

# Exhibit 2

REDACTED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JT COLBY AND COMPANY, INC., D/B/A  
BRICK TOWER PRESS, J. BOYLESTON AND  
COMPANY PUBLISHERS, LLC, AND  
IPICTUREBOOKS, LLC,

Plaintiffs,

-against-

Index No.  
11-CV-4060 (DLC)

APPLE, INC.,

Defendant.

-----X

VIDEOTAPED DEPOSITION OF

MIKE SHATZKIN

New York, New York

December 4, 2012, 9:35 a.m.

Reported By:

Nicole Sesta

Ref: 8575

1 M. Shatzkin

2 court reporter.

3 A Okay.

4 Q Also note that we have a court  
5 order in place today. So that the objections  
6 will simply consist of the word objection. If  
7 your counsel is going to instruct you not to  
8 answer I'm sure he'll do that.

9 A Okay.

10 Q Can you think of any reason why  
11 you're not able to testify today, is there any  
12 medication that you're on that might affect you?

13 A No, no.

14 Q Is it correct that you're here  
15 today to testify as an expert witness on behalf  
16 of the plaintiffs in the lawsuit between JT  
17 Colby and Apple?

18 A Yes.

19 Q What did you do to prepare for  
20 this deposition?

21 A I read a bunch of material, the  
22 complaint, depositions by Rich Freese and John  
23 Colby, I think. And I read the expert  
24 testimony, the expert report and then the  
25 deposition from the branding, I'm sorry, the

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2 name jumped out of my mind, the branding expert  
3 from Apple.

4 Q Would that be Professor Carpenter?

5 A Yes, Professor Carpenter. And I  
6 had my staff help me massage some numbers to  
7 analyze some of the data out of the sales  
8 records of iBooks. I would say that's pretty  
9 much what I did to prepare for this, prepare to  
10 write the report that you have and prepare for  
11 this testimony.

12 Q You mentioned the expert report of  
13 Professor Carpenter, was that just one report or  
14 was there more than one?

15 A I'm recalling one.

16 Q You also mentioned deposition  
17 transcripts of Mr. Freese and Professor  
18 Carpenter, are those the only deposition  
19 transcripts that you reviewed, and excuse me Mr.  
20 Colby?

21 A Think I read something from Mr.  
22 Colby. But those would be the only ones.

23 Q You mentioned having your staff  
24 help you with numbers. Who on your staff helped  
25 you with that?

1 M. Shatzkin

2 my ability up to the time I wrote the report  
3 yes.

4 Q You're being compensated in  
5 connection with your work in this case, correct?

6 A Yes.

7 Q How much are you being paid?

8 A \$500 an hour for the work done so  
9 far, \$600 an hour during deposition time, and  
10 \$700 an hour if we go to trial.

11 Q How many hours have you spent so  
12 far in connection with this case?

13 A Roughly 25.

14 Q Do you know how many hours you  
15 spent reviewing materials in connection with  
16 this case?

17 A Well, I would say that that 20  
18 hours is probably let's guess eight reviewing  
19 materials, eight writing and editing, and four  
20 conferring with counsel. I mean that would be  
21 sort of a rough break down but probably close to  
22 accurate.

23 Q Had you ever heard of any of the  
24 plaintiffs in this case before you were  
25 contacted by Mr. Freese?

1 M. Shatzkin

2 A Yes, sure.

3 MR. RASKOPF: Objection.

4 A Yes. Wait a minute. Plaintiffs,  
5 no, actually if iBooks is a plaintiff I had  
6 heard of iBooks. I had not heard of Mr. Colby.

7 Q Had you heard of JT Colby and  
8 Company?

9 A No.

10 Q Before this case?

11 A No.

12 Q Had you heard of Brick Tower Press  
13 before this case?

14 A No.

15 Q Had you heard of J. Boyleston and  
16 Company before this case?

17 A No.

18 Q Had you heard of iPicturebooks?

19 A Yes.

20 Q And in what context did you hear  
21 of iPicturebooks?

22 A Very aware of it. I'm in the  
23 business and I'm aware of what goes on in the  
24 business, and I knew Byron Preiss and I knew  
25 what Byron Preiss did. So I was aware of iBooks

1 M. Shatzkin

2 and I was aware of iPicturebooks when they were  
3 new.

4 Q Do you recall roughly when that  
5 was?

6 A Late 1990s.

7 Q Had you ever met Mr. Raskopf  
8 before this case?

9 A No.

10 Q Had you ever worked with his law  
11 firm before this case?

12 A No.

13 Q Have you heard of Allegaert Berger  
14 & Vogel?

15 A No, I haven't heard them.

16 Q You said you had heard of iBooks  
17 and iPicturebooks before. Have you ever done  
18 any work for either of those entities?

19 A No.

20 Q Had you ever done any work for Mr.  
21 Preiss?

22 A No.

23 Q Have you ever heard of a company  
24 called Byron Preiss Visual Publications?

25 A Yes.

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2 and how they impact particular players or  
3 particular propositions is what I think I've got  
4 a reputation for doing well.

5 Q Have you ever worked directly for  
6 any publishers as a full-time employee?

7 A No, except for Two Continents, no.

8 Q You have worked for publishers as  
9 a consultant, correct?

10 A Oh, yes.

11 Q What publishers have you worked  
12 for?

13 A All of them, literally. Random  
14 House, Simon & Schuster, Harper Collins,  
15 Hachette, Penguin. I mean, I'm just naming the  
16 big ones now, right. Many small ones, foreign  
17 ones. I mean, in one way or another, I've been  
18 retained by them or I've sold them projects or  
19 that is to say sold them books to publish.

20 I've interacted on a professional  
21 basis with most of the significant publishers in  
22 the English-speaking world.

23 Q Have you ever done any work for  
24 Harlequin?

25 A I spoke at Harlequin's global



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2 Q It says, "I have reviewed and  
3 considered the amended and supplemental  
4 complaint and jury demand, answer and  
5 affirmative defenses, the plaintiffs iBooks  
6 sales figures and examples of the plaintiffs'  
7 print and electronic books." Do you see that?

8 A Yes.

9 Q What sales figures did you look  
10 at?

11 A We looked at a spreadsheet that, I  
12 believe, was the sales reporting or compilation  
13 of the sales reporting by Simon & Schuster for  
14 the several-year period during which they  
15 distributed iBooks.

16 Q Do you know what period that was?

17 A Off the top of my head, like  
18 around 2000 to 2004, something like that.

19 Q Did you look at any other sales  
20 figures other than the ones you just mentioned?

21 A Not that I remember, no.

22 Q You also mentioned in your report  
23 examples of the plaintiffs print and electronic  
24 books. Do you recall what books you looked at?

25 A Exactly which titles, no.

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2 Q Do you recall how many?

