The Free State Foundation's
Book Celebration

"The Constitutional Foundations of Intellectual Property: A Natural Rights Perspective"

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* This transcript has been edited for purposes of correcting obvious syntax, grammar, and punctuation errors, and eliminating redundancy. None of the meaning was changed in doing so.

P R O C E E D I N G S

MR. MAY: Welcome to everyone. I'm Randy May, President of the Free State Foundation. And, as many of you know, this is really the first intellectual property-oriented event that we have held here at the National Press Club. So, there are a lot of new faces here -- mostly new faces, and that's terrific. We have probably done two dozen communications policy events in this room -- not only in this room but at the Press Club over the years, and it's nice to do this intellectual property event here.

This is actually the First Amendment Room if you did not notice when you came in. At the Free State Foundation, one of the things that we try and do is promote understanding of the First Amendment and advocate for First Amendment rights. So given my druthers, I often just opt for the First Amendment room, not just because of those windows there or this beautiful column right here in the middle of the room here, which is so nice, but just because it is always comfortable to be here in the First Amendment room.

Now, today, we are going to discuss another right secured by the Constitution, intellectual property rights.

And we are doing so in the context of discussing the new book. I think all of you know this, but the book is, "The Constitutional Foundations of Intellectual Property -- A Natural Rights Perspective," co-authored by Seth Cooper and myself. So, I wrote in all caps here, "Do a book pitch. On sale today and through the flyer." But if you haven't -- if you don't have the book, I think if you are not already enticed, hopefully by the end of the day -- end of this meeting, you will be. And we have got the books on sale out there.

Or if you prefer, we have got -- everyone has at their place a flyer from Carolina Academic Press, the publisher of this book. Carolina Academic Press, by the way, is a very old and respected academic publisher. And at the very bottom, there is a discount code that you can use to purchase the book at a 20 percent discount, the same discount that we are selling the books here. And also I want to call your attention to these blurbs on this flyer from some very prominent people, two of whom are sitting right here on our dais today.

So, before we launch into the substance, and the substance is going to unveil itself this way, I'm going to speak -- Seth and I are going to speak about the book

initially. We will just divide that time. And then we are going to have comments from Rob Atkinson and Ralph Oman. And I have asked them to speak for about six minutes or so. And then we may go back and forth a bit, but we always have time at Free State Foundation events for questions and comments from the audience. That is a tradition we have. We don't want your questions to be too hard, but -- no, they can be hard. We are going to reserve some time for that.

Another thing I will mention, I think we probably have this on our flyer someplace, but if you would like to tweet, we have the hash tag #IPFoundations. If you think you can come up with a better hash tag -- usually at one of these things, someone tells me it should have been something or another. If you come up with a better one, we will probably use it at the next event perhaps. But that is the hash tag.

Now, I am just going to introduce our speakers briefly. You have -- everyone should have this biographical sheet. It has their full bios. So, what I am going to do is dispense with reading those things. You can do that. And I'm just going to give you a sentence or two about each person, also dispensing with myself for this

purpose.

So, after I speak, we are going to hear from Seth, co-author of the book. And Seth is a senior fellow at the Free State Foundation. And I guess the other thing I would like to say about Seth is that he was awarded a prestigious fellowship, a Lincoln Fellow at the Claremont Institute. That was during the summer of 2009. And that is relevant. Number one, they are a very small number. I think Seth told me there may be 10 fellows. And it is a competitive application process to be one. But it is relevant because at the Claremont Institute, their scholarship focuses on the principles important to the American founding and with a certain emphasis on a natural rights perspective. So that was an important grounding for some of the work in this book.

Next, Rob Atkinson. Rob is president and founder of the Information Technology and Innovation Foundation. He has got a long bio. But the part I will call to your attention from Rob's bio, just quoting, it says, "He is an internationally recognized scholar and widely published author whom *The New Republic* has named one of the 'three most important thinkers about innovation.'" *Washingtonian Magazine* has called Rob a, "Tech Titan." And *Government*

Technology Magazine has judged Rob to be one of the 25 top "Doers, Dreamers and Drivers of information technology." So that is very impressive for Rob, and congratulations.

The bad news about Rob is he has a Ph.D. from the University of North Carolina. Now, you might think that is okay, but I'm a double "Dukie," you know, a double graduate of Duke University. And, you know, there is a certain way we feel about those people who went to Carolina.

MR. ATKINSON: It comes from insecurity.

MR. MAY: Hopefully, you didn't hear that remark. It was typical of those Carolina people.

No, you know I'm kidding. We are delighted to have Rob here, of course.

And then finally, last but not least, we're very privileged to have Ralph Oman here as well. Ralph practices and teaches copyright law at the George Washington University Law School as the Pravel -- how do you pronounce that, Ralph?

MR. OMAN: Pravel.

MR. MAY: Pravel Professorial Lecturer and Intellectual Property and Patent Law. Importantly, for our purposes here today, Ralph served as Register of Copyrights of the United States from 1985 to 1993. Now, it is not on

his bio, somehow we left this off, but when I looked at his bio, it was important to me, and I want to point out to you, that Ralph served as a Naval flight officer and spent two tours of duty in Vietnam. And he was also a Foreign Service Officer. So in addition to his government service, which is most relevant to us today as head of the Copyright Office, Ralph has had other very important service to his country as well.

So with that said, let's delve into the subject. First, I just want to say a quick word about why we decided to write this book. Both Seth and I support the protection of property rights generally. Indeed, when I founded the Free State Foundation back in 2006, right at the top of the Free State Foundation's homepage, I identified supporting the protection of property rights as one of our chief objectives in conjunction with our overall mission to promote free market, limited government and rule of law principles. It should go without saying then, that in today's digital age, intellectual property contributes mightily, and in growing proportions, to the health of the nation's economy.

Nevertheless, over the past number of years, it became increasingly clear to Seth and me that a large

number of people, including those who proclaimed themselves supporters of property rights or even constitutionalists, did not believe that intellectual property is property at all. And the others don't believe that anything that appears online constitutes property that should be safeguarded. And, as most of you know, there is certainly a segment of those of the generation younger than myself that feel that way about information online. You have probably all heard the mantra, "Information Wants to Be Free."

Now, whether or not intellectual property rights, and I should say when I speak of intellectual property rights, our book is focused on copyright and patents. Whether or not IP rights should be safeguarded can be discussed and debated in various ways, including a utilitarian approach. That is, do they have utility in advancing some societal goal or another, or in pragmatic terms. And these approaches certainly may have merit in addressing certain issues, especially what we may call “boundary issues,” such as the length of copyright or patent terms or the scope of the fair use doctrine.

