vendor, Amazon.

Brian Murray at HarperCollins just said that company wide, they had jumped from about 1 percent of sales to about 3 percent of sales electronically, which, although most big trade companies aren't disclosing, seems to be about where people are. There's rapid acceleration.

But again, I think it draws our attention to the fact that this is still – it's a growing market and there are structural limitations built into that market that tell us that even as the pace of growth continues within traditional channels, it can only grow so far so fast. Internet book selling alone still comprises – you all know your number, but it's 10 or it's 12 or it's 15 or for some of the academic folks, maybe it's 20 or it's 25. But for e-books to get any bigger than that, they'd have to surpass what's taken us 10 or 15 years in the selling of physical products online.

Again, mobile presents a completely different end around on this. You can foresee how those barriers get broken down, but then we also know how nuanced the trade book market is. Kid's books don't work so well. Gift books don't work so well. Novelty books don't work so well. There's all kinds of categories of books that we don't buy for ourselves or that we buy for very particular purposes that don't translate very easily.

So again, the percentage penetration is going to have a lot to do with which part of the trade book publishing business you're in.

We've dealt with the pricing decisions. Then there was Tina Brown's announcement of – she's shocked the world by telling us she's going to publish three to five books on small budgets with someone else's money based on paying writers small advances to write short books quickly, and that's top of the arts section in the New York Times. Once again, it just

gives you some sense of how you need to adjust your lenses when you're looking at what's going on.

Then there are other areas where there's all kinds of exciting things happening, but nobody wants to cover them. Self-publishing strikes me clearly as one of those areas, both in the respect that people don't want to write about it, but also in the respect that I still see most folks in the trade not wanting to get their hands around it.

And maybe if we didn't call it self-publishing and if we called it customer publishing we'd have a completely different vantage point on it.

So here are some of our just recent riff from the headlines reference points. Earlier this week, Sony Reader opened up their e-store to accept self-published books, both electronic versions of books published by AuthorHouse, which is this gigantic self-publishing conglomerate now, as well as opening up their platform to an e-book-only startup, Smashwords.

Last week, the publishers of the originally self-published The Shack – that religious parable – celebrated the fact that they now have eight million copies – regular print copies in print in the U.S., another two million copies worldwide. This was a book that nobody else wanted to publish. They did I think almost the first million copies themselves before they wound up partnering with Hachette Book Group.

Right here in Boston, in the shadow of the Copyright Clearance Center, there's been much celebration over the arrival of an Espresso Book Machine at the Harvard Book Store in Cambridge.

So we see little signs all over, but again, they're usually celebrated as oddities. The stories that get covered are the wrong ones because they hew to a certain story line.

There's a San Francisco author named Kemble Scott whom you may have read about recently. He put his latest book on scribe.com and he got some interest, some publishers showed some interest, but he wanted to get it out right away. So he partnered up with a new model-based publisher in San Francisco. They released it just in the Bay Area in a print on demand edition. The San Francisco Chronicle wrote about it in the paper, bringing huge exposure, and wouldn't you know it, it leapt to No. 5 on the San Francisco Chronicle paperback best seller list.

So scribe.com has great publicists and they started sending this out with all kinds of agitation to anyone who would listen and to my amazement, national news organizations bit up and down the chain.

I looked it up in BookScan. You know what it took to get them on the San Francisco Chronicle best seller list, the one-week sale? Just shout out a guess, anybody. Under 50 books. And it declined the second week on sale, as most books do. It was down to about 35 in week two.

But from this, we have even – Kara Swisher at All Things D interviewing the author to find out if this is the answer to all of publishing's problems. If it is, our problems aren't –

M: (inaudible)

CADER: There you go. But it shouldn't take our eyes off of self-publishing because there's huge activity there, there's huge interest there and it's not being harnessed properly.

Up until yesterday, I would have found it ironic to look at the Espresso Book Machine, which originally, about 15 years ago, Jason Epstein started this as sort of – it was the new world iteration of what he did with Anchor Books. It was going to let all those wonderful classics that increasingly few people are interested in actually purchasing and owning be able to access at any time in print form without an operator and regardless of where they found themselves in the world.

So I was interested to read – I was just on my computer as I was looking at an extract from the Boston Globe this morning – that even Jason has now become practical and is celebrating the fact of what this machine is. It's a self-publishing machine.

All these bookstores buy it thinking that somebody's going to want to come in and buy an old book that's not widely available that they've been desperate to have and stand around and wait for it to be printed out. And they're all just shocked that customers see this and say, can I print my book on that? Will you carry my book? Will you help me print my book on that?

