

WHY E-BOOKS SUCK (UNLESS YOUR NAME IS “AMAZON”)

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This Talk is a Set of Anecdotes

- Around e-books; not “about” ebooks
- E-book – the thing – is pretty well-understood
- E-book – the cultural/social/technological phenomenon – is not.

What is Innovation?

- Is it the invention (patents, etc)?
- When was GPS “invented”?
 - ▣ Engineering design studies: 1960s
 - ▣ First launch: 1973
 - ▣ Fully operational: 1994
- When was the last time you got lost?
 - ▣ I bet it was sometime after 1994.
- The “innovation” of GPS is only recently felt.
- E-books are in the position of GPS in 1994.

Why Should You Listen to Me?

- No particular reason, actually
 - ▣ Not a lawyer nor publisher nor librarian
- But I'm probably a good bit like you
 - ▣ Politically little-I liberal
 - ▣ First Amendment fundamentalist
 - ▣ Crazy book- and knowledge-lover

I've been doing this a long time

- Early '00s I started a blog

http://blogbook.org/tech_ip/

The net never forgets

- Mostly an excuse for me to spout off

Ranty McRant-Pants Gets Drafted

- Invited to play in the (slightly bigger) leagues
- Copyfight blog (<http://copyfight.corante.com/>)
 - My last post for tech-ip (Feb 2005) was titled
“Librarians get it”
 - My first post for Copyfight was on pornography
I claim that's a coincidence
 - ▣ At that time Copyfight a 7-person collaborative
 - Headed by Donna Wentworth
 - ▣ Last few years, just me
- This talk based off work done for Copyfight
 - ▣ But please don't blame them for anything I say

E-book Ancient History

- Descendants of hypertext
 - ▣ A.K.A. electronic fiction
 - ▣ Hypercard/interactive fiction
 - ▣ And arguably the World Wide Web
- 1970s: Dynabook (Xerox)
- 1992: Data Discman (Sony, CD book player)
- 1993: PDF (Adobe, open format)
 - ▣ competes & replaces SGML

Modern History

- 1998: (disputed) first ISBN issued for an e-book
- 1999: Open eBook (WWW working group/standard)
- 2011: First private (class-action) e-book lawsuit
- 2012: First government anti-trust action against (e)book sellers

Well *that* was fast

40 years to maturity

4 years to lawsuits

Terms of Art

- **Monopoly:** exclusive possession and control, particularly from the selling side
 - ▣ Monopoly isn't *per se* illegal; e. g. government-granted monopolies we call “patents” and “copyrights”.

- **Monopsony:** exclusive buyership; kind of the inverse of monopoly
 - ▣ Also not particularly illegal, but highly problematic (from the sellers' perspective at least)

More Terms

- **Agency Pricing:** system in which producers (publishers) set minimum prices and forbid discounting
 - ▣ Related “most favored nation” agreements
 - ▣ Also not particularly illegal
- **Collusion:** coordinated action, coordinated planning
 - ▣ Collusion can make a legal act (e.g. political advertising, agency pricing) into an illegal act.

Amazon vs. The World

- Amazon is a monopsony
 - ▣ Especially for e-books
 - That's bad news for everyone else
 - Book publishers *hate* this
 - ▣ Buyers (readers) go to Amazon to get *things*, by a wide margin
 - ▣ Earliest online affiliate program
 - Link to Amazon, get some bucks
 - What could possibly go wrong with that?

Amazon is Ubiquitous

- Not just books, not just e-books
- Competes with (nearly) every retailer
 - ▣ Thus no Kindle in Target, Wal-Mart, Sams
 - Even though they don't sell e-books there, selling Kindles would be handing customers to Amazon

Amazon Divides Authors

- “Professional” (i.e. published through big houses)
 - ▣ Tend to dislike Amazon
 - ▣ “Wild West”
- “Amateur” (or self-published)
 - ▣ Tend to like it
 - ▣ See CreateSpace, fine-grained price controls
 - And other author controls that big publishers don’t give

Updated Hourly!