3 A Four, six.

4 Q Did you look at any web sites in  
5 connection with your report?

6 A No.

7 Q Did you conduct any research in  
8 connection with your report?

9 MR. RASKOPF: Objection to  
10 the form.

11 A No. Well, except, as discussed  
12 earlier, the manipulation of the data from the  
13 sales reporting to make it more informative,  
14 that you could call that research. But it  
15 wasn't -- in other words, it wasn't looking at  
16 other information, but it was doing something to  
17 existing information to make it more meaningful.

18 Q That was what you called the  
19 number crunching that Ms. Flannery did?

20 A That Katherine Flannery did.  
21 That's right.

22 Q The sales figures that you looked  
23 at, were those for iBooks only or for iBooks and  
24 iPicturebooks?

25 A I believe both of them were in

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2 there, but my focus was on iBooks. I believe  
3 Katherine actually sorted numbers for both of  
4 them, but my focus was on the iBooks.

5 Q Did you conduct any consumer  
6 surveys in connection with your report?

7 A No.

8 Q Did you review any marketing  
9 materials for iPicturebooks or iBooks?

10 MR. RASKOPF: Objection to  
11 the form.

12 You may answer.

13 A I don't think so.

14 Q You mentioned publicity earlier.  
15 Did you review what you would consider publicity  
16 materials?

17 A No.

18 Q No materials as to just iBooks or  
19 iBooks and iPicturebooks?

20 MR. RASKOPF: Objection to  
21 the form.

22 You may answer.

23 A I'm sorry, what?

24 Q Let me break it down a little bit.  
25 Did you review any marketing materials with

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2 respect to iBooks?

3 A I didn't review any marketing  
4 materials that I can recall at all.

5 Q Same question: Did you review any  
6 marketing materials with respect to  
7 iPicturebooks?

8 A No.

9 Q Did you review any publicity  
10 materials with respect to iPicturebooks?

11 A Note that I recall.

12 Q Did you review any Wikipedia  
13 entries?

14 A No.

15 Q Did you review any media articles  
16 or coverage?

17 A No.

18 Q Did you do any Google or other  
19 internet searching with respect to iBooks or  
20 iPicturebooks?

21 A No.

22 Q And other than what you listed in  
23 your report in that second paragraph at the top  
24 of page two, do you recall reviewing anything  
25 else in connection with your report?

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2 A No.

3 Q Looking at the next paragraph,  
4 starts, "The facts I call upon."

5 A Uh-huh.

6 Q Is it fair to say that that's a  
7 reference to your general experience?

8 A Yes. It is fair to say that.

9 Q Did you make any assumptions in  
10 preparing your report and formulating your  
11 opinions?

12 A Well, some of what might be my  
13 expert opinions could be characterized as  
14 assumptions, but they're assumptions based on --  
15 they're informed assumptions. They're  
16 assumptions based on a lot of history over a  
17 long period of time. But yes, in that context,  
18 I did make assumptions.

19 Q Did you make any assumptions  
20 regarding the existence of any facts that you  
21 relied on?

22 A I don't quite understand that.

23 MR. RASKOPF: Note my  
24 objection to the form of the  
25 question.

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2 people, is that also the gatekeepers?

3 A No, the bookstore buyers, the  
4 reviewers and the librarians and the people who  
5 are making professional judgments about the  
6 books.

7 Q So is it fair to say that you're  
8 expressing that brands matter to the gatekeepers  
9 but not to the end consumers?

10 A That's exactly right.

11 MR. RASKOPF: Note my  
12 objection to the form.

13 A That's exactly right.

14 Q And then in the next paragraph you  
15 say, "As all brand experts know the key for  
16 brands to deliver a consistent experience to  
17 their users."

18 A Uh-huh.

19 Q What's your basis for saying that?

20 A Well, despite the fact that I've  
21 had no formal education in branding or taken any  
22 courses in branding, I have been exposed to a  
23 lot of dialogue about branding and marketing  
24 conversations for many, many, many, many years.  
25 And there are ways to describe -- there are

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2 romance novels, correct?

3 MR. RASKOPF: Objection to  
4 the form.

5 You may answer.

6 A Yes. Broadly speaking, yes.

7 Q Do you know whether Harlequin  
8 markets directly to consumers?

9 A Yes, they do.

10 Q Do you know what that marketing  
11 involves?

12 A Not in great detail, no.

13 Q Do you know any information about  
14 how they market to consumers?

15 A Well, I know that they make offers  
16 that encourage consumers to buy from them  
17 directly. I think they're probably subscription  
18 related. They both print and digital. I think  
19 that's probably the primary technique for them  
20 is offering subscriptions.

21 Q Let's mark as Exhibit 5 what I'll  
22 represent is a November 27, 2012 printout of the  
23 home page from the Harlequin.com web site.

24 (Exhibit 5, November 27,  
25 2012 Harlequin printout, marked

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2 for identification, as of this  
3 date.)

4 Q Looking at Exhibit 5, when you  
5 said that Harlequin makes offers, is there  
6 anything here that reflects the offers that  
7 you're referring to?

8 MR. RASKOPF: Objection to  
9 the form.

10 A Well, enjoy 20 percent off every  
11 day might be one of them. This is not really  
12 what I was thinking, no.

13 Q What kind of --

14 A Well, actually, no. Well, there's  
15 a Harlequin extras. I'm not sure what that is.  
16 And there seem to be price offers here. So  
17 maybe it's not subscription. Maybe it's  
18 discounting by price. But I would imagine there  
19 are probably subscription offers buried in there  
20 somewhere too.

21 Q When you say subscription what do  
22 you mean?

23 A What I mean is a way for a  
24 consumer to sign up like in a book club or  
25 something else or committing to pay regularly



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2 over time and, therefore, getting something  
3 regularly over time.

4 Q That something being a book?

5 A Books, yes.

6 Q So is it fair to say that as  
7 you're discussing it a subscription offer would  
8 be somebody who essentially subscribes to books  
9 as if they were magazines getting them regularly  
10 delivered?

11 A That's right.

12 Q Looking at the second page of  
13 Exhibit 5 it refers to free online reads. Were  
14 you aware that Harlequin offered free online  
15 content?

16 A I wasn't specifically aware of  
17 that but I'm not surprised.

18 Q And then down at the bottom of the  
19 page it refers to community, do you see that  
20 heading? And under that it talks about blogs.  
21 Is that something you were aware of?

22 A Not specifically but again, I'm  
23 not surprised.

24 Q Why were you not surprised?

25 A Because that's a pretty standard

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2 tool for a direct to consumer strategy.

3 Q When you say a direct to consumer  
4 strategy, would that be distinct from selling  
5 directly to retailers in a trade context?