That's what's going to make the Espresso Book Machine work. And if the bookstores that carry it are smart, that's what's going to keep these bookstores alive. They're not going to be bookstores. They're going to be publishing experts. They're going to help you come in and write your book. And they're going to work with the restaurant down the street to help them come up with a book that they can sell together, and they're going to work with local organizations.

And yes, if there's a book from 1952 that you're dying to have and you didn't want to order it from Amazon or BNN and let Lightning print it out, they're going to do that for you too and it will print while you're working on the business plan for the memoir that you really want to write.

And they're going to charge you if you want them to carry your book in their store. And they're going to charge you more if you want them to have a book party for you or if you want to organize a reading for you. And they're going to integrate that into everything else they do in the store. And maybe they're going to sell e-readers and maybe they're going to help you self-publish electronically.

But it's the accidental pathway to success. They've started buying into it for all the wrong reasons, but it may in fact turn out to be the very point of salvation for them. That's the metaphor, right, for how publishers should be looking at this.

This is the part where I've lost my place. I got myself all worked up.

There's going to be all kinds of similar services and expertise and branding and distribution. There are lots of things people want from you, right, that don't involve buying your books, and in the current business model, all we want is for somebody to buy our books or please go away.

So imagine a world in which you get to sell off your core competencies to all these different people who want something from you instead of bundling them in for free as an expense that goes along with getting somebody to be one of your authors.

We're also seeing – we've seen it through the Internet – there's a large – an amazingly large group of people who like to write for non-economic reasons and they like to participate in projects in the hope that they will become published or ratified or institutionalized or approved by a brand. Which translates into people who are very qualified who will, in fact, work for free or virtually for free, and who will then become the viral army that makes those products work.

In fact there's a – I've forgotten the name now. There's a startup travel line out in San Francisco by an Internet entrepreneur who's crowd-sourcing travel books. But unlike Fodor's and everything else, he's crowd-sourcing thousands of travel books. So there will be a travel book for more or less every city and place in the world that more than 10 people want to go to and an economic model that allows those books to be written at no cost and then printed out and sold on demand or electronically to those who want them. And the ones that work will get expanded and they'll get more resources and they'll come out in all kinds of other forms. And the ones that don't will live happily in their modest iterations.

It's a very flexible model, but it allows him to approach a very traditional field that's been very successfully and very well published, but in a completely different way.

I saw glimmers of similar approach this morning. I covered Perseus' year-end letter, which is very odd. They have a fiscal year. It ends in June and I told David Steinberger it seems like he's actually ending on the Jewish year.

But in any case, one of the things he was celebrating for employees is that on their travel site, the Moon travel guides, they figured out they could take out little slices of big travel guides and print these varied destination-specific guides. So they did 25. They used their digital short run facility in Jackson, Tennessee. They worked pretty well because cost of creation was almost nil. They get to throw a lot of units in the pipeline, so now they're going to do 80 of those in the coming year. And they realize for Rick Steves, they could do the same thing in Europe.

So similar idea in smaller scale is going to carry over into traditional travel publishing as well, but again, we're so focused on moving that small number of units that we forget all the needs that haven't been served by the traditional ways and print runs that are now open to us if we think about different ways that that creation and selling process can work.

Of course, the core people here still are the readers. And one of my constant themes is that we've sort of become institutionally ignorant of readers and their desires.

I have a whole separate shtick about getting into the reader business. It gives lots of nice slides about how if you want to buy a book in a series and you go in a store, you can't figure out – you can't make heads or tails of where to start and whether you have to start at the beginning. There's all kinds of subtle cues built into how we do business that tells readers we're not thinking about them. And those are easy things to overcome, except they're institutionally ingrained.

The biggest one, though, to bring it back to self-publishing, which people ignore, is what other business has customers writing, sending mail every day that gets gathered up and not databased and harvested and cross-marketed and sent promotional offers – I can't find mine, but put in the trash can?

We call it the slush pile and for years, people have written in desperate for something from us other than a form letter. And what they've gotten is either a form letter or no response. There's a huge cumulative effect to that if you think about what's that like for a business over the course of 10 or 20

or 30 or 40 years. There used to be lots of good reasons why things functioned that way.

But again, we're coming to a world where anybody who writes, maybe there's some way to say yes to them and maybe there's some way to turn that yes into a business opportunity. Or maybe at the least, there's a way of saying no that still invites them in and still connects them to other parts of our products and other parts of our process instead of just telling them go away.

Because we need those people. Anybody who knows who you are and knows your address and wants your attention is somebody you should want to know, and whether you want to know them as a customer or whether you want to know them as a client or whether you want to know them as some new hybrid form of person who you're going to do business with and sell stuff to at the same time, we gotta stop closing the door.

I've got other bits and pieces here, but I think that's plenty. Can we do questions now?

(applause)

END OF PRESENTATION