

**TRANSCRIPTION OF THE CONTRIBUTION TO
“E-BOOKS IN THE CLASSROOM: IMPLICATIONS FOR
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by Ted Striphas

This talk in some ways channels a familiar cast of characters from my book, *The Late Age of Print*: people like Oprah Winfrey, an institution like Amazon.com, and a technology like the electronic book. But I hope to take them in a somewhat different direction. The story that I tell in *The Late Age of Print* is a fairly optimistic one, but unfortunately I will set things off on a bit of a dour note by talking about the abuses of literacy, Amazon Kindle, and the right to read.

On October 24, 2008, the media mogul Oprah Winfrey went public with the details of her new love affair. It had begun innocently enough over that summer and her appearance that fall day on “The Oprah Winfrey Show” would leave no doubts about just how smitten she’d become. There was no reason to believe that Winfrey would be leaving her long term partner, Stedman Graham, anytime soon however. The new object of her affection was just that: it was an object, or rather a gadget. “Anyone who knows me knows that I’m really not a gadget person at all, but I’ve fallen in love with this little baby,” Winfrey reveals. She was referring to the Amazon Kindle, the handheld electronic reading device that is sold exclusively on and designed by Amazon.com.

For others, though, the love affair with Kindle has been anything but candy and roses. In June 2009, seventeen year-old Justin D. Gawronski was anticipating the start of his senior year at Eisenhower High School in Michigan. His Advanced Placement English teacher, anxious to hit the ground running come September, had issued a summer reading assignment and so Gawronski did what any honors student worthy of the name would do. He promptly got the book and got right down to work. Rather than purchasing the print edition of the required reading, however, Gawronski downloaded it wirelessly onto his Kindle. Over the next few weeks he carefully read his way through about the first third of the e-book, bookmarking pages, highlighting passages and typing in notes in preparation for the start of the fall term.

But when Gawronski booted up his Kindle on Friday, July 17, 2009, he was dumbstruck to see the volume that he had been reading disappear from the device. It had been deleted remotely by Amazon. Amazon had pulled

not just any book from the young man's Kindle, but George Orwell's paranoid novel of life under totalitarianism, *1984*. One can only respond: "Oops." It was hardly an isolated case, in fact, prompting more than a few Big Brother analogies to follow in the wake of the incident's revelation in the news media.

Gawronski's story shows how Kindle isn't just another handheld mobile device. It belongs to an increasingly prevalent type of technology, what Jonathan Zittrain calls "tethered appliances." He explains, "they are appliances in that they are easy to use while not easy to tinker with. They are tethered because it is easy for their vendors to change them from afar long after the devices have left warehouses and showrooms." In other words, tethered appliances oblige you to enter in to enduring relationships with corporate custodians who make it their responsibility to manage the inner workings of these devices, despite what your wishes may be.

My argument today is that, however convenient a Kindle may be for acquiring e-books and other types of digital content, it nevertheless predisposes the act of reading to serve a host of inconvenient, we might even say illiberal, ends. My broader related claim is that Kindle personifies a challenge to a core set of liberal democratic principles, which also happen to share an enduring relationship to reading in the United States. Ultimately, then, there is more at stake than just a smoldering obsession with a high tech gadget when we're talking about Kindle. There's a need, I want to argue, for a new and fundamental right to counterbalance the illiberal tendency it embodies, with what some would call a right to read, which in the United States would complement the existing right to free expression.

Into the Amazon

Kindle was probably the first standalone e-reader to provide for real time communications between bookseller and consumer, thanks to its on board 3G mobile phone technology. One result is that readers can download the complete contents of any Kindle-formatted book in under a minute, provided of course you're within range of a cell tower. It's little wonder, then, that the Amazon CEO Jeff Bezos describes Kindle as a service and as "an extension of the Amazon store," rather than more generically as a handheld mobile device or even more specifically as an e-reader. Much has been made about Kindle's downstream capabilities, but what about the data Kindle transmits upstream, back to Amazon.com? The language that Amazon uses in its promotional materials describes the flow of data in this direction, upwards. It suggests little more than user friendliness, as if Kindle's backup and syncing features existed only for the sake of helping bibliophiles to make the most of their digital libraries. Yet the Kindle license agreement and terms of use tells a rather different story: "The Device Software will provide Amazon with data about your Device and its interactions with the Service (including available memory, up-time, log files and signal strength) and information related to the content on your

Device and your use of it (such as automatic bookmarking of the last page read and content deletions from the Device).”

Once the data arrive in the server cloud, these and other bits of information including any textual annotations and highlights you may have made, become subject to the Amazon privacy notice. The latter, the privacy notice, ironically opens up quite detailed information about your personal reading habits to a host of uses beyond the express purpose of backing up and syncing. I’ll return to this point shortly, but first let me say a few words about some of the changes that Amazon has made to its corporate identity and core mission. The shift started sometime around 2002 when the company began looking for ways to improve its hardware utilization. The issue was the overcapacity of the servers and other computing infrastructure that had supported its website, which the company had designed or scaled in anticipation of meeting sudden but infrequent increases in demand. As Nicholas Carr observes in his book *The Big Switch*, “Amazon had to construct its system to be large enough to accommodate the burst of shopping during week after Thanksgiving even though that week comes around only once a year. Most of the system’s capacity went unused most of the time.” Consequently, Bezos and company decided to rent out its excess computing capacity to just about anyone willing to pay. Amazon.com subsequently spun off a new division of the company, Amazon Web Services or AWS.

Launched officially in 2006, AWS belongs to a broader movement into technology known as utility computing. Whereas the philosophy of personal computing stresses widespread computer ownership just in case, the philosophy of utility computing perceives that as a waste of money and other important resources. Instead, the latter stresses only the barest minimum of computer ownership, and mostly then of web facing devices that have been significantly downscaled in terms of both memory and horsepower. If you’ve ever heard of the thing called the netbook, this is kind of what utility computing people have in mind as the future of computing. So, in the event that someone requires additional storage space, processing capacity or the like, a large centralized provider will be happy to deliver it just in time via the web, typically for a fee.

So the point here is that Amazon is not just the retailer that many of us think we know. It’s also becoming what *Business Week* has called “a kind of 21st century digital utility,” not unlike free services that are ad supported such as Google and Facebook. Now Amazon has been collecting, analyzing, and making use of customer information since its inception back in 1994. But in conjunction with its recent emphasis on web services, it seems apparent that Kindle is deepening and widening the company’s data mining efforts in several ways. First, by allowing Amazon to drill down beyond the retail layer, a proven source for what Oscar Gandy calls “actionable customer intelligence,” into the bedrock of everyday life itself. Second, and more specifically, by transforming people’s idiosyncratic and heretofore mostly private reading itineraries into data generating activities. And finally,

then, by implicating those acts into a larger system of technological and productive relations, what you might call the ambient informatics of cybernetic capitalism.

The upshot of this is that Kindle raises all sorts of questions about propriety. In the emerging world of tethered appliances, to whom does reading belong? To whom, and this is a strange question, should it belong? What happens once our reading becomes the object of another's persistent scrutiny?

Propriety

Many of us were taught at a young age that it's impolite to read over someone else's shoulder. Doing so amounts to an intrusion of the reader's personal and cognitive space, or stronger still, a violation of his or her privacy. The everydayness of this simple life's lesson provides a complicated history of readers and reading whose intellectual origins can be traced back to classical liberalism. In 1859, John Stuart Mill referred to "the inward domain of consciousness as the locus of absolute freedom of opinion and sentiment on all subjects," a conception of the self that has helped to frame subsequent understandings of how and why people read. Consider the novelist Vladimir Nabokov, for instance, who claimed that readers were born free and ought to remain free. Essayist Sven Birkerts offers a similar opinion, suggesting that "reading is the intimate, perhaps secret part of a larger project, one that finally has little to do with the more societally-oriented conceptions of the individual."

At the heart of the liberal formulation of reading, then, we find sovereignty and solitude as its optimal, perhaps even normative conditions. This, of course, begs the question of what happens to reading and to the broader sense of privacy with which it's been associated over the years once our books and periodicals become exposed to the world. Indeed, this seems to be the fundamental question that Kindle poses. As a tethered appliance, it subjects readers and consequently their reading habits to ongoing surveillance. Now this statement merits some qualification, however, because the surveillance that I'm talking about doesn't necessarily involve active human scrutiny, at least in the first instance. It's perhaps best described as algorithmic in the sense that most, if not all of the eavesdropping and data mining take place automatically, carried out by Amazon's powerful computer systems. So in this case there's no conscious doer behind the deed in other words, of course beyond the computer programmers whose interests should extend strictly to the collection and not to the substance of Kindle data, at least hypothetically they don't. And yet, there nevertheless remain important reasons to be concerned about this kind of data gathering, despite the apparent lack of active scrutiny on Amazon's part. The crux of the matter comes down to what I want to call information repurposing. In his book *The Digital Person*, Daniel J. Solove asserts there are few effective measures in place to control the afterlife of digital data, what he calls (and I love this phrase) "the perspiration of the information age."

Corporate privacy policies offer varying levels of protection, in most cases insuring against the most egregious abuses of personal information. But on balance, Solove argues, these policies tend to be full of loopholes and exceptions that render them dangerously confounding. For its part, Amazon states that it may transfer a customer's personal information to affiliate businesses in the event of mergers or acquisitions, but pledges that it "remains subject to the promises made in any preexisting privacy notice." So far, so good. The problem, however, stems from the practicalities of delivering on promises such as that, where personal information flows from one large organizational, technological, or policy setting into the next. What Solove calls "privacy drift" is one well documented outcome in which compliance with an institution's express privacy goals falls off or becomes ineffective the farther that personal information migrates from the party who had collected it initially. Given Amazon's sprawling corporate holdings, privacy drift seems like a reasonable and even pressing concern. Amazon's corporate holdings are extraordinary: everything from the Internet Movie Database all the way to Zappos.com and shoes.

Also troubling here, though, is Kindle's potential to render users vulnerable to unprecedented levels of government surveillance of their everyday reading activities. Now library loan records and bookstore sales receipts are well established mainstays of criminal investigations. This, of course, is so despite the best intentions of very good booksellers and very good librarians. The assumption on the part of government officials is that evidence of what a suspect has been reading may ultimately help them to establish a pattern of behavior leading up to a crime. What's important to note is the legal standard that applies in such cases. Typically, investigators need only acquire a subpoena to access a suspect's library records or bookstore receipts. In contrast to search warrants, subpoenas are issued not by neutral magistrates but by prosecutors who, like the police, have a strong interest in catching criminals and thus are predisposed to honor the requests. Kindle, however, runs afoul of the liberal belief in the sanctity of reading and hence the impulse to safeguard the sovereignty of readers. According to Amazon's privacy notice, "We release account and other personal information when we believe release is appropriate to comply with the law." This isn't an unusual statement at all. What is unusual, though, is the nature of the personal information that Amazon maintains in the case of Kindle users, namely the bookmarks, the highlighted passages, the annotations, and so forth that I have previously mentioned. Amazon possesses detailed records of not only what, but indeed how people read, information that would ordinarily be subject to fourth amendment protections against unreasonable searches and seizures which typically require a search warrant. But because these data are transmitted electronically to the company and then archived in its computer cloud, United States federal law considers these not to be private information but instead, stored communications. This is a special genre of information that the law considers to be beyond the scope of the fourth amendment because it is shared with and maintained by a third party. The upshot is that the everyday reading itineraries of Kindle owners suspected of crimes are

subject not to the probable cause warrants standard but instead to the much more relaxed requirements of a subpoena.

A Right to Read

The name Kindle harkens back to the myth of Prometheus the Titan, who in Aeschylus's play *Prometheus Bound* brought fire to humanity along with mathematics, medicine, metallurgy, and other forms of knowledge that helped free us from the power of our absolute rulers, the Greek gods. Thus, with Kindle Amazon has channeled one of the most enduring fables of human liberty only to stand it on its head. The question that I want to wrap up with is, what happens when a people either chooses or is compelled to read on a device that is so connected electronically, that it manages to disconnect that people from some of the key tenets of liberal democratic culture?

The connection between reading and liberal political culture is a contingent, and a necessary one. It's an always fragile union forged out of historical circumstance and it promises to weaken and maybe even dissolve unless steps are taken to strengthen it in perpetuity. Julie Cohen, for her part, argued that what's needed to secure the sanctity of reading in the wake of technologies like Kindle is nothing less than a right to read. Such a right, she contends, is grounded in the right to free expression, and is codified in the first amendment to the United States Constitution. Cohen says, "freedom of speech is an empty guarantee unless one has something, anything, to say, the content of one's speech is shaped by one's response to all prior speech, both oral and written, to which one has been exposed." Cohen goes even further than this, however, suggesting that the right to read should include the ability to do so anonymously. Reading has always been an expressive activity in its own right, resulting in dog eared pages, marginalia, and other types of communicative qualities. But tethered appliances clearly raise the stakes of this expressivity. When a reader's private scrawl is no longer secreted away in the odd corner of a random volume, but is instead archived in third-party databases where it is identifiable and accessible, one must wonder what would happen to the expressive circuitry of a people. Cohen rightly fears that it could be scrambled or short-circuited, pointing to, as she puts it, the likely chilling effect that ubiquitously exposed reading would have on people's willingness to select, access, and engage reading materials controversial or otherwise.

"The right of freedom of thought and intellectual inquiry necessarily includes, (I would even say demands as a communications scholar), the freedom to read unobserved." This is currently impossible with Kindle, regrettably, since Amazon offers no choice but to opt in to the device's innocuous sounding backup feature. But what a right to read might help put in place then, beyond the freedom to enjoy an e-book without someone peering over your shoulder, would be a strong, pro-reader default. You might think of it as a legal touchstone whose purpose would be to represent readers in absentia, in contexts where their interests might otherwise

be forgotten or inadequately accounted for. So on its own, Kindle isn't abusive, at least as far as I'm concerned. It's nothing more and nothing less than, as Oprah Winfrey put it, a gadget, albeit something of an enthralling one. But the network of legal, technical, and economic forces to which it presently belongs does manage to expose Kindle users to all sorts of abuses of literacy. And those abuses are likely to continue and perhaps even escalate, absent the protections of a right to read.

Transcription produced by Beth Friese