6 A Yes, a direct consumer strategy as  
7 opposed to dependence on the trade.

8 Q Did you know whether Harlequin  
9 does any advertising for its books?

10 A I suspect very little, if any, but  
11 I don't know. I suspect if they do do  
12 advertising it would be restricted to either  
13 books for which they have very, very high  
14 expectations or it wouldn't be for a single  
15 book, but would be to try to gain the attention  
16 of a person like get them to subscribe to the  
17 newsletters on the web site or get them to a  
18 subscription offer or something of that nature.  
19 I wouldn't think that advertising was a  
20 particularly important component of their  
21 marketing.

22 Q You haven't seen any of their  
23 advertisement materials, have you?

24 A No.

25 Q Have you ever seen any of

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2 speaker on a program and talk about it. I think  
3 it would be likely that they have other ways of  
4 thinking about their audiences, whether they're  
5 divorcees or, I don't know, books about cheating  
6 on your spouse. I don't really know what they  
7 do. I'm not a romance reader. I think but  
8 definitely they are aware because they're  
9 dealing with millions of women all over the  
10 world that there are tastes within the romance  
11 consumption that need to be addressed and  
12 branded. I'm sure they work at that all the  
13 time.

14 Q Do you know whether Harlequin uses  
15 its own name Harlequin as an imprint or whether  
16 it has other imprints as well?

17 A I think it has other imprints. I  
18 know it has at least some other imprints as  
19 well.

20 Q You said Harlequin is likely aware  
21 of target customers for its different products,  
22 correct? Do you know whether or do you know  
23 whether Harlequin has developed specific  
24 products for specific consumers?

25 MR. RASKOPF: Objection to

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2 the form. You may answer.

3 A I think that's what they do. In  
4 other words, I think that they figure out target  
5 audiences or series. I don't know. I'm making  
6 this up, who knows whether they have it or not,  
7 English historical romances. They may create I  
8 don't know Regal books about the English lords  
9 and ladies having romances.

10 If they found that that was a  
11 category that people just wanted to read more  
12 and more and more of they might very well create  
13 a branded series around that category and be  
14 creating a product specifically for that series.  
15 That's an evolutionary stage of a niche  
16 publisher, which I think Harlequin is about the  
17 most evolved niche publisher there is. They  
18 write the book and they probably included that  
19 in what they've done.

20 Q Is Scholastic an example of a  
21 niche publisher?

22 MR. RASKOPF: Objection to  
23 the form. You can answer.

24 A Well, yes, I guess they are.  
25 They're probably larger than Harlequin.

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2 speaking at both of them.

3 Q Do you know whether Scholastic  
4 sells books directly through its web site?

5 A I'm sure they do.

6 Q Looking at your report, which is  
7 marked as Exhibit 3.

8 A I have the report.

9 Q On page five at the top you say  
10 science fiction fans knew Tor and Baen?

11 A Uh-huh.

12 Q Am I pronouncing that correctly,  
13 Baen?

14 A Yes.

15 Q How does science fiction fans know  
16 Tor?

17 A They know Tor and Baen because  
18 they read Tor books and Baen books. If you read  
19 science fiction there are only a dozen places  
20 that issue the books that are significant, and  
21 if you're a science fiction consumer or put it  
22 this way, there are many, many science fiction  
23 readers and romance readers and thriller readers  
24 who are consuming them by the dozens per year.  
25 When there are -- if you're consuming 20, 30, 40

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2 titles in a genre and there are only 6, 10, 15  
3 places that issue them, you find pretty quickly  
4 that you're getting repeats.

5 So you'll be conscious of them.  
6 And both Tor and Baen make very active efforts  
7 to communicate directly with their audiences.  
8 And I don't know much about Baen on the inside  
9 but I do about Tor. They have a tremendous  
10 reach, direct contact reach with the science  
11 fiction community.

12 Q You said there are only a dozens  
13 places that issue those that are significant?

14 A In any significant numbers.

15 MR. RASKOPF: Objection to  
16 the characterization of the  
17 witness' prior testimony.

18 MS. RAY: Let's keep it to  
19 objection.

20 MR. RASKOPF: I want to get  
21 the objection clear on the record.

22 MS. RAY: Per the judge it  
23 has to be limited to objection.

24 MR. RASKOPF: Objection as  
25 well.

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2 Q What are those dozen places?

3 A I don't know them all. I'm not a  
4 science fiction reader.

5 Q Do you have any particular ones in  
6 mind?

7 A Well, Orbit is the Hachette  
8 division that does science fiction. I don't  
9 remember what Random House calls their science  
10 fiction imprint. There was Del Rey Books, well  
11 that's part of Random House. Del Rey Books was  
12 with Ballantine, but the big houses mostly do  
13 science fiction. And there's Daw, which may or  
14 may not still exist, but which was a big science  
15 fiction imprint would now be owned by Penguin, I  
16 think. In these niche areas there are  
17 specialists and they don't exist. I mean they  
18 may exist in the hundreds because they're going  
19 to be small publishers that do three titles and  
20 then go away, but I'm not thinking about those.  
21 I'm thinking about the ones that are providing a  
22 lot of content into the marketplace. There  
23 aren't hundreds of those.

24 Q You mentioned Tor and Baen as  
25 making active efforts to communicate with their

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2 audience; is that correct? What did you mean by  
3 active efforts?

4 A They solicit people to be in touch  
5 with them. They say register on our web site,  
6 get our newsletter. In Tor's case they're  
7 beginning to sell directly to their customers.  
8 Baen definitely does that. Baen has been  
9 selling directly to customers for a long time.  
10 Baen has subscription offers I know. I don't  
11 think Tor does yet. So essentially they use  
12 whatever communication means they have, which  
13 largely are the books, to encourage consumers to  
14 be in touch with them in ways that will allow  
15 free communication and free marketing.

16 Q On page five of your report in the  
17 second paragraph you mention Hay House building  
18 e-mail lists?

19 A Yes.

20 Q What do you mean by e-mail lists?

21 A I mean lists of e-mail addresses  
22 for which you have the permission of the owner  
23 to send them an e-mail.

24 Q Would those be e-mails of prior  
25 customers?



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2 A Could be prior customers or could  
3 be people that just signed up to get your  
4 e-mails.

5 Q Do you know whether Tor uses  
6 e-mail lists?

7 A Yes, they do.

8 Q How do you know that?

9 A In this particular case I know it  
10 because I did -- I had a conversation with the  
11 VP at Macmillan, Macmillan owns Tor, who's their  
12 digital guy last November, and he told me a  
13 whole bunch of data about how many e-mails  
14 they'd sent out for Tor last month, et cetera,  
15 et cetera, which he was encouraging me to write  
16 about and I did write about a blog post from  
17 November 2011, I think, about what Tor was doing  
18 in terms of marketing, which I think was 650,000  
19 e-mails sent in one month or something. And  
20 they've spoken at -- I had them speak at a  
21 conference last June as well.

22 Q Is there anything else that either  
23 Tor or Baen do to reach consumers?

24 A No, I don't think so. I don't  
25 think they advertise. I don't think they stage

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2 events. I'm trying to think about what you  
3 would do to reach consumers. I think you reach  
4 consumers by the books you sell. That's how you  
5 reach them.

6 Q Have you ever visited a web site  
7 for either publishers?

8 A Have I ever visited?

9 Q A web site for either publisher,  
10 Tor or Baen?

11 A I've looked at Baen's not long ago  
12 because they're a bit of a puzzle to me. I  
13 wanted to see if I could learn more about them.  
14 I've never actually talked to anybody at Baen,  
15 which for me is unusual. Tor, I can't really  
16 recall.

17 Q Do you know whether Tor sells  
18 books directly through its web site?

19 A I'm pretty sure they do. Tor  
20 announced about two years ago not only would  
21 they sell books through their web sites, but  
22 they would sell books of other publishers  
23 through their web site as well. I'm not sure  
24 that they ever actually executed on that. It  
25 was a provocative announcement when it was made

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2 so I took note of it. They also recently, this  
3 is what they announced at my conference last  
4 June, are now selling ebooks off their web site  
5 and will sell ebooks of other publishers as well  
6 as their own.

7 Q So they sell both hard copy and  
8 ebooks through their web site?

9 A I believe they sell hard copy.  
10 I'm almost certain they've started the ebook,  
11 but unfortunately what I'm reporting to you is  
12 what they announced they would do. So I'm not  
13 absolutely certain that they actually did it but  
14 I think they did it.

15 Q Do you know whether -- withdrawn.  
16 I think you said it was your understanding that  
17 Tor did not stage events?

18 A Yes.

19 Q What do you mean by events?

20 A Events would be live gatherings  
21 promulgated by a publisher.

22 Q Do you know whether Harlequin does  
23 events?

24 A I'm pretty sure Harlequin does do  
25 events.

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2 Q Do you know whether Scholastic  
3 holds events like this conference you mentioned  
4 for Hay House?

5 A I don't know.

6 Q You mentioned that Harlequin is a  
7 niche publisher. Would you consider it to have  
8 a strong brand identity?

9 MR. RASKOPF: Objection to  
10 the form of the question.

11 A Yes, they have a strong brand  
12 identity, a very strong brand identity.

13 Q Also Tor, correct?

14 A Yes.

15 Q And Baen as well?

16 A Yes.

17 Q Scholastic too?

18 A Yes.

19 Q Do you know when any of those  
20 brands developed their brand identity?

21 A They evolve over time. I don't  
22 think you can put a moment to it, yesterday they  
23 didn't have a brand identity and today they do.  
24 Their brand identity is built on what they  
25 publish and every book they sell, every book

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2 the fact that he said backlist titles implies  
3 that what he may be talking about is new iBooks  
4 editions of books that were previously published  
5 elsewhere. The lack of the word of suggests  
6 that he interpreted it that way or he meant it  
7 that way.

8 Q It goes on to say in trade  
9 fiction, and that would be fiction books sold in  
10 the book trade channels you described before?

11 A Yes.

12 Q Science fiction, fantasy, graphic  
13 novels, history, and popular culture, correct?

14 A Yes.

15 Q He's saying here on the about us  
16 page with respect to iBooks that it publishes in  
17 all those genres?

18 A Yes.

19 Q Is that your understanding as to  
20 what iBooks publishes?

21 A Yes, published, yes.

22 Q Do you know whether iBooks has  
23 ever published any first editions of any books?

24 A I don't know. I don't know  
25 whether the iBooks output was all previously

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2 published books or whether it was some originals  
3 or not. I don't know.

4 Q Do you know how many new titles  
5 iBooks publishes each year?

6 A No.

7 Q Do you know how many iBooks has  
8 published overall?

9 A I know in these documents that I  
10 know what their output was for a period of time  
11 that I examined, which was approximately 2000 to  
12 2004 that we talked about earlier. For that  
13 period we did tally titles, and so I know in a  
14 general sense. I cannot recall. But I have  
15 known and expressed opinions about but I don't  
16 remember the numbers at the moment.

17 Q I believe you said that you had  
18 reviewed a report by Professor Carpenter,  
19 correct?

20 A Yes.

21 Q Was it just one report by him?

22 MR. RASKOPF: Objection.

23 Asked and answered.

24 A I recall one. Oh no, no, there  
25 was a second one. That's right. I did see a

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2 A National Book Network is a  
3 distributor like Toucan is. National Book  
4 Network is an organization that has a warehouse  
5 sales force and a computer and takes the books  
6 of little publishers and puts them into the  
7 trade.

8 Q Into the trade meaning into book  
9 retailers?

10 A Into bookstores and wholesalers,  
11 right.

12 Q Looking back at Exhibit 7, which  
13 was the web page, in the paragraph about iBooks  
14 that listed different categories, is that fair  
15 to call them trade fiction, science fiction, et  
16 cetera?

17 A Yes.

18 Q Do you know what percentage of  
19 iBooks books fall within those categories?

20 A That's exactly the analysis --  
21 well, I didn't do the analysis for all the  
22 categories because I didn't think there was a  
23 particular opportunity in all the categories,  
24 but we looked carefully at what the percentage  
25 was of science fiction. Actually not so much

1 M. Shatzkin

2 the percentage as the number. What we were  
3 looking for was any categories where they may  
4 have done enough titles to have built vertical  
5 recognition.

6 Q Do you recall how many books were  
7 in the science fiction category?

8 A Hundreds. I can't remember how  
9 many, but that's in my report.

10 Q Do you recall how many books were  
11 science fiction as opposed to any other  
12 category?

13 A Far more. I don't remember the  
14 percentages but far more were science fiction  
15 than any other category. I think approximately  
16 science fiction was as much as all other  
17 categories. But I can't quite remember whether  
18 that's accurate.

19 Q Looking at your report, which was  
20 Exhibit 3, at the bottom of page five you have  
21 the heading iBooks brand, the iBooks brand. In  
22 the first line you say, "The iBooks imprint  
23 published a large number of titles primarily in  
24 the science fiction genre." Do you see that?

25 A Uh-huh.



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2 has spawned companies that really don't have  
3 much presence except on the internet because  
4 it's a big enough market to support that.  
5 That's well understood by people who are working  
6 the digital revolution.

7 Q In your report when you say which  
8 have turned out to be of substantial interest on  
9 the internet and sold well as ebooks, were you  
10 talking about genre fiction generally or the  
11 books published by iBooks in particular?

12 A No, I was actually talking about  
13 the genres in which they publish, not iBooks  
14 itself. I don't think I ever knew or do know  
15 how those books have sold on the internet,  
16 iBooks books particularly have sold on the  
17 internet.

18 Q Looking in the next line you say,  
19 "Although the sales of iBooks overall were  
20 modest ( [REDACTED] units) with sales of science  
21 fiction titles alone totally [REDACTED] units,"  
22 do you see that?

23 A Uh-huh.

24 Q Looking at that and doing the  
25 math, is it fair to say that 34 percent of the

1 M. Shatzkin

2 total units were science fiction books?

3 MR. RASKOPF: Objection to  
4 the form.

5 A That certainly would be the  
6 calculation, yes.

7 Q And you view that as being  
8 primarily science fiction?

9 MR. RASKOPF: Objection to  
10 the form of the question.

11 A I actually am not looking at it  
12 from that perspective. What you're  
13 characterizing is the percentage of the total  
14 output that was one thing or another. What I  
15 was looking for was a critical mass of output in  
16 any area. So, in other words, whether  
17 approximately [REDACTED] science fiction units  
18 were sold, whether that was [REDACTED] out of [REDACTED]  
19 [REDACTED] or out of [REDACTED] or out of [REDACTED]  
20 is not as important to me as they sold [REDACTED]  
21 units. What's selling [REDACTED] units meant to  
22 me is that there are likely to be tens of  
23 thousands of people who have bought more than  
24 two or three of these books.

25 That's what I was looking for.

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2 Was there a foundation of awareness which would  
3 have constituted a building block for expanding  
4 the brand using internet techniques. So it  
5 wasn't so much the percentage because obviously  
6 the person who bought a gardening book whether  
7 there's one of them or a thousand of them is not  
8 going to be aggregatable into a science fiction  
9 community. So I wasn't worrying about those  
10 people, whether there were a lot of them or a  
11 little of them. What I was worrying about was  
12 was there enough to constitute some brand  
13 awareness. That's the [REDACTED] number was much  
14 more important to me than the ratio.

15 Q You say you were looking at  
16 whether it was likely that there were people who  
17 bought two or three or more books?

18 A Right.

19 Q Do you know for a fact that there  
20 are people who bought two or three or more  
21 books?

22 A No.

23 Q You said that somebody who is  
24 interested in gardening books is not going to be  
25 aggregatable into science fiction, correct?

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2 many books in the same genre and repeat what  
3 they do, and because I know that iBooks had a  
4 lot of very, very highly branded authors, I  
5 intuit, I believe as an expert that the  
6 likelihood is that fans of science fiction  
7 having discovered an iBook, however it is they  
8 found it shopping in a store that carried it,  
9 would easily find others and be attracted to  
10 others. So it's an expert opinion. It's not  
11 something that I can point to a survey to  
12 demonstrate.

13 Q Do you know whether any of the  
14 things you've talked about is likely to happen  
15 had happened prior to 2010?

16 MR. RASKOPF: Objection to  
17 the form of the question.

18 Q Customers discovering their books  
19 and --

20 A I'm sorry?

21 Q Do you know whether prior to 2010  
22 customers had discovered books published under  
23 the iBooks imprint?

24 MR. RASKOPF: Objection to  
25 the form of the question.

1 M. Shatzkin

2 Q And come to recognize it?

3 MR. RASKOPF: Objection to  
4 the form of the question. You may  
5 answer.

6 A That was actually the point to  
7 this paragraph, which was one, approximately 2  
8 million units of iBooks science fiction were  
9 sold to an unknown number of people. And I am  
10 positing that a significant number of those  
11 people had several, and those people would know  
12 iBooks and would have from the sales that took  
13 place in the time period that I was analyzing  
14 it. That's the basis of the opinion.

15 Q And that time period was 2000 to  
16 2004, correct?

17 A Approximately, yes.

18 Q But you don't know for a fact  
19 whether there were repeat customers who had two  
20 or three or more iBooks science fiction books?

21 MR. RASKOPF: Objection to  
22 the form. Asked and answered.

23 A No.

24 Q We're going to go off the record  
25 for a minute while we set up a spreadsheet for

1 M. Shatzkin

2 that as you recall was from 2000 to 2004?

3 A Yes, I believe it is.

4 Q Did anyone explain this  
5 spreadsheet to you in terms of what data it  
6 contained or how it worked?

7 A I don't think so, no. We didn't  
8 have any need to understand every column. We  
9 were looking for very, very specific information  
10 and we were able to -- actually Katherine was  
11 able to find what I asked her to find without  
12 much help from me or anybody else.

13 Q Looking at the spreadsheet it  
14 looks like there's an initial column that was  
15 numbers; is that correct?

16 A Okay, yes, the numbers on the far  
17 left, yes.

18 Q It looks like there's a next  
19 heading that says ISBN?

20 A ISBN, yes.

21 Q What does ISBN stand for?

22 A International standard book  
23 number.

24 Q Is that the unique number assigned  
25 to a book?

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2 over.

3 A I don't feel like there's anything  
4 here that I'm not seeing. I'm telling you that  
5 my granular familiarity with each individual  
6 column is minimal.

7 Q Understood. My understanding is  
8 that the spreadsheet reaches to 2,800 pages and  
9 that if one were to continue scrolling over to  
10 the right I think you get to close to 100  
11 columns.

12 MR. RASKOPF: We'll take  
13 your word for it.

14 Q If you can scroll down.

15 A Down?

16 Q Down. It may be simplest to just  
17 use the page down key.

18 A Where do you want me to go?

19 Q If you can find the title  
20 Battlestar Galactica.

21 A Do you know the row number?

22 Q Looks like 817. It may be 317.

23 A Yes, got it.

24 Q It looks like the title Battlestar  
25 Galactica appears six times in a row; is that

1 M. Shatzkin

2 correct? In other words, there's six rows that  
3 have Battlestar Galactica in the title?

4 A Yes.

5 Q Looking at that it looks like  
6 three of them have the same ISBN number, which  
7 would be 743413261.

8 A I see two of them with 261. I see  
9 one with 621, which might be a typo, yes.

10 Q Looking at the two that have --

11 A I see two that have 261, the top  
12 two, that are both 2299.

13 Q You said that when you looked at  
14 this you were counting the numbers of books,  
15 where books had the same title did you count  
16 each time the title appeared?

17 A I don't know.

18 Q Where a book had -- where the same  
19 ISBN number was listed, do you know if that was  
20 counted?

21 A I don't know.

22 Q Was this the only spreadsheet that  
23 you looked at containing sales data for the  
24 plaintiffs?

25 A I think so.



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2 Q Do you know whether it showed  
3 sales data for both iBooks and iPicturebooks?

4 A I know that it did. We sorted out  
5 the iPicturebooks.

6 Q When you say you sorted out --

7 A We didn't tally them. We were  
8 looking for science fiction and our  
9 understanding was that there wasn't any science  
10 fiction in iPicturebooks.