- Oct 2012 Amazon started “author rankings”
 - ▣ Which really pushes this divide
 - ▣ Assumes Amazon is the whole of the book-selling world
 - ▣ Helps promote Kindle-only authors
 - ▣ Rankings have problems (e.g. what counts as a sale)
 - Bottom line: this is going to further divide authors

Cynically, I think Amazon is trying to turn authors against publishers.

Amazon Even Competes with Libraries

□ Amazon Lending Library

- Kindle owners get to “borrow” books
 - From Amazon, not the local library
- Links to Amazon “Prime”
 - It’s “free” if you pay yearly fees (\$80/yr)
- Competes with publishers too
 - People who borrow don’t buy



Amazon Takes Control

- Amazon doesn't allow you to buy other retailers' e-books on Kindle
 - ▣ Unsurprisingly, ditto for iPad, Nook, etc.
- Amazon plays hardball
 - ▣ Independent Publishers Group didn't like Amazon's contract terms
 - Amazon yanked all IPG titles from Kindle, then Web
 - IPG folds

E-books Are A Hook

- And a lock (as we will talk about in detail later)
- People buy e-books as part of larger purchases
- You can't just buy "an e-book"
 - ▣ You have to buy "the \$EBOOK-READER version" of an e-book
 - This particularly sucks for libraries
 - You can't even put your Kindle purchases onto the Kindle app on your iPad
 - unless Amazon does it for you
- E-books lock in authors
 - ▣ once you are published on a platform the incentive to stay (exclusive) is huge.

What's Wrong with E-books?

Printed Books	E-Books
Cash (anonymous)	Identity (account, sign-in, persistent, subpoena-able)
You bought it? You own it!	You don't really own those bits. Read the agreement before purchasing. Amazon and the unauthorized, disappearing e-book (Orwell's "1984" in 2009)
You borrowed it from a library? Those records are protected.	Companies can give out your e-book borrowing records at will (commercial and governmental)
No license restricting your use (upcoming: <i>Kirtsaeng</i> and used markets).	Restrictive end-user licenses apply.
Libraries determine lending policies.	E-book maker or seller determines lending policies.

E-Books Really Suck

Printed Books	E-Books
Known, non-proprietary format.	Secret format, readable only by approved software.
Scanning and copying for private use is allowed (blind readers).	DRM prevents copying, and blocks reading for sight-impaired people.
Nobody can legally destroy your book.	Companies may destroy (their) books, or go out of business and stop support.
Copyright laws (open, debated, public representatives, Copyright Office) govern behavior.	Corporate agreements (private, love it or leave) govern behavior.
Have a thriving used marketplace for people with low incomes, out-of-print, etc.	Seen a used e-book lately? (And you may never – more at the end.)

Thanks to Richard Stallman of the Free Software Foundation for the original inspiration for these comparisons.

What was *Kirtsaeng*?

- And why does it matter that we won?
- Formally *Kirtsaeng v. John Wiley & Sons, Inc.*
 - ▣ On appeal to SCOTUS from 2nd Circuit
 - Arguments Oct, 2012, decision (reversal) March 2013
- Wiley wanted the court to draw a boundary around the US
 - ▣ stuff made inside vs. stuff made outside

This Would Have Hurt, A Lot

- Hands up time:
 - ▣ Who comes from a library that takes book donations from individuals?
 - ▣ Who comes from an archive (whose contents include private materials)?

ALA *amicus* brief
estimated 20-40 million
foreign volumes
in US libraries.



Legally Speaking

- *Kirtsaeng* was a challenge to “first sale” doctrine.
 - ▣ About 105 year-old notion
 - ▣ It’s (lawfully) mine, so I can do with it what I want.
- “First sale” means the copyright holder’s ownership rights are “exhausted” with the first sale.
 - ▣ They still control copying (to some degree) and derivative works
 - ▣ But not the act of selling or giving

First-Sale Rights

- If I have a book (that I got legally) then
 - ▣ I can re-sell it
 - ▣ I can pass it on to my children
 - ▣ I can donate it to a library
 - ▣ I can lend it (as a library or as a person) to others

- Bottom line: without first-sale rights libraries as we know them would be in a tougher place.

The Used-Stuff Marketplace

- First-sale also applies to other copyrightable media
 - ▣ Games & Console cartridges
 - ▣ Music & movie CDs and DVDs
 - ▣ (some) computer software
 - ▣ Manuals, textbooks
 - ▣ etc
- But not e-books; see licensing restrictions above
 - ▣ Used e-object marketplace is {nonexistent, a mess}
 - Choose one or both

What Happened in this Case?

- Kirtsaeng (the person)
 - ▣ Bought textbooks (legally) overseas
 - Cheaper
 - ▣ Resold them on E-bay
- John Wiley & Sons (the textbook publisher)
 - ▣ Sued to stop him
 - ▣ You can see how they might be unhappy about this
 - Students buying from Kirtsaeng are not buying in school bookstores
- 2nd Circuit held: you cannot bring stuff made overseas into the US and have first-sale rights to it

Supreme Court Reversed

- 6-3 (surprising considering 4-4 last time)

The Court – in an utterly brilliant opinion by Justice Breyer, a minor classic of the “here are all the reasons why my arguments are better than yours” school of opinion-writing – rejected Wiley’s argument and refused to impose the geographical restriction Wiley sought.

David Post, at Volokh Conspiracy

- Really felt like they “got it” this time
- This may matter if ReDigi makes it to the Court
 - ▣ Talk about ReDigi at the end

Back to E-Books (circa 2009)

- Amazon sells lots of Kindles
- And lots of e-books
- At \$9.99
 - ▣ Which is below cost
 - ▣ Also well below hardcover price for almost everything

Publishers *Hate* This

- Rebates to publishers are based on retail price, not wholesale
 - ▣ Amazon takes a real loss
 - ▣ Publishers claim a loss
 - Interesting question: what *is* the cost of an e-book?
 - If you can figure this out you probably win some prize
 - Publishers won't say
 - Logically, e-books ought to cost (way the hell) less (than paper books)
 - There's not a lot of logic in the e-book business, sorry
 - Self-published e-books are an argument for costing way less

Razors, Blades, and Hooks

- ❑ Cheap e-books drive Kindle sales
- ❑ Amazon takes dominant position in e-book market
- ❑ CreateSpace also plays a role
 - ❑ Self-publishing matters (I think)
 - ❑ Self-publishing & e-books
are ham and eggs
- ❑ Amazon looks to be dominating self-publishing
 - ❑ Cutting out traditional publishers again
 - ❑ At this point, publishers have to do *something*



Amazon vs. Macmillan

- A.k.a. “Authors getting screwed” time

30 Jan 2010: Macmillan proposes new terms for e-book sales.

Amazon says “No”. Remember how Amazon ‘negotiated’ with IPG?



4 Feb 2010: Amazon pulls Macmillan titles from Kindle sales lists & new book link lists

5 Feb 2010: SFFWA (and others) remove Amazon links from Web sites

Authors blog/tweet/FB their desire actually to sell books (imagine that)

6 Feb 2010: Amazon capitulates! Agency pricing begins.



Everyone Gets On Board

- Overnight, e-book prices jump 30%
- People complain, but pay up anyway
- Big five publishers (HarperCollins, Hachette Book Group, Macmillan, Penguin and Simon & Schuster) all switch to agency pricing
 - ▣ At more or less the same time
- And Apple announces iPad, with e-books
 - ▣ Having most favored nation pricing
 - ▣ Using publishers logos in promotion



DoJ Does Not Believe in Coincidence

- Remember the term “collusion”?
 - ▣ Remember what it can do to otherwise-legal acts

Two days after iPad launch, Steve Jobs confidently predicts Amazon’s (much-hated) \$9.99 pricing is “about to end”



It’s almost like he was daring the DoJ to come after them.

DoJ Takes the Dare

4 Apr 2012: DoJ files suit

- ▣ Naming Big 5 publishers and Apple
- ▣ Accused of collusion to use agency pricing to force prices up
- ▣ Three publishers would rather switch than fight
 - ▣ HarperCollins, Hachette and Simon & Schuster settle

December 2012: Penguin & Random House merge, settle

- ▣ leaving one

8 Feb 2013: Macmillan capitulates



DoJ Settlement

- Or, The Amazon Wish-List
 - ▣ No more agency pricing
 - ▣ Retailers can discount, and publishers eat it too
 - ▣ No more MFN agreements
 - ▣ In-device purchases controlled by device maker are legal
 - Recall Kindles require Amazon purchases



How People Line Up

- Big publishers: hated it!
- Apple: hated it, but going to copy every Amazon bad practice anyway
- Indie authors: like it
 - ▣ They want to be able to set their own pricing
 - Which CreateSpace lets them do, so long as Amazon gets its pound of flesh
- Organized professional authors (Author's Guild, SFFWA): hated it!

IMO: The Real Problem Was Missed

- Amazon is a monopsony
 - ▣ E-book publishers have to sell through them (through their devices)
- Jumping into bed with Apple (iPad) isn't better
 - ▣ Kindle dominates now, but just wait
 - ▣ Frying pan, fire anyone?
 - ▣ Apple already copying Amazon restrictive practices
 - And adding its own
 - Incompatible formats
 - Exclusive licensing, including rejects

What DoJ Should Be Investigating

(but won't because they're all ex-Cartel)

- DRM (Digital Rights Management) which is mostly just encryption
 - ▣ The true heart of the problem
 - ▣ Someone else puts a lock on 'your' stuff
 - And this helps you... how?
 - ▣ You're not allowed to remove this lock
 - Legally, but it's easy to do, so lots of people do it
- (we'll come back to this in a moment)*

What's Actually Wrong

- DRM enforces e-book terms and restrictions
- DRM is the real monopoly power here
- DRM is approximately the worst thing ever for libraries
 - ▣ DRM hurts legitimate use
 - ▣ Generally has no effect on copying
 - ▣ DRM stops dumb people and impatient people

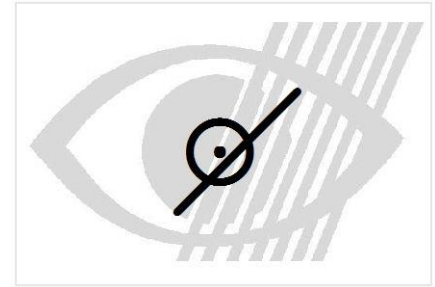
Meet a (DRM) Criminal



- Rupert Goodwins
 - Editor for ZDNet UK
 - Self-published novelist
 - On Amazon
 - Former hardware & software engineer

Rupert Goodwins Breaks DRM

- Rupert Goodwins is slowly going blind
 - ▣ Like lots of us
- Rupert Goodwins loves to read
 - ▣ Like lots of us
- Technology exists to help Rupert Goodwins (scanners, etc)
 - ▣ But not in the presence of e-book DRM
 - ▣ E-book publishers won't let you use unauthorized software, remember
- So in order to read his e-books, Rupert Goodwins has to break DRM
 - ▣ And thus, is a criminal
 - ▣ Like lots of us



Macmillan's Gambit

24 April 2012: Macmillan announces that its Tor/Forge e-book titles will go DRM-free

- ▣ This is HUGE. Free the books, free the readers (the people) and the libraries
- ▣ Without DRM
 - ▣ You can buy Macmillan titles from anywhere
 - ▣ And read them everywhere
 - ▣ Bye-bye monopoly; bye-bye monopsony

Memo to Amazon: Kiss my bits!



Why This Can Work

- Tor/Forge titles and readers are a particular set
 - ▣ Highly educated
 - ▣ Highly motivated
 - Follow authors
 - Buy complete series
 - ▣ Vocal
 - ▣ Lots of genre (generally SF & Fantasy)
 - ▣ Very net-savvy, connected, recommendation-sensitive
- Even so Macmillan's 2012 numbers were unconvincing

Keep in Mind

- Getting rid of DRM isn't the end of e-book suckage
 - ▣ But it's a damned fine start
- So, how's it working so far?

A Little Perspective

- In 2012, Kindle market share dropped 15% month over month
- iPad share is grew at about the same rate
- E-book sales up over 150% month over month
- Print book sales slumped
 - ▣ Retail outlets closed
- Indie publishing grew
- Currently in a kind of limbo
- A new marketplace waiting to be born



A Last Word on Hardware

- Hands up time (I promise this is the last one)
 - ▣ How many people own a point-and-shoot camera?
 - ▣ How many people own a smartphone?

- If you raised your hand for smartphone, why didn't you raise it for point-and-shoot?
 - ▣ Your point-and-shoot camera is named "Android" or "iPhone"

Peak E-Reader is Now

- In the very near future your e-book reader will be named “Galaxy” or “iPad”
- We are currently seeing ‘peak’ reader
- Dedicated e-reader advantages:
 - ▣ Screen resolution/quality (E-Ink)
 - ▣ Price

Therefore

Two recommendations for librarians:

1. Buy DRM-free titles as much as possible
 - Consider independent source like Humble E-Book Bundle (<http://www.humblebundle.com/>)
 - Eight (DRM-free) e-books, three charities, name your own price
2. Buy pads, not e-readers

Afterword: Tiptoeing into the Used Marketplace

- Or, “Oh, gods, here comes Amazon again”
(where’s my *Jaws* theme music?)
- February 2013 Amazon announces a patent
 - ▣ Technically, “a personal data store”
 - ▣ Practically, “store your used digital objects here”
 - ▣ Oh and let us re-sell them for you!

Authors Wail and Gnash Teeth

- John Scalzi tells people he'd rather they pirated his stuff than buy used from Amazon
 - ▣ Remember, (professional) authors hate all things Amazon
- If he (they) aren't getting money from people's reading of e-books then nobody should
 - ▣ Anyone see a problem with that?
- Later he backpedals a little, saying it's still OK with him if people just read his e-books
 - ▣ Like, say, from their local library
 - ▣ He still hasn't explained why used e-books are so much worse than used (physical) books

Redigi

- October 2011, start-up company
 - ▣ “enabling on-line sale of used music”
 - ▣ Trust me, there’s no difference between a digital media file and an e-book
- Careful use of technology to try and ensure only one copy of the file ever exists
- Capitol Records wails, gnashes teeth, sues
- April 1, 2013, Capitol gets summary judgment
 - ▣ Not the end of the story, probably

Why Not?

- Judge bought Capitol's argument that multiple copies would exist
 - ▣ If so, no first sale, no *Kirtsaeng* umbrella
- That conclusion can be challenged

- Technology is flexible (see Aereo)
 - ▣ Someone else will try this
 - ▣ Otherwise, why would Amazon announce its patent?

Libraries Care About Used Goods (I Think)

- Donated items, Resold items
 - ▣ Buy & shelve
 - ▣ Selling off excess stock
- Redigi Probably won't have the impact of *Kirtsaeng*, at least not yet
 - ▣ Remember how immature e-books still are
- Keep your eyes on the ball
 - ▣ The story of e-books isn't the technology; it's what people do with the tech

That's All Folks

Thank you so much for your patience

Find me online

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 - ▣ Ask to be in the blog circle there