Our book is not about dealing with these contemporary boundary issues. Rather, it is about

recovering the Constitution's understanding of intellectual property rights as ultimately grounded in the natural rights of authors and inventors. To this end, the book explores the foundational principles of property, including intellectual property, that informed the Constitution, and it explains how these concepts continue to inform the development of IP rights after the Constitutional Convention through the First Congress and right up to Reconstruction.

So, let me set forth at the outset in very clear terms the two related foundational principles at the core of our book. One, that each person has a natural right to enjoy the fruits of his or her own labors, including intellectual labors. And, two, that a primary purpose of civil government is to protect this natural right through laws that protect private property.

So, now just to elaborate a bit. I want to spend a minute or two discussing the 17th century English philosopher, John Locke, who, as most of you know, was a significant influence on the thinking of our Founders, especially with respect to their acceptance of natural rights principles that ultimately found their expression not only in the Declaration of Independence, in which they

are very clear, but also in the fabric of our Constitution.

Now, as Locke explained in a famous passage in his landmark "Second Treatise of Government," "Every man has a property in his own person. This nobody has any right to but himself. The labor of his body and the work of his hands, we may say are properly his. Whatsoever then he removes out of the state that nature hath provided and left it in, he hath mixed his labor with and joined to it something that is his own and thereby makes it his property."

Stated plainly, and without that 17th century English way of speaking, Locke understood that each person possesses a natural right to the fruits of his or her own labor and that the civil society, established by government, is obligated to protect that as a person's property.

Now, in Lockean terms, as we say in the book, the product or expression of a person's creative activity or the resulting mixture of a person's labor with his or her own resources to produce something to which he or she attaches value, for example, a book like this or an invention, is that person's own property by right of original acquisition and first possession. We attempt to

show in the book, and I think we do, that the Founders in drafting the Constitution, and specifically including the Intellectual Property Clause in the Constitution, accepted the Lockean principle that one person cannot be deprived of his or her natural right to enjoy what he or she has earned by virtue of his or her own labor. And that this natural right necessarily includes the fruit of a person's intellectual labors, such as their writings or inventions.

Chapter 3 in the book titled, "Literary Property, Copyrights, Constitutional History and its Meaning for Today," I think is interesting. One of the things that I think most of you will find interesting is it discusses this, I think, little known alliance between Noah Webster on the one hand called the Father -- what is he called, Seth? "The Father of Copyright," right?

MR. COOPER: That's right.

MR. MAY: And James Madison, "Father of our Constitution." And one of the things that I think is not known is that when he wasn't working on his dictionary and other writings, Noah Webster spent a lot of time traveling around the then country before the adoption -- even before the adoption of the Constitution, trying to petition legislatures, the state legislatures, to adopt their own

copyright laws. And I want to quote from just one. There are several examples of this in the book, but I want to quote from Noah Webster's petition to Delaware. And, again, this preceded the Constitutional Convention, but I think illustrates the emphasis on natural rights.

"Among all the modes of acquiring property or exclusive ownership, the act or operation of creating or making seems to have the first claim. If anything can justly give a man an exclusive right to the occupancy and enjoyment of a thing, it must be that he made it. The right of a farmer and mechanic to the exclusive enjoyment and right of disposal of what they made or produced is never questioned. What then can make a difference between the product of muscular strength and the product of the intellect?"

Now, it's relevant to note that again that Noah Webster went to the Virginia Convention when Madison was there to make this same argument, the same type of argument.

Thus, it is our contention that this natural rights perspective regarding the safeguarding of property was embodied in the Constitution in Article I, Section 8 of the Intellectual Property Clause, which grants Congress the

power, this is the first time I'm going to quote it, "to promote the progress of science and useful arts by securing for a limited time to authors and inventors the exclusive right to their respective writings and discoveries."

Here is what we say in the introduction of the book to place our thesis in the broader context of American constitutionalism and the framework of our system of government. "It is our contention that the natural rights perspective on intellectual property offered is consistent with classical liberal concepts concerning the rights of man and responsibilities of government as expounded by thinkers, such as John Locke and James Madison. And this perspective is consistent with the ideals expressed in the Declaration of Independence, reflected in common law precedents at the time of American independence, and embodied in pre-constitutional legislative precedents in the newly independent United States. In short, the intellectual and historical backdrop in which the Constitution of 1787 was adopted and ratified regarded copyrights and patent rights as a form of private property that are rooted in the natural rights of authors and inventors to secure the fruits of their labors.

So, finally, I just want to conclude my remarks,

before turning it over to Seth, to suggest to you that our book is really a mixture. It is not a textbook per se, although we hope it is adopted by professors for their courses. And, by the way, that is what Carolina Academic Press does -- that is part of their reason for being. But it is really a book that I think is a mixture of history -- constitutional history -- philosophy, jurisprudence, and biography, really, because we try and tell this story to some extent by examining what the historical figures did and what they said. And those figures, as I mentioned, Locke and Madison and Noah Webster but also Daniel Webster, Joseph Story, Chancellor Kent, and Abraham Lincoln, who I bet many of you don't think of as having necessarily had a lot to say about intellectual property, but he did.

So with that, I'm going to turn it over to Seth. I just want to say again -- we have books for sale. If you are interested, I hope you will buy a book. I know that Seth and I would be pleased to autograph it for you. We don't get that many opportunities to do that. So we would do that and be pleased to do it.

So with that, I'm going to turn it over to Seth. And then after Seth speaks, we will have Rob and Ralph

react.

(Applause.)

MR. COOPER: Thank you, Randy. And thank you everyone for attending. I am thrilled to be here. I am excited about this book, and I am excited to have something to say on the topic of intellectual property. Because it has the name "intellectual" on it, it just makes it seem like you are smarter than you really are. Just by default, it has that thing about it.

It has been a lot of fun. It was a labor to write, but it was also fun to write and then put it together with Randy.

Our book, "The Constitutional Foundations of Intellectual Property," is a distillation of the constitutional logic of copyrights and patents in the American constitutional order. And our book traces the development of that logical concept throughout about the first century of the nation's history.

Now, the text of the Intellectual Property Clause, that is Article I, Section 8, Clause 8 of the Constitution, is pretty simple. So grasping the intellectual background of the Constitution becomes really important to understanding that text and where it is coming from. Randy

certainly spoke to the 17th century kind of backdrop and then into the 18th and early America. And I think the finest statement about property rights in that early American context comes from James Madison. In his 1792 *National Gazette* essay "On Property," he defines property, "In its larger and juster meaning," to involve "everything to which a man may attach of value and have a right which leads to everyone else the like advantage." So in that larger concept of property rights, persons, echoing Locke, have a right of property in themselves,in their faculties, in their possessions, and their labor for their daily subsistence. Madison concluded that the most important property that persons possessed was in their own conscience. That's something intangible.

As we get into Chapter 2 of our book, we also talk about a more narrow definition of property that is closer to what most of us understand today. And we describe how intellectual property was understood to fit in that narrower definition as well. So it suits both the classic definition that is broader and the narrower one that we are more familiar with today.

What we see is that early on in the nation's history, right before the Constitution, are ideas about

intellectual property being a property right rooted in a person's natural right. Those ideas were widely understood and applied directly to copyrights and to patents, to creative works and to inventions.

In the 1780s, you really start to see, as a nation, the first sort of movement gets underway. That is when the Confederation Congress passed a resolution calling on the states to adopt laws for literary property. So that preceded what Randy just discussed earlier, where several of the states, actually all of them save one, before the Constitution, adopted their own state copyright laws. And what is particularly interesting about those state copyright laws is that many of them describe copyright or literary property as a property right rooted in a person's natural right.

For instance, the Connecticut 1783 copyright law declares: "It is perfectly agreeable to the principles of natural equity and justice that every authority should be secured in receiving the profits that may arise from the sale of his works." The Massachusetts copyright law, in the same year, describes: "The legal security of the fruits of authors' study and industry as one of the rights of all men, there being no property more peculiarly a man's own

than that which is produced by the labor of his mind."

Many of these states were lobbied personally by Noah Webster through letters and petitions. He spoke before many of them. He combined it with a book tour for his *American Speller*, his *Blue Back Speller*, which was teaching people how to read. He was an idiosyncratic kind of person, Webster. He tended to drive other people a little crazy. He proposed a phonetic spelling to the American alphabet, which he caught a lot of flack for in the end. Ben Franklin liked it, but it didn't catch on.

In any event, throughout all the states, Webster consistently made the case for copyright being rooted in an author's inherent right to reap the financial rewards for his work. And Randy spoke earlier about the copyright alliance that he had with Madison. I was going to speak to that. But I guess I don't have the copyright on that, or Randy and I share it. Or did we assign the copyright to Free State Foundation for our book? I don't remember.

But, in any event, that was great. And that was exciting learning about when we prepared this book, that those two had connected. Noah Webster first encountered James Madison when Madison was a member of the Confederation Congress. And so Madison was on the

committee that helped prepare that resolution that went out to the states. And they crossed paths again in Virginia where Madison introduced Webster to George Washington as well. And they had some close collaboration in some other matters.

By 1787, Madison wrote in his "Vices of the Political System of the United States" memo that he considered one of the vices of the existing Confederation to be "the want of uniform laws concerning literary property."

So, Madison clearly shared that concern. Once the Constitution was ratified and went into effect, Madison was in a key position to help actualize things. He was considered the floor manager of the House, for all intents and purposes. And so it was that the First Congress passed the Copyright Act of 1790 and the Patent Act of 1790, both of which were signed by President George Washington.

I skipped a little part here about the theoretical backdrop being important in the text. The Constitution itself is not an expression of abstract theory. It is the practical implementation and application of that theory. So it makes sense that the IP Clause would be very straightforward. But that is in no way to imply a

rejection of the underlying theory. The IP Clause secures those rights, which were understood from their source to be rooted in a person's labor.

That is what the First Congress acted on. And in the course of the ensuing decades, you see those foundations being built upon. You see it throughout the Antebellum Period in particular. Chancellor Kent, James Kent, "America's Blackstone," he wrote in his commentaries about, "The right of acquisition in a person's intellectual labors." Justice Joseph Story, the Supreme Court's greatest scholar, said that a person's exclusive title in their inventions and their literary works was, "in the noblest sense their own property." He regarded the Intellectual Property Clause as not only a just policy, he said it was "impossible to doubt its justice, or its policy."

Daniel Webster, "the Defender of the Constitution," a distant cousin of Noah Webster, incidentally, had occasion to support intellectual property rights as a Member of Congress and in his extensive career as an attorney. He once said that, "Intellectual property is much like the original right of acquisition described in classic natural rights terms." And he said, "Upon

acknowledged principles, rights acquired by invention stand on plainer principles of natural law than most other rights of property."

And all this leads up into our final chapter where we put the spotlight a little bit on Abraham Lincoln. He described intellectual property, in particular patents, in terms of free labor ideology that was then prevalent in the 1850s. It was certainly rooted in natural rights tradition, but it was also the expression or concept of how a person can gain greater independence and improvement and do so through their own efforts and enterprise. And that of course depends on the principle of free labor, that a person has a right to keep what they earn, that persons have a right to reap what they've sown.

Lincoln expressed that and connected that to patent rights in particular in his "Lecture on Discoveries and Inventions," which he gave a half dozen times in the late 1850s. He also made that pretty explicit connection in his "Address to the Wisconsin State Agricultural Society" in 1859, right before he was elected president.

We see through all these constitutional thinkers and statesmen a logic of intellectual property that was really identical in all of its essential elements, although

differently expressed sometimes and often eloquently expressed by these people. According to the shared logic, copyrights and patents are rooted in a person's natural rights to the fruits of their labor. That backdrop is the light in which we need to read the IP Clause, the Intellectual Property Clause in the Constitution. And it should impress upon everyone, especially Congress, that intellectual property rights need to be taken seriously.

One of the things our book does is push back on the lightweight arguments that are just thrown about, saying that intellectual property is some sort of government conferred regulatory privilege or monopoly or something like that. And we see squarely a number of instances, where some of these great thinkers that we're discussing pushed back against that. They identified this specifically, not in a regulatory context, they put it in the property context. This is something that is earned by an individual. It leaves others open to pursue their own work in those areas. We are not talking about monopoly trade franchises or something like that. We're talking about a person's right in what they have actually created and earned.

So we go over all these things in the book. It

was a pleasure to write. I hope you like it. And, as someone who really loves the Constitution and who likes the Founding Fathers and these figures of history, I think it provides a nice on-ramp to the subject if you are not familiar with intellectual property. You may not have a big background in patents or copyrights or this doctrine or that, the regulation, or cross licensing agreements and so forth. But if you have an interest in someone like Washington or Madison or Webster or Lincoln, that is a common frame of reference. And it provides a nice way to get into the subject and understand its importance and place in the American constitutional order.

So, again, I hope you like it. Thank you.

(Applause.)

MR. MAY: Thank you very much, Seth. So now we are going to turn to Rob to speak and give his reactions to the book. I guess Rob was kind enough to write a blurb too, which I appreciate. So, having done that, he can't do a 180 here and say something completely different.

Rob?

MR. ATKINSON: Alright, well, thanks, Randy. Yeah, I stand by my blurb even though you have insulted my alma mater.

(Laughter.)

MR. MAY: Basketball season is coming up shortly.

MR. ATKINSON: Exactly. First of all, thank you. And I want to congratulate both you and Seth for an excellent book, and more than that I think a timely and an important book. I should also just add I am actually, believe it or not, I am on a panel next door like right there and I have to leave a couple of minutes early, so I apologize ahead of time.

So, I think why this is important is this book, frankly, is not going to convince Public Knowledge or EFF or any of these weak copyright groups, weak IP groups. Hopefully, they might read it, but I would be skeptical that they would shut down Public Knowledge tomorrow and realize the error of their ways. But that is not really the point of the book. I think the point of the book is to really solidify the understanding of IP and copyright on the right because that is what I think has changed over the last -- in a troubling way -- over the last five or so years.

I think for a long, long time there was a general consensus in Washington around the issue of copyright and IP, and the left and the right both had their differences

but there was a little middle ground that they agreed upon. For example, they agreed that IP was needed. They agreed that IP drove innovation. And the differences were largely at the margin. The people who are left of center, as a generalized rule, they didn't really fundamentally care about property rights. Property rights to them were a means, not an end. The reason you cared about IP wasn't to protect natural rights, it was to protect innovation and to drive the creation of content. It was an instrumental value for them. And I think for the right, historically, as you have shown in your book, the property rights or natural rights are fundamental.

But be that as it may, it really led to no major differences in how we thought about copyright. People came at it from different value sets and came to generally the same conclusion. The left might be for a little bit shorter terms, the right for a little bit longer terms. But you had a consensus that it was workable.

And, unfortunately, what I think we have seen is intellectual property getting caught up in the Washington culture wars. You know, we can't even have a civil conversation anymore about abortion, guns, immigration. There are just so many issues now that are just gigantic,

emotional hot button issues. And IP now has fallen into that camp or been pushed into that camp I would say. And I think that is all to the bad. It leads us down the wrong path. It leads us down a path where we can't compromise, where we can't have rational discussions anymore.

And I think for the left, you know with their views that you don't need IP, that if you are an artist or whatever, just go out on the road and do concerts and sell t-shirts. Piracy doesn't hurt creators. It actually helps them. And IP just hurts innovation. As I said, I don't think those folks are going to get religion after reading this book.

But the more important one, though, is the split on the right that I have seen in the last five years, which is really unique and interesting to me. And I think the split comes about into two camps. I would say there is the camp that is represented by this book, that the priority is about property rights and that is the core and everything flows from property rights. And that, again as I said, was the historical rationale for conservatives and for most Republicans in the IP debates.

But over the last five or so years, you've seen a shift among some conservatives, the famous Derek Khanna

blog when he was on the Republican Policy Committee. I assume Derek is a Republican. He was working for the Republicans, so you would assume that means he is a Republican coming up with a different rationale for copyright. And in that blog, if you read it, it was very, very much about copyright is a barrier and an anchor on innovation.

And then related to that is this other brand of what I would say sort of radical -- radical sort of individualists, I guess, or the people who would put freedom ahead of property. And there is this rise I see in the Republican Party among people who put individual freedom ahead of property rights. And for them, "Why can't I go and download that book illegally? You are impinging upon my freedom, Randy. I have the freedom to do that. And I have the freedom to take a chapter out of that and just stick it into my book," which, by the way, we just saw a book the other day that took a whole report of ours and put it in theirs and didn't even have the courtesy to cite us even though it was copyrighted. And so they may be those radical Republicans who wrote that.

But my point is a more serious one. For example, if you look at Michele Boldrin's book, who I debated. He

is a professor at Washington University in St. Louis. And he wrote a book called, "*Against Intellectual Monopoly*." I debated him at the Cato Institute. And his argument was that IP limits the ability of people to do what they want to do, and that as an individual, I should have the freedom to create mash-ups. I should have the freedom to take large chunks of work and do whatever I want with it. He actually went so far in his proposals, which, you know, again 10 years ago, we would have looked at this and go -- this guy is just totally outside the bounds of sort of normal conventional thinking on this.

Here is a guy who has gotten a lot of play. He has spoken at Cato, an implied endorsement by Cato of his book. And he essentially wrote that we should have a federal law that requires all blueprints and any mechanical drawings to be published immediately on the open Internet. That is pretty radical, you could argue.

So, I think in closing, I think the conservatives, the Right, essentially has to think in their own minds, really, where do they stand on copyright because, as I said, I see this split now in the Republican Party here and the conservative movement. And I think your book is a very, very healthy anecdote to that because it grounds

people in what most conservatives are grounded in, which is the Constitution.

So, again, I think it is a wonderful job you have done. And I hope at least those folks take a serious look at your book. Thank you.

MR. MAY: Thank you, Rob. And we do say, and I appreciate the way you put it, because a couple of times in the book, I mean right up front in the introduction, we say explicitly we hope to appeal to those who call themselves sympathizers or protectors of property rights, but otherwise don't think of intellectual property as being property or sometimes even constitutionalists, you know, on the one hand but don't see this as part of the Constitution or conservatives. So, we do try and appeal to those. I agree with you, I doubt if we are going to convince Free Press and Public Knowledge really, but I am always open to trying, as those of you who know me know, that is what we do in a think tank. We keep trying.

So with that, I'm going to turn to Ralph Oman. Again, I feel honored to have Ralph here. I have known Rob for a long time, and consider Rob a good friend. Ralph will tell you that we had never met before this morning. We have communicated by e-mail, but I have admired him and

I asked him to take a look at our book when we had a draft. And he was willing to do that, which I appreciated very much.

So, Ralph, why don't you take it.

MR. OMAN: Thank you, Randy. It is a pleasure and an honor to be here. I must confess that I don't recognize the Congress you are describing. It is in my opinion still a bipartisan consensus that governs intellectual property, and no one is a stauncher champion of intellectual property and copyrights than John Conyers, the Democrat who is ranking on the Judiciary Committee.

But that is the interesting discussion. I wish that had been my assignment, Randy, to discuss the nature of copyright on Capitol Hill. I am teaching a seminar on that at George Washington Law School this semester, and it is a great topic.

But let me stick to my assignment. I will be talking about the application of the broad principles of the authors, who so brilliantly stated in their book, applying those broad principles to the challenges that copyright faces in the age of the Internet.

As the authors stated, copyright started as an exclusive property right in 1790, with the passage of the

first Copyright Act. But that exclusivity, that feature that was so important to the Founders, has been whittled away over the past 100 years. Market failure was the rationale. A few users convinced Congress that the free market just wouldn't work. The transactions were too small. They were too numerous. The bargaining powers of the two parties were too unequal or that the time frame needed to arrange a license was too short, and that we really couldn't rely on the free market to set prices and to control access.

But today, digital technology has changed that reality if in fact it ever was a reality. Microchips, little black boxes, they will mediate millions of transactions in a millisecond. They will screen transactions, searching for copyright management information. They will work at the speed of light.

With this technology we can restore, in my opinion, the author's exclusive control over their works that the Founders built into the Copyright and Patent Clause. They can license them. They can license them collectively as part of a group. They can make them available for free if they want. They can say no. They can say "yes" if the price is right. Think cable

television and the history of the cable television compulsory license. Think of the digital audiotape machines back in the early 90s. Think of jukeboxes going back into the mists of history. Jukeboxes being a way of life in the South, the only cultural outlet available in most southern communities. And the powerful Members of Congress from the South were able to block copyright liability for jukeboxes when by principal they should have been paying to use the music to make money.

Thinking of the digital audiotape machines, I personally was involved in that effort when I was the Register of Copyrights. The DAT, the digital audio tape machine, could make perfect copies of sound recordings without any degradation of the quality of the sound from one generation to the next. I testified before the House Intellectual Property Subcommittee in support of a bill that would implement a very, very complicated compulsory license. It sanctioned home taping for an indirect royalty. It prohibited serial copying, which was very important to the record industry.

It aimed to balance the interests of all of the parties, namely, the creative community, the Japanese equipment manufacturers, the home tapers. The chairman,

Bill Hughes of New Jersey, and Carlos Moorhead of California, both vented their anguish, their frustration over the complicated regulatory scheme of the proposed legislation. It had been negotiated on a Greek island over the holiday season by the record industry and the equipment manufacturers, and it was 57 pages long. As Chairman Hughes complained, "The Copyright Act is going to look like the tax code if we don't change our ways."

But, in fact, they did adopt that proposal. They asked me if I was troubled by the length of the bill, by the detail that it got into, even the accounting procedures to be used in determining who got what. I was a good soldier at the hearing. And I said what was expected of me, that it was a technical problem and needed a technical solution. The bill did that. But what I should have said and didn't say, simply, wouldn't it be better, wouldn't it be much simpler to say, "Okay, songwriters, okay record companies, it is your music. You can do with it what you want. You can lock it in a vault for all we care. Just make clear that it can't be copied without your authorization. If you don't want people to make perfect copies on the digital audio tape machines, you can say no. You can sue the manufacturer of the infringing machines,

the copying machines, for contributory infringement." That is what I should have said but didn't.

The copyright owners should have been allowed to negotiate a deal with the equivalent manufacturers that would have allowed this new digital technology to reach the public under rules of the marketplace, one that was acceptable to both sides. If Congress had simply reaffirmed the exclusive right that the authors talk about in their book, the free market forces would have done the rest.

Another example that I won't get into detail on was television in the 50s. The motion picture industry saw television as a direct threat. They refused to license their works to the television networks. What happened? Did the television networks go out of business? No. It ushered in the golden age of television where the networks had to produce all of their own -- all of their own materials and we had a terrific assortment of choices for the viewing public.

That was when the system worked right. Congress didn't rush in with a compulsory license telling the motion picture industry, "You have to license your works for the television networks or else we'll impose a compulsory

license on you."

Authors have something to sell, users want to buy. Congress should just reaffirm the historic exclusive property right of the authors, get out of the way and let the parties do a deal. The very best copyright laws have always protected the rights of creators and the powers of the creators against the powers of the companies and others that are money making machines that use the copyrighted works, that build business models like Google that exploit authors' works. That would be ideal.

The Internet is the latest wrinkle that began with the invention of the printing press. The tension between these new technologies and the interest of authors is nothing new. This really shouldn't surprise us. It is the very essence of copyright thinking. The core that makes copyright socially revolutionary, historically unique, and worth fighting for.

And I thank the authors, Mr. May and Mr. Cooper, for giving us the ammunition we need to fight that war. This book should be required reading for all Members of Congress, federal judges, and all political stripes from Capitol Hill.

Thank you.

MR. MAY: Okay, well, I want to second that. Was that a motion? I second that motion.

(Applause.)

MR. MAY: Ralph, thank you very much. Now, we are going to move to questions and comments for the audience shortly, and we're also going to ask the panelists whether they want to add or subtract anything. And I actually have a question for Rob.

But I'm going to take the liberty since it would be one Register of Copyrights following another one because Marybeth Peters couldn't be here today, but she is a former Register of Copyrights as well. And I just want to quote her blurb here that is on your sheet:

"I love the book, and I hope it finds a large audience. Over the years, I have had many people tell me my interpretation of the Constitution's Intellectual Property Clause was wrong. Hopefully, this new book, with its scholarly yet readable treatment, will refocus the debate about IP rights on first principles and our founders' intentions."

And then just right below her blurb, Ted Olson, Solicitor General of the United States from 2001 to 2004, Ted said, "A fascinating, illuminating and insightful

exploration of the roots of intellectual property law in America essential for students, teachers and practitioners in the field. Intellectually sound and highly readable." He left out Congress, but I'm sure he would have included them if he had thought about it.

Now, I'm going to play a little game. If you have come to some of our other events, you know I like to do this once in awhile. There's going to be a little contest. I'm going to read a quote, and if you can tell me who is the author of this quote or said this, then you will win a free book. And I'm going to give only a couple of people a chance to do it. Who has the answer? No one has the answer, not even my wife has the answer.

Okay, "I always thought the man that made the corn should eat the corn." Yes?

PARTICIPANT: Is that Abraham Lincoln?

MR. MAY: It is. Okay.

(Applause.)

MR. MAY: Congratulations. That's good. So you come up afterwards and get your book. So while I have got that quote open, a little less prosaically but I think in the same vein, in 1847, Lincoln wrote, "Each individual is naturally entitled to do as he pleases with himself in the

fruit of his labor." And this is all part of the discussion we have about Lincoln's focus on labor, free labor, and the person's right to enjoy the fruits of his own labor. And I think there is a lot of material in that chapter. In fact, I know there is, that I think most of you wouldn't be familiar with.

Okay, that said, Rob, I just want to ask you, and thanks again for your remarks, but I know that you also, I believe, at ITIF, which does such awfully good work, you study or have studied the contribution that IP makes to our economy. In this book, that was not the focus. I mean we allude to it as well, but it is not the focus of the book. But can you just say a few words about, putting aside, you know, the philosophical rationale, but the importance of intellectual property to the economy at this point in time?

MR. ATKINSON: Yes, a few things we've written mostly look at what other people's work has done. I think of just two ways to answer that. One is to look at how the U.S. economy has evolved into a much more knowledge and intangible capital-based economy than we were 15 or 20 years ago. And that, much of that new production is IP based. And so that is why I think losing this fight against IP in the U.S. means that we're going to have a

higher risk of losing it globally, which has very important implications for our economy, much more than almost any economy in the world.

But the second answer is there was a study by Rob Shapiro, and Rob looked at this a couple of years ago. And I think -- I'm going to get the number wrong, I don't know if anybody knows Rob's study, but he found something on the order of 45 percent of U.S. GDP was IP based, IP dependent. It is in that ballpark. I don't remember the exact number.

STEVE: $1.1 trillion according to Mr. Steve Siwek, who just published a paper.

MR. ATKINSON: Well, that would be a lot if it is at 45 percent.

PARTICIPANT: It was the (barely audible) Copyright Industries in the U.S. Economy study, I believe.

MR. ATKINSON: That may have been copyright.

PARTICIPANT: Copyright?

MR. ATKINSON: Yes.

PARTICIPANT: Specifically copyright.

MR. ATKINSON: Copyright. Yes, so copyright is about, yeah, 8, 10, 12 percent. This was IP dependent, so it would include patent industries and others.

MR. MAY: I was probably joking, but I think the number -- I mean I saw a number recently that for both segments, and if you express it in terms of IP dependent, it was on the realm of 30 to 35 percent, is that what you, did you say that?

MR. ATKINSON: I would say low 40s.

MR. MAY: Yes. So anyway, it is a big number. Aside from whatever your philosophical disposition may be in terms of the economic health of the country, it is important to protect these rights.

I am going to ask our panelists, Seth and you or Ralph or Rob want to say anything -- add anything that is sort of on top of what we have said thus far at this point? Anything?

Okay, let's see whether we have some questions or comments? Steve? You can tell us what that acronym was that you just used for the --

STEVE: Siwek?

MR. MAY: Yes.

STEVE: Siwek is not an acronym. It is the man's last name.

MR. MAY: Oh, okay.

STEVE: My name is Steve (inaudible).

MR. MAY: You see, we didn't get into that, you know, in our study. And Steve just did a good thing. When you speak, if you can introduce yourself and give us your name, that's helpful. And just so you will know, we are transcribing this session and video recording it, so don't say anything you don't want placed on videotape.

STEVE: Fair enough.

MR. MAY: With that, go ahead.

STEVE: Thank you. Just to round out the question that I got pulled into a moment ago, Stephen Siwek did a study. I believe that is the source for the $1.1 trillion contribution to the economy from copyright and copyright related industries. The broader number, Robert, that I think you were talking to comes from the U.S. Department of Commerce Patent and Trademark Office, a study that they did, which concluded that the entire set of IP industries provide over $5 trillion to the U.S. economy, over two-thirds of U.S. exports. So, yes, quite significant parts of our economy.

What I really wanted to ask about was this, personally I have spent some time looking into the issue of intellectual property rights as property rights. And I think that the historic evidence and the legal precedent

are overwhelming, that clearly patent and copyright are exclusive property rights in our constitutional system.

Your book takes the additional step of attributing to that that they are natural rights. And so playing devil's advocate a little bit, I'm going to challenge you with the question: Why did the Founders, if patent and copyright are natural rights, provide in the Constitution the requirement that the term of protection be limited in contrast to real and personal property rights?

MR. MAY: Yes, well, that is a good question, which I appreciate. And, you know, I think the answer is that I don't think that we maintain in the book that their focus was on natural rights to the exclusion of any other arguments that you could suggest. I mean we have material in the book that actually deals with Jefferson's supposed antipathy towards monopolies, which I know you are talking about the terms opposed to, you know, monopolies and how that is reconcilable with property rights. So we will deal with that.

But I think they didn't view that there weren't other dispositions, if I could say, that would come into play but the natural rights philosophy, which they got again from Locke. There is a lot of evidence about their

looking to the classical liberal philosophy in terms of protecting property rights that was important. And I think the limited terms was a concession to that. You know, it is one of those boundary issues that I mentioned at the beginning where you then might rely on other types of theories, like a utilitarian theory for how long that should be.

Do you want to -- anyone want to add anything? Seth?

MR. COOPER: Yeah. First, structurally, property rights are primarily subjects that are left to the states in the Constitution. So the IP Clause is one of the only areas where you have a set of property rights that are specifically within the province of the federal government to define and to enforce. It does so indirectly in other respects but here it is really central.

And any kind of property right is going to have some kind of limits, some kind of boundaries. Some kinds of adjustments need to be made for everyone to enjoy them or to enjoy them consistent with all their other rights. So, I think it makes more sense to put some of those limitations in the IP Clause simply because that responsibility is being given to Congress in the first

place.

I think there is a recognition as well that because you are dealing with intangibles and someone's productions from their mind, at some point in time it may become too difficult to administer, that when you are so far removed in years and circumstances, that it may cause more harm than good, and you can still protect the core of that right consistent with everybody else's right by setting some kind of term that is ascertainable, that is understandable, that is adopted in accordance with law.

And Daniel Webster, in one of his cases, I think it was the India rubber case that I quoted earlier, asserts a natural rights foundation. Actually, it was in *Wheaton v. Peters*. In *Wheaton v. Peters*, Daniel Webster said, "Look, it's a right that it may require special or extraordinary legislation to protect it, including legislation to limit it, be it so." That's just the way it is.

MR. MAY: Okay, we have some questions, but before I forget, just as a housekeeping matter, I want to thank -- I would like you to join me in thanking some people here. Kathee Baker is our events coordinator, and she is standing there, and I want to thank her. Mike

Horney, a research associate at the Free State Foundation. And my wife, who always plays an important role in almost everything I do. So, we should thank her. And then finally, I'm pleased -- my wife is choking on that.

(Laughter.)

MR. MAY: She is choking on that, but it is true that she plays an important role in most things that I do. And finally John Farley, who is in the back, he is a senior official with the Fund for American Studies, and John is a member of the Free State Foundation's Board of Directors and has always been an important source of support for the Foundation, and we appreciate that. So would you thank those guys?

(Applause.)

MR. MAY: And, Laurie, I'm sorry if you choked on that. Okay, who has a question next? Okay, right over here, Kathee. And just identify yourself, please?

MR. GRAHAM: Thank you very much. John Graham from the National Center for Policy Analysis, and I'm really looking forward to reading the book. And I'm also, just by good chance, I have my handy-dandy Constitution courtesy of the Cato. And I notice the IP Clause is separated by six different enumerated powers from the

Commerce Clause, right? And yet so much of what we do in IP these days has to do with international issues. So, I wonder if any of what the Founders did, you know for Madison, Jefferson through Lincoln, is there anything there that helps us, guides us on the international context of IP?

MR. MAY: I'm not sure at that time how much they were guided back at the time of the founding, I'm not recalling something but, Seth? I mean I know it is obviously important these days, the international aspect, and we have international treaties and so forth. But at the time of the founding, were they influenced by international?

MR. COOPER: At that point, they were definitely focused on building up American industry. We don't get into this in the book, although Randy and I will be writing about this in the future, Hamilton, Alexander Hamilton, has a "Report on Manufacturers." He did talk about the importance of growing the industry at home to make America a self-sufficient nation in terms of manufacturing and also in terms of writing.

But you do find in the era, particularly with the state legislation, you find a principle that is familiar in

international contexts, that becomes helpful. Some of the early state legislation on copyrights, like Massachusetts, would say to foreign states, meaning other independent sovereign states: "We will recognize their copyrights as soon as they recognize ours." And so by the 1830s, in the Patent Acts, you do get that recognized in the patent context. It was a much longer fight to get that in the copyright context, to get that recognized. And it was caught up with issues such as trade publishers at home found it cheaper to reprint Charles Dickens, for instance, than to pay Washington Irving royalties. So, they could just get the newest copy off the ship and run off their own thing.

They did finally get it, and so they were able to sort of see that principle of: "We will recognize Britain's copyrights if they recognize ours." Well, the United States was a little late to the game. But you can kind of see that in early state legislation that provided a model.

MR. MAY: I see Ralph has a comment?

MR. OMAN: An interesting angle for that evolution toward international protection for copyright. The pressure for protecting British works, French works, German works didn't come from the British, the French, and the

Germans. It came from American authors who couldn't compete. The publishers, sure it is cheaper to publish without having to pay a royalty to the author, so that is what they did. Supposedly, in whatever it was, 1856, people were clinging to the docks in New York waiting for the ship to come in with the latest version of one of Dickens' novels, all shouting, "Did Little Nell die? Did Little Nell die?"

The tremendous popularity of British works convinced Congress that they should move in the international direction. They did pass the legislation in 1891, and that set us on the road to adherence to the Berne Convention, which is not based on reciprocity -- I will protect you, if you protect me -- but on national treatment, which was a big step forward for the United States.

MR. MAY: Okay, Tim? Let me see, I don't know where the mike went.

MR. LEE: Tim Lee, Center for Individual Freedom. Just in response to what Steve said, one thing I would like to point out is that other things that we accept as natural rights, First Amendment rights, you know, we obviously have no right to defamation of real property.

You know, the bane of every first year law student's existence is the Rule Against Perpetuities. So, one answer to the question of, well, why isn't this unlimited in time like most other natural rights in the Constitution is that most of those rights aren't unlimited in time either, whether it is real property with the Rule Against Perpetuities. The Second Amendment obviously has limitations on it, so that might be one way.

MR. MAY: Yeah, that is useful, although I guess Steve might say in response in the IP Clause itself, it refers to the limitations whereas the First Amendment -- all these restrictions, which you rightly point out, on almost every other right we can think of, aren't necessarily expressed in the same way.

So, next, we are going to turn to Tom here. Just a minute, Tom.

MR. SYDNOR: Hi Randy. Tom Sydnor, American Enterprise Institute, Center for Internet, Communications and Technology Policy. I hope because great minds think alike, we have actually been working on some pretty similar issues. I came out with a paper last week dealing with some of the copyrights or monopolies arguments. And I think we are at a point where we can. So, I have been

looking at some of the same issues, including Mr. Khanna's arguments about how the Founders looked at copyright.

And I have two questions. Number one, I thought Seth made an extremely important point about the early international dimension of copyright protection. I think he made an extremely important point about the fact that the original state -- before we get to the federal Copyright Act of 1790, back in 1783, original state copyright laws contained reciprocity provisions, which become irrelevant once we get the federal Copyright Act in 1790. We are essentially our own little copyright union, and we are geographically isolated. So if you look at the evolution of international -- of truly international rather than interstate, copyright protection in Europe in the 19th century, it actually starts with reciprocity. And then as Ralph said, moves on to national treatment, which is much better. So, I think that is an important point. We just kind of got lucky. We were our own little union for a while.

But I did want to ask you one thing about the subtitle of your book. Having been working on these same issues, I have noted in one of my endnotes, that I am explicitly not relying for the proposition that copyrights

should not be treated as monopolies on natural law theory. And I'm not doing that because I disagree with you in any way, matter, shape, or form that copyrights are -- or intellectual property rights generally -- properly fall within the natural law tradition.

MR. MAY: Wait a minute, I want to make sure -- you may have used a double negative. You are not disagreeing -- you are not --

MR. SYDNOR: I agree entirely with you.

MR. MAY: You agree entirely.

MR. SYDNOR: On this, as in many issues, Randy, I have been vigorously agreeing with you for years.

MR. MAY: Okay.

MR. SYDNOR: And this is no exception, but I do wonder does it really matter whether you ground copyrights in the -- or intellectual property rights in the natural law tradition because it seems to me that even if you argue that they are socially constructed, you know property rights are socially constructed, and we enforce them because they are useful over the long run, you still get to the same conclusion that you need effective protection, particularly if you want to encourage commercial investment because investors can invest in something else. And if you

narrow their property rights too much, aren't we discouraging them from investing in the production of expression rather than its dissemination.

So, other than some -- I think Rob's point about the rhetorical advantages of the natural law tradition are valid, do we -- can you reach the same -- do you think you can reach the same conclusions even if you think that property rights are socially constructed?

MR. MAY: Yeah, no, I think you could depending on, you know, how you then view the social construction but for a lot of people I would say you could, and maybe yourself. So I don't want -- if you end up in the same place, I don't want to discourage you because I think that intellectual property rights are important to protect, so whatever works. But if you are asking about us, why we did it, I think -- I think it was an enterprise, you know, in terms of scholarship in which we wanted to -- I guess it is fair to say, and I mentioned that Seth attended that Claremont Institute fellowship. And the Claremont Institute is known to have this natural rights disposition. And I think we were disposed in that way.

I mean I'm one that looks to -- aside from where you come out on arguments, for example, as to whether the

Declaration of Independence has any standing as a matter of law, as positive law, and I understand all the debates. And, you know, aside from where you come out there, for me, for example, the Declaration of Independence, particularly the Preamble, which if you look at it, has, whoever has that little book, it is a very natural rights statement, you know, that "Nature's God," and, you know, "God's," whatever the phrase is, you know, it is a statement of natural rights.

And, you know, for me, it is an important philosophical way of understanding why the Founders did what they did, and why they placed importance -- so much -- enough importance on the Intellectual Property Clause to place it in the Constitution, as opposed to using the Commerce Clause, I guess you could say to adopt the first patent act or a copyright act. And it's just, you know, it's a statement of what they thought, what the Founders' thought, to me. Again, without having to debate now about originalism versus some other theory, but what the Founders thought is important, I think. And so that is the way I would answer the question.

You know, and for some people, it may be people that have some reason, I wouldn't fully understand it, but

have some reason where they react against natural rights, well, that is old. You know, who gives a damn what John Locke thought and the Founders, but, you know, that's not the way we look at things at the Free State Foundation.

My good friend, Alden Abbott?

MR. ABBOTT: Thank you, Randy. Excellent presentation. I think just to strengthen Randy's argument, good argument, is that the reason it matters is that there has been a cottage industry of academics, and I think wrongly, who have been attacking on instrumentalist, pragmatic grounds, their view that patent rights not only don't encourage innovation but impose net costs on the economy. Ever since Justice Breyer and other academics, he wrote a famous article, "The Uneasy Case for Copyright," there have been instrumentalists attacks on copyrights, saying they don't really promote innovation. We don't need it.

So, you need a bulwark. I mean I think there are answers to those attacks but it is all too easy to say -- oh, the experts have spoken, these rights don't matter. If, however, they are first principles, constitutionally-based principles, that back those rights, that is very powerful ammunition and the bulwark in light

all of these recent instrumentalist attacks.

MR. MAY: Okay, we have got time for maybe a couple more questions, and then we will probably call it a day. But if I don't say it later, I will say it now. I'm really pleased and gratified for how many people showed up. It's a great turnout, again for the first intellectual property event we have done at the Press Club.

Patrick, did you have your hand up? Patrick?

Mr. KILBRIDE: Thank you, Kathee. Thanks, Randy and Seth. Congratulations. It's really terrific. I look forward to reading the book but just the teasers that I have seen look very fascinating.

Without -- sorry to belabor the point, but I think it is an interesting question that has been raised, and the responses have dwelled on the copyright side where I think there is a more natural sort of foundation in natural rights. Throughout the patent side of things, and I always sort of think back to the invention of the wheel and the guy in the cube next door. If he didn't imitate that, it would be nuts, right? And nobody would blame him for it. So, how do we reconcile intellectual property rights universally with some of these ideas?

MR. MAY: Well, the patent rights, you know, which

go obviously to inventions, I mean I think that quote I read from Noah Webster where he talked about works created with your own hand, and I think he said "muscular strength," or whatever, I mean that goes to the inventions as opposed to the literary property.

So, I think both fit comfortably within the labor theory or the fruits of your labor theory, whether it is writings or discoveries and inventions that I talked about.

You know, again, in both cases, and this goes back to another point, you always have the boundary issues. And there are a lot of questions about how long patent protection should be and whatever. But each of these two sides of intellectual property that we have discussed, copyright and patent, in terms of the law and the way it is developed and applied, there are limitations, restraints that are within the law that then serve to advance the interest of others who want to create and produce in society.

I mean again -- we talk -- we expound on it more in the book, but in the copyright side, you have got the -- obviously, the idea-expression, dichotomy, right? So, you can't copyright ideas but just the expression of ideas. And that is a limitation so that others can use it.

On the patent side, and I know less about the details of modern patent law but that is not what our book is about, but there is novelty, you know, there is a requirement that an invention be novel, right? I know it gets esoteric as everything that is involved, but that is a way of restraining the inventor's original claim in a certain way so that I think these things are reconciled in ways like that.

Okay, do we have -- I said two, if we have one more question?

Okay, the winner of the book, now you've got to tell me though how you knew that quote from Abraham Lincoln before you ask your question?

PARTICIPANT: I actually stumbled across that on someone's blog that I re-posted, so thank you for asking that question. I was lucky.

MR. MAY: Okay. When I stumbled across that quote in some context a few years ago, I just thought it was neat about the seed and corn, and I used it in a blog that I wrote, a Labor Day blog.

PARTICIPANT: That sounds about the right time.

MR. MAY: Praising Labor Day, okay.

PARTICIPANT: So, Google has recently had a plan

to digitalize every single book ever written. And as authors yourselves, I am just wondering what your thoughts are on that plan, if that is good or bad for authors and IP?

MR. MAY: Well, I don't think it is good if they do it without protecting my copyright. Again, there are ways to do this. I don't think that is Google's position anymore. There are a lot of questions about the orphan works and the older works, and how they could possibly contact people and whether the rights are expired. But it is not their plan to do it without the permission of the copyright holder, is it?

PARTICIPANT: I hope so.

MR. MAY: Well, I don't know. Is it?

PARTICIPANT: (Inaudible.)

MR. MAY: So no, I thought that ruling was about a week --

PARTICIPANT: They digitize the whole thing but --

MR. MAY: Yeah.

PARTICIPANT: -- in general, the public would just get to see snippets.

MR. MAY: Oh, I thought you meant put it up. But you're right, that was just a ruling in the last week or

two, right? And, you know, I'm sure there will be questions about whether the snippets are consistent with fair use or they? may be. But I'm sorry, I thought you were just asking could they just put the whole book up. I mean they're pretty aggressive, if I might say, sometimes in the positions that they take with regard to intellectual property but I don't think that was their proposal.

MR. ATKINSON: And I think the key question is if your book is really any good, how many days -- when was the actual -- what was the publishing date?

MR. MAY: September 9th of this year.

MR. ATKINSON: Okay, so you should be on the pirate bay by now, I hope? And if you're not, that tells you something about your book, I think.

(Laughter.)

MR. MAY: Well, thanks for putting it that way, Rob. Didn't you say you had another event, another event to go to?

(Laughter.)

MR. MAY: Okay, well, you have been a remarkably attentive audience, and also the questions were terrific. So, I appreciate that. So, I'm going to ask you just to thank all of our participants.

(Applause.)

MR. MAY: Okay, thank you.

(End of proceedings.)

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