11 Q So you weren't addressing any  
12 sales levels for iPicturebooks in your report,  
13 correct?

14 A That's right.

15 Q Does the spreadsheet identify when  
16 any particular sales have occurred?

17 A I don't really remember. I don't  
18 know. I can't remember whether there was more  
19 than one spreadsheet that we added together for  
20 the time period or whether there was only one  
21 spreadsheet that covered the entire time period.  
22 I really don't recall. We got a bunch of  
23 information. I knew what I wanted. I knew I  
24 wanted to extract a small subset of what the  
25 spreadsheet contained, and I gave my colleague

1 M. Shatzkin  
2 the information I needed so she could extract  
3 what I wanted to extract. I didn't really pour  
4 over the spreadsheets themselves myself.

5 MS. RAY: Counsel, our  
6 understanding is that there was  
7 only one spreadsheet produced to  
8 us as material the witness  
9 considered.

10 MS. BOGDANOS: That's  
11 correct.

12 MS. RAY: If there was  
13 another spreadsheet -- so our  
14 understanding is correct, there  
15 was no other spreadsheet?

16 MS. BOGDANOS: Correct.

17 Q In directing your colleague to  
18 tally numbers of science fiction units sold, did  
19 you do any independent investigation to confirm  
20 the numbers that you derived from the  
21 spreadsheet?

22 A No. Under both meanings of that  
23 question, that I can conjure, the answer would  
24 be no to both of them.

25 Q You testified that your

1 M. Shatzkin

2 understanding is that the sales data covered the  
3 period 2000 to 2004, correct?

4 A Approximately.

5 Q Approximately. To the best of  
6 your knowledge have you reviewed any sales data  
7 for any time period after 2004?

8 A I can't recall. I seem to know  
9 anecdotally that the numbers have not been  
10 nearly -- were not nearly as robust after the  
11 Simon & Schuster period. Whether I know that by  
12 seeing numbers or whether I know that by asking  
13 questions and being told that I can't really  
14 recall, but I didn't try to analyze it.

15 Q Looking at this spreadsheet of  
16 sales data do you know whether these sales were  
17 made to distributors or to end customers?

18 A Well, there were two components  
19 and don't ask me to find them because I won't be  
20 able to, which were shipments out and returns.  
21 So the shipments out and returns were all  
22 transactions conducted with intermediaries. The  
23 number that I just gave you, the 1,900,000, or  
24 whatever, was a net number. That is it was the  
25 shipments out with returns subtracted.

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2 So the presumption is that the  
3 difference between gross and the net constitute  
4 sales that were made to consumers by the  
5 intermediaries.

6 Q So I understand, you would have a  
7 gross sales number, correct, and a net sales  
8 number, is that right, and the difference  
9 between those represent?

10 A Returns.

11 Q Returns?

12 A There was a gross sales number.  
13 What we got as raw data was a gross sales number  
14 and a returns number. We from that calculated a  
15 net sales number and that's the number I was  
16 reporting. That was part of what the exercise  
17 was designed to accomplish.

18 Q So the [REDACTED] was the net number, the  
19 number shipped out net of returns?

20 A That's right.

21 Q Other than looking at the net  
22 sales number do you have any way of knowing how  
23 many of any of the [REDACTED] [REDACTED] or the  
24 total [REDACTED] books were actually sold into  
25 the hands of consumers?

1 M. Shatzkin

2 A No.

3 Q I think we're done with the  
4 spreadsheet. Let's take a quick break and get  
5 the laptop out of the way.

6 THE VIDEOGRAPHER: The time  
7 is 2:32 p.m. and we're going off  
8 the record.

9 (Recess taken.)

10 THE VIDEOGRAPHER: The time  
11 is 2:34 p.m. and we're back on the  
12 record.

13 Q We're going to mark as Exhibit 10  
14 a November 27, 2012 printout of the search  
15 results for iBooks on Amazon.com?

16 (Exhibit 10, Amazon.com  
17 results, marked for  
18 identification, as of this date.)

19 Q Mr. Shatzkin, have you ever looked  
20 up iBooks on Amazon?

21 A No.

22 Q On any web site?

23 A No.

24 Q Looking on the left-hand side of  
25 this printout, which is of the first 12 of 849

1 M. Shatzkin

2 Q Do you know what portion of books  
3 sold in the iBooks imprint are sold in hard  
4 copy?

5 A Versus digital, no, I have no  
6 idea.

7 Q Do you know what portion are sold  
8 online as opposed to in other outlets?

9 A No.

10 Q We're going to mark as Exhibit 11  
11 a copy of the amended and supplemental complaint  
12 in this case.

13 (Exhibit 11, amended and  
14 supplemental complaint, marked for  
15 identification, as of this date.)

16 Q Before we turn to that, do you  
17 know what portion of iBooks sales, meaning sales  
18 of books sold under the iBooks imprint, were  
19 made to distributors as opposed to end  
20 consumers?

21 MR. RASKOPF: Objection to  
22 the form.

23 Q Meaning directly.

24 A No. Even for the time period that  
25 I measured I assumed that they were almost all

1 M. Shatzkin

2 your opinion at all that iBooks focused on  
3 science fiction?

4 A No.

5 Q Why not?

6 A For the reason I stated earlier,  
7 which is that from my perspective the publishing  
8 they did outside of science fiction for the  
9 purposes of my opinion about whether they had  
10 brand equity in science fiction, publishing  
11 outside of science fiction was noise. It was  
12 not meaningful. What was meaningful was how  
13 much publishing they did within science fiction.

14 Q That again was based on the sales  
15 numbers that you looked at?

16 A That's right. Sales numbers which  
17 also -- and the output numbers. In other words,  
18 the sales were one component and a number of  
19 titles published was another component of it.

20 Q Do you know how many titles iBooks  
21 has published in the science fiction genre?

22 A All I know is in the summary that  
23 is in this report, whatever it was, 178 titles  
24 or 560, I can't remember, 600 titles, \$2 million  
25 or something of that nature. That's the four

1 M. Shatzkin

2 walls of my knowledge.

3 Q In arriving at that number do you  
4 know whether that number, as you put it your  
5 colleague crunched the numbers, do you know  
6 whether she crunched the numbers to eliminate  
7 duplicate ISBN numbers?

8 MR. RASKOPF: Objection to  
9 the form of the question. You may  
10 answer.

11 A You just pointed out duplicate  
12 ISBN numbers to me for the first time. I don't  
13 know whether she eliminated them or not.

14 Q Do you know whether she eliminated  
15 duplicate titles?

16 A I don't know. I don't know about  
17 science fiction more than anything else. In  
18 other words, whether all the numbers are  
19 slightly inflated by that factor or whether none  
20 of them are, I don't know.

21 Q You just don't know one way or  
22 another?

23 A That's right.

24 (Exhibit 12, May 17, 2000  
25 memorandum draft, marked for



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2 Q Why not?

3 A Well, you're showing me a document  
4 that was from 2000 and I would think that it's  
5 superceded by data from 2000 to 2004. That's  
6 what I relied on. So the fact that a document  
7 that precedes that data characterizes it  
8 differently would not change my opinion.

9 Q So the description of iBooks as a  
10 general trade imprint doesn't affect your view  
11 one way or the other by the company itself?

12 A No, it doesn't affect my opinion  
13 at all.

14 Q Do you know whether iBooks has  
15 ever used e-mail lists of the type you described  
16 earlier?

17 A I don't know.

18 Q Do you know whether iBooks sells  
19 books directly to consumers through its web  
20 site?

21 A I have no idea. I actually think  
22 I know that they don't.

23 Q Do you know whether iBooks hosts  
24 events of the type you described earlier,  
25 whether conferences or --

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2 A I'm not aware of any.

3 Q Do you know whether iBooks uses  
4 Facebook or Twitter?

5 A I don't know.

6 Q Do you know whether it makes any  
7 use of social media whatsoever?

8 A I don't know.

9 Q Do you know whether with respect  
10 to the -- withdrawn. Do you know whether the  
11 plaintiffs have done anything with the iBooks  
12 imprint to put it in direct contact with  
13 consumers?

14 MR. RASKOPF: Objection to  
15 the form.

16 A I don't know.

17 Q Have you made any inquiry as to  
18 whether the iBooks imprint has made any effort  
19 to be in touch with its consumers?

20 MR. RASKOPF: Note my  
21 objection to the form.

22 A I'm trying to remember how I know  
23 that. The current owner of iBooks is a  
24 bookstore guy and has not probed in that  
25 direction, but I can't remember why I know that.

1 M. Shatzkin

2 I'm not aware of them making any efforts to go  
3 direct to consumer.

4 Q When you say a bookstore guy what  
5 do you mean by that?

6 A I mean that his background is in  
7 bookstores and his belief is in bookstores. So  
8 in the continuum or in the evolution of industry  
9 thought moving from bookstore dependent to  
10 bookstore independent, he tends to be more  
11 behind the curve than ahead of the curve based  
12 on his background.

13 Q I believe you said that you had  
14 not looked at any web sites in connection with  
15 your report, correct?

16 MR. RASKOPF: Objection to  
17 the characterization of the  
18 witness' prior testimony. You may  
19 answer.

20 A I don't recall looking at any web  
21 sites to prepare for this, no.

22 Q Do you know whether there is any  
23 active web site for iBooks?

24 MR. RASKOPF: Objection to  
25 the form of the question. You may

1 M. Shatzkin

2 answer.

3 A I don't know. Kind of hard for  
4 them to have one I guess if they didn't have one  
5 before or the iBooks store opened. I'm not sure  
6 what they do if they have one now.

7 Q You talked earlier about community  
8 building, do you recall that?

9 A Community?

10 Q Community building.

11 A Yes.

12 Q Do you know whether any of  
13 plaintiffs have engaged in community building  
14 with respect to iBooks?

15 MR. RASKOPF: Objection to  
16 the form. You may answer.

17 A I'm not aware of any such efforts,  
18 no.

19 Q Do you know whether any of  
20 plaintiffs have engaged in search engine  
21 optimizations with respect to iBooks?

22 A No, I don't know.

23 Q Do you know whether they've  
24 collaborated with other publishers or imprints  
25 with respect to iBooks?

1 M. Shatzkin

2 A No, I don't know.

3 Q Do you know if they have  
4 collaborated with other web sites?

5 A I don't know.

6 Q For example, Library Thing which  
7 you mentioned?

8 A I have no idea whether they have  
9 collaborated or not.

10 Q Do you know if they have  
11 collaborated with Good Reads at all?

12 A I don't know.

13 Q Do you have any information about  
14 what volume of traffic the plaintiffs' web site  
15 gets?

16 A No, I don't even know if they have  
17 a web site.

18 Q Have you ever seen any marketing  
19 materials for plaintiffs' iBooks books?

20 MR. RASKOPF: Objection to  
21 the form. You may answer.

22 A I don't think so.

23 Q I understand that earlier you used  
24 both the terms marketing and advertising. Are  
25 those two different things in your mind?

1 M. Shatzkin

2 A Depending on how one defines  
3 marketing, advertising could be a subset of  
4 marketing. Publicity is marketing. Advertising  
5 is marketing and other things are marketing.  
6 Some people break out publicity and advertising  
7 as if they were separate from marketing. It's a  
8 nuanced view of how to define these things. I  
9 don't think there's a textbook definition that  
10 says it's one or the other.

11 Q Would you understand marketing as  
12 including publicity and advertising?

13 A I would, yes.

14 Q Do you know whether plaintiffs do  
15 any advertising for their iBooks imprint?

16 A I don't know.

17 Q Do you know if they do any  
18 advertising for iPicturebooks?

19 A I don't know.

20 Q Do you know whether there are any  
21 fan sites for any of the iBooks or  
22 iPicturebooks?

23 A I don't know.

24 MS. RAY: Let's take a  
25 break.

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2 THE VIDEOGRAPHER: The time  
3 is 2:56 p.m. We're going off the  
4 record.

5 (Recess taken.)

6 THE VIDEOGRAPHER: The time  
7 is 3:19 p.m. This begins tape  
8 number four.

9 Q Mr. Shatzkin, have you ever  
10 visited a web site at iBooksInc.com?

11 A Not that I'm aware of.

12 Q Do you know who owns  
13 iBooksInc.com?

14 A No.

15 (Exhibit 13, Gregory  
16 Carpenter expert report, marked  
17 for identification, as of this  
18 date.)

19 Q Mr. Shatzkin, we've marked as  
20 Exhibit 13 Professor Carpenter's report.

21 MR. RASKOPF: Isn't there a  
22 rule against a thousand page  
23 documents?

24 MS. RAY: I'm not sure it's  
25 a thousand pages. We did spare

1 M. Shatzkin

2 Q And I believe you saw one  
3 spreadsheet?

4 A I saw one spreadsheet and I don't  
5 know which of those two or whether it was a  
6 different one.

7 Q Looking at page 11 of the report,  
8 paragraph 31, it says, "The practice in the book  
9 industry was that distributors could return  
10 books that did not sell to the consumers for up  
11 to two years." Is that correct?

12 A Well, the practice in the book  
13 industry is not defined that way. That could  
14 have been the practice of this distributor.  
15 There's not a standard returns practice in the  
16 industry, except that returns are generally  
17 enabled. But there certainly are rules from  
18 each publisher or distributor can set its own  
19 rules and a rule that you can return up to two  
20 years from purchase is not unusual.

21 Q If you turn to page 12, looking at  
22 paragraph 35.

23 A Uh-huh.

24 Q It refers to sales in 2005 and  
25 2006, do you see that? Do you have any reason



1 M. Shatzkin

2 science fiction names, that iBooks published on  
3 its list.

4 Q When you refer to the author list  
5 would that include authors such as Arthur C.  
6 Clark?

7 A That's exactly right.

8 Q Do you know whether iBooks, the  
9 imprint, published any first editions of any  
10 books by Arthur C. Clark?

11 A I have no idea.

12 Q Do you know whether titles that  
13 iBooks published that were authored by Arthur C.  
14 Clark were also available from other publishers  
15 at the same time?

16 A I don't know.

17 Q So is it fair to say that you  
18 don't know as to any of the authors published by  
19 iBooks Inc. whether it was a unique source for  
20 those titles at the time it published them?

21 A That's right, I don't know.

22 Q If you turn to page 33. Actually,  
23 it may make sense to look first at page 32,  
24 paragraph 95. At the bottom it states, "The  
25 below figure shows the sales of the iBooks

1 M. Shatzkin

2 imprint for the priced period through the Colby  
3 period." It refers to a table on the next page  
4 and then paragraph 96 refers to another table.  
5 And you looked at this when you looked at the  
6 Carpenter report?

7 A Yes.

8 Q Did these tables affect your  
9 opinion one way or the other?

10 A No.

11 Q Why not?

12 A Because, why not. It's sort of  
13 hard to address that from a negative, but maybe  
14 the simple thing to do is to say that the low  
15 bars on the right, as far as I know, did not  
16 subtract anything from the high bars on the  
17 left. So, in other words, they didn't reduce  
18 the evidence on which I based my opinion. They  
19 just simply failed to give additional evidence  
20 to support my opinion.

21 Q And that evidence being the number  
22 of books sold as reflected on the spreadsheet  
23 that you looked at that you believe were  
24 categorized as science fiction?

25 A That's right.

1 M. Shatzkin

2 MR. RASKOPF: Note my  
3 objection to the form of the  
4 question.

5 A No.

6 Q Looking at page one of your  
7 report, the numbered paragraphs at the bottom  
8 when you say this report will explain the  
9 following, in number one when you refer to  
10 multi-level branding, that's what you just  
11 talked about authors, imprints, or series in  
12 publishing companies; is that correct?

13 A Uh-huh.

14 Q And number two refers to trend  
15 towards book purchasing online and a focus on  
16 business to consumer brands, correct?

17 A Uh-huh.

18 Q Is it your opinion that iBooks is  
19 a business to consumer brand?

20 MR. RASKOPF: Objection to  
21 the form of the question.

22 A It is my opinion something is  
23 not -- you cannot say, well, I guess you can say  
24 it is or isn't a consumer brand. In some level  
25 anything that's ever bought by a consumer is a

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2 consumer brand. The question is whether it's a  
3 consumer brand on which some commercial value  
4 can be built. If there are six people that know  
5 about it, it would be pretty hard. If there are  
6 thousands of people that would know about it it  
7 would be somewhat easier. If there millions of  
8 people that know about it then you're Harlequin  
9 and you build a world scale enterprise on it.

10 It is my opinion that iBooks was  
11 recognized as a legitimate science fiction  
12 publisher by a substantial number of science  
13 fiction book consumers, and that that created a  
14 foundation on which can be built upon.

15 Q That again is based on the sales  
16 numbers?

17 A Yes.

18 Q In paragraph three where you say  
19 how the iBooks brand could have capitalized on  
20 its legacy, do you see that, to build a valuable  
21 consumer franchise? Is it your opinion that it  
22 ever did capitalize on that legacy?

23 MR. RASKOPF: Objection to  
24 the form of the question.

25 A I'm not aware of any specific

1 M. Shatzkin

2 steps that were taken to capitalize on that  
3 legacy in the manner which say I would have done  
4 it.

5 Q Looking at page two of your  
6 report, number four at the top, you refer to  
7 misstatements and erroneous conclusions by  
8 Professor Carpenter, correct?

9 A Uh-huh.

10 Q Are those -- are your opinions as  
11 to the misstatements and erroneous conclusions  
12 that you believe Professor Carpenter reached set  
13 forth at pages six, seven, and eight of your  
14 report?

15 A Certainly -- that certainly does  
16 seem to be a list of them. Whether it's the  
17 whole list of them I'm not sure, but it does  
18 seem to be the section in which I gathered that  
19 particular batch of information.

20 Q Do you have any other opinions  
21 about Professor Carpenter's expert reports,  
22 whether his original report or his rebuttal  
23 report, that are not set forth in your report?

24 A I can't even really begin to  
25 answer that question. Probably. I mean I have

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2 Q Do you know whether at any point  
3 in time iBooks has been the only source for  
4 Arthur C. Clark books?

5 A No.

6 Q In the last paragraph on page  
7 eight in the first line you say, "At the time  
8 the entire industry turned its attention to  
9 consumer branding." Do you see that?

10 A Uh-huh.

11 Q You say there is no precise date  
12 but you reference November 2007, the  
13 introduction of the Kindle and is that the  
14 Amazon ereader?

15 A That's the Amazon ebook ereader,  
16 yes.

17 Q Do you know whether iBooks turned  
18 its attention to consumer branding?

19 A I see no evidence that they have.

20 Q If we take a short break we may be  
21 close to done.

22 THE VIDEOGRAPHER: The time  
23 is 4:09 p.m. and we're going off  
24 the record.

25 (Recess taken.)

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2 proposition, and they need to understand the  
3 environment or climate in which they are  
4 introducing that, and what words are the best to  
5 use.

6 There's definitely a marketing  
7 component to all those things, or Net Galley,  
8 things like that. Sometimes it includes  
9 figuring out who might write about it or in some  
10 more conventional aspects of marketing  
11 publicity.

12 Q We mentioned your blog earlier. I  
13 think it's called the Shatzkin File?

14 A That's right.

15 Q Do you know how many blog entries  
16 you've done?

17 A It will be four years in February.  
18 I would say probably about between 3 and 400.

19 Q Do any of your blog entries  
20 discuss iBooks?

21 A No.

22 Q Do any of your blog entries  
23 discuss any of the plaintiffs?

24 A No.

25 Q Do any of your blog entries

1 M. Shatzkin

2 discuss Byron Preiss?

3 A No.

4 Q Have you been asked to give any  
5 opinion in this case about whether there is  
6 likely to be confusion between the iBooks  
7 imprint and Apple's iBooks software application?

8 MR. RASKOPF: Objection to  
9 the form of the question.

10 A I don't think I've been  
11 specifically asked that question.

12 Q Do you have any opinion?

13 A Yes.

14 Q What is your opinion?

15 A I think it would be inevitable  
16 that there would be confusion.

17 Q What's the basis for that opinion?

18 A The names are the same. The ebook  
19 world is new and still confusing to a lot of  
20 people and I think that the power of Apple is  
21 such that to the extent that there's any  
22 awareness of iBooks it is likely in this day and  
23 age to be thought of as the Apple ebