



**Copyright & Technology NYC 2018 Preview
With
Bill Rosenblatt, Giant Steps Media**

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KENNEALLY: Can you name a business built on copyright? Most of us would probably answer from a list of so-called creative industries, including book publishers, movie studios, and record companies. But that overlooks several elephants standing in the same room.

Welcome to Copyright Clearance Center's podcast series. I'm Christopher Kenneally for *Beyond the Book*.

Those elephants who have grown enormous on copyright are the technology giants familiar to everyone as GAFA – Google, Apple, Facebook, and Amazon. At least, that's the contention of Jonathan Taplin, author of [*Move Fast and Break Things: How Google, Facebook, and Amazon Cornered Culture and Undermined Democracy*](#). As Taplin sees it, such companies built their businesses to scale by tolerating digital piracy of books, music, and films. Taplin delivers the keynote address for [Copyright and Technology, New York City 2018](#), a one-day conference that examines the influence technology has on copyright today. [Bill Rosenblatt](#) organizes the conference, which is now in its ninth year, and welcome back to *Beyond the Book*, Bill Rosenblatt.

ROSENBLATT: Thank you so much, it's always great to be back.

KENNEALLY: We're looking forward to this conference. I'll be there participating and moderating in a panel, we'll talk about that in just a few minutes. But very excited to hear Jonathan Taplin speak, his book has really made a bit of noise here, because it really flips on its ear the whole notion of many of these startup companies as really being forces for good. At least when it comes to digital media, they have undermined lots of businesses.

ROSENBLATT: Yeah, well, he's really assumed a thought leadership position. He's gotten a lot of op-ed pieces in *The New York Times*, and so forth. He came out with this book, and as you might remember, he gave a keynote speech at Digital Book World in New York a couple of years ago. But Jonathan Taplin is one of these Renaissance men who's been quite a while. In the late '60s when he was a college undergrad, he was the



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road manager for, I think, Bob Dylan and a number of other musical luminaries at the time. Since then he's been an award-winning movie producer and he has been the head of the Innovation Lab at the USC Annenberg School of Communications, and he's done a lot of pioneering research on the influence of Google on copyright infringement online that's influenced a lot of policy and things like that. So he's really been in and around this area for quite a long time. He's done a lot of thinking about it and he has a real perspective on it. So I cannot say how much I'm looking forward to his keynote talk.

KENNEALLY: In a nutshell, Bill, tell us what the argument is. Essentially it is that Google built the business because it provided nearly unlimited access to a whole host of creative materials which drew an audience in, and then Google monetized that audience.

ROSENBLATT: The way that I think was most succinctly used to put this argument was actually at our copyright and technology conference a few years ago, by Robert Levine, who wrote a book called *Free Ride*, which makes a lot of the same arguments. What he said was that the so-called copyright wars are the world's most pretentious supply chain dispute. Because essentially for all these big online businesses – Facebook, Twitter, Google, etc. – content is an input good, and if you're any kind of business, you want to lower your cost of input goods. What these big online businesses found is that they can get a lot of stuff for free if they get it directly from end users who are willing to contribute it without compensation. So they've found themselves in a position where they have an ocean of such material. In comparison, just by sheer volume, the amount of content that comes from commercial sources is tiny, just by volume. So it's hard for big companies like that to make an argument that they should pay much special attention to Hollywood movies or trade books or record label distributed music and whatnot. So the easiest thing for them to do is just to ignore it and go on their way, and that's how they've built their business.

KENNEALLY: It's really very interesting, and of course the irony is that they may have started this approach over 10 years ago when user-generated content meant uploading of copyrighted material from others. But today, of course, user-generated content is everything you and I shoot on our iPhone. So even if they were to be restricted from having access to the copyrighted materials, they're not going to be without content for their platforms. It's really interesting how that has evolved.

ROSENBLATT: Yeah, and it cuts both ways because people upload their content to these platforms in order to get exposure, and then they are sometimes – and we can argue about how often this happens – able to monetize that exposure in different ways. So their argument is we provide a platform and we provide – the phrase that Pandora, for example, likes to use is, we enable musicians to find their audiences. So that phrase is –



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you can take that in a number of different ways. Yeah, Jonathan is going to explain this in his keynote, he's going to give his perspective. He doesn't pull any punches, for sure.

KENNEALLY: Indeed, and it will get everyone charged up for the rest of the day, which covers a wide range of issues where copyright and technology intersect. As is fitting for your background in the music industry, Bill, there are a number of programs about music, but I'm particularly interested in those that relate to publishing. There is a session looking at something not unrelated to piracy online and the use of copyrighted material without permission – in fact it's very much related to it – it's called Fugitive Justice: Can Courts Help Scientific Publishers With Their Sci-Hub Problem? What you've identified is that while many publishers in the scientific and academic world have won in court against Sci-Hub, which is often called the Pirate Bay of science, those wins really haven't changed anything because the defendant is based in the former Soviet Union, it's hiding out by various means, physical and technical. Really the question becomes whether there are any legal remedies to this very drastic attack on STM publishing.

ROSENBLATT: That's right. Two major STM, which is scientific, technical, medical, publishers have brought cases against Sci-Hub. Sci-Hub has not shown up in court to defend itself as an entity, and there are monetary damages that courts have awarded, there are also injunctions that courts have granted. An injunction, of course, is an order from a court to stop doing something, or to do something different from what you're doing. So the big question is really what can courts do to get Sci-Hub's influence to curtail around the world, in its ability to distribute all this content without permission.

The latest wrinkle is there was a case brought by the American Chemical Society. As usual, Sci-Hub didn't show up to defend itself, and so the plaintiff asked for an injunction, and the court said, OK, there's no opposition so therefore you get your injunction. The injunction seemed to implicate search engines that show search results that include Sci-Hub links, and ISPs that people subscribe to just to get their basic Internet service that they use to browse material on Sci-Hub. There's a real question as to can a court's injunction reach entities like that, that arguably have no formal relationship with Sci-Hub, it's just an ISP, like it's Comcast or it's Spectrum or Verizon, or it's a search engine, it's Google or it's Bing. How do you extend an injunction to what the lawyers call nonparties? So I think we're going to have some argument about that.

This panel has got, first of all, the lead counsel for Elsevier, Joe DeMarco from DeVore & DeMarco, who helped produce the result against Sci-Hub from the Elsevier lawsuit. Then we have Andrew Bridges, who's a lawyer who tends to represent big Silicon Valley entities in these copyright suits, and he's someone who's probably on the short list for, let's say if Google got served with an injunction, who would they call to defend them, he'd be one of those lawyers that they'd know about and might consider hiring, if it came



to that. Then we also have a woman named Nancy Kopans, who is the general counsel of ITHAKA, which is a nonprofit that's best known for operating something called JSTOR, which is an archive of older journal article material. They believe in preservation and access to this material, but not that it should all be given away for free. They stop short of that, and they believe in responsible preservation. So it's a really interesting middle ground between these two extremes. We're going to see this all being discussed on the panel.

KENNEALLY: What I have seen on the number of years that I have attended Copyright and Technology is the discussions are very lively ones, and you really put your finger on some issues that there's a number of angles to consider. These are not obvious or have a clear result. There's going to be back and forth that I think really engages the audience. I can see how that could occur in one that is looking at the rise of eBook watermarking. Bill, you have a background in DRM, in digital rights management, but what we are seeing in eBook publishing is the decline, in fact the disappearance, of DRM, and the rise of this eBook watermarking, which is identifying a particular user through data that is not clearly visible to the user. So it's a way of tagging a file, but doesn't impede the use of the file. That's good for the consumer because it allows them to use the file in a variety of formats, but it also has its own implications for the future of digital rights. Tell us about that.

ROSENBLATT: First of all, DRM is not really going away in the United States. It's, let's say, tapering off in certain parts of the publishing market. But if you go to Europe, for example, you see a lot more use of watermarking, especially in certain countries. Germany is one example, Netherlands, Italy – there are a few other examples. It's become much more of a big deal over there than it is here. DRM is a controversial term. A lot of people in publishing know what DRM is and they have opinions about it. It's a thing that's talked about in the popular press. So DRM's kind of a thing. Watermarking is not a thing. It's something that not that many people have heard of unless you're a really, really inside baseball kind of person.

But as you said, Chris, that's right, watermarking is really embedding data about who bought this eBook or journal article or whatever the case may be into the content itself. In fact, sometimes the watermark is visible, it's not invisible. For example, O'Reilly, which is a highly regarded technical publisher – and in full disclosure, I've written a couple of books for them, so I regard them highly – they have used this technology for many, many years, and it's actually very easy to use. Another very well-known publisher that uses watermarking, although in more of an obfuscated way, is Pottermore, which is the organization which publishes Harry Potter eBooks.



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So there's a bottom-up, almost grassroots rising school of thought that says that watermarking can be an alternative to so-called hard DRM. Some people refer to watermarking as soft DRM or social DRM. I don't prefer that myself, because DRM, to me means you're encrypting the content and you're restricting certain uses. As you said, Chris, watermarking, there is no restriction on use. It's used forensically to catch potential misuses. So if you find a watermarked copy of an eBook online on a public file sharing site, then you can look at the watermark and see where it came from and take some action. But watermarking is really a wave of the future if you look at particularly what's going on in Europe. I've been looking for ways to highlight, here in the US, its increase in popularity, so I thought that having a panel on it at the conference would be a good way of doing that. One of the panelists is going to be Huub van de Pol from BooXstream, which is a leading eBook watermarking provider. They serve many publishers in the US and Europe.

KENNEALLY: It'll be an interesting discussion. Watermarking, as you say, is fairly obscure, but if your prediction holds true it'll become more prominent in publishing in the months and years to come.

I will be, as I mentioned, moderating a panel with the wonderful title, "Driven to Exhaustion: The Future of Digital First Sale," and that will feature Richard Mandel, Jonathan Band, and James Grimmelmann, looking at a case in particular called Capitol Records v. ReDigi, but at large, the whole notion of first sale in the digital realm. Again, a very legal discussion, but yet one with great implications for the consumer world because today, since people have turned more and more to digital for their media, they've lost that opportunity to sell the used record or the used book, or whatever the material particularly was. There has been some argument that they should be able to do that. We're not going to resolve that on that afternoon in January, Bill, but I think we'll have a lively discussion for that, as well.

ROSENBLATT: Yeah, that's right. This is a topic that's come up again and again over the last I'd say two decades. You've got this purely digital content that you downloaded from somewhere or your streamed from somewhere. Do you have the same right to that as you would to a physical object such as a book or even a physical digital object, such as a DVD or a Blu-ray or a CD. Essentially what the law says is that you're not buying let's say an eBook from Amazon or a music download from Apple, you are licensing it, and so your use of that content is subject to whatever the vendor says you're able to do with it. There's a growing school of thought that says you should have the same ownership rights as you do for physical objects. But then the question is, what happens when you talk about digital data that's not in a form that we would recognize as content in the traditional sense? So you're dealing with software that's embedded in your automobile,



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for example. What is that? Do you own that? You own the car, do you own that software? Well, maybe no, not necessarily.

In addition to the ReDigi case that you mentioned, there are cases, again, in Europe that have said, yes, there are some ownership rights, or what they call exhaustion rights, in digital content. For example, there was one case that said that if you have some software that you downloaded, you can resell that, even though the license agreement says that you're not allowed to.

So this is an area that's going to be controversial for a while, and we have a great set of people to talk about that issue, including the lead counsel for ReDigi that's now currently on appeal before the 2nd Circuit, and Jonathan Band, who is a leading advocate for the library community, which has a real vested interest in ensuring that digital materials are loanable by libraries. Then James Grimmelmann, who is a professor of Law at Cornell's New York tech campus, he's an expert on these issues and he's going to have a lot to say about that as well.

KENNEALLY: I have to say, I admire your ability to pull in some of the top minds involved with all these subjects. Just as you mentioned there on that particular panel, we've got the lead attorney for ReDigi, you've got James Grimmelmann and Jonathan Band. Those names alone are worth coming for.

ROSENBLATT: We love to have lots of people come. We do have a great time and it's a great discussion. We try to keep it at a high level, we try to make it nuanced, and we try to all walk away smarter than we were when we first got there. So the website, www.copyrightandtechconf.com will give you the full details of the agenda, the speakers, and registration. We'd love to have you all, and of course we're very grateful to you, Chris, for extending your services as a moderator, which are much appreciated.

KENNEALLY: We look forward to joining you there and joining as many can attend who are listening to us right now. We've been speaking with Bill Rosenblatt, organizer of the Copyright and Technology, New York City 2018 conference. Bill Rosenblatt, thanks for joining us on *Beyond the Book*.

ROSENBLATT: Thank you so much.

KENNEALLY: *Beyond the Book* is produced by Copyright Clearance Center, a global leader in content management, discovery, and document delivery solutions. Through its relationships with those who use and create content, CCC, and its subsidiaries, RightsDirect and Ixxus, drive market-based solutions that accelerate knowledge, power publishing, and advance copyright.



Beyond the Book co-producer and recording engineer is Jeremy Brieske of Burst Marketing. I'm Christopher Kenneally. Join us again soon on *Beyond the Book*.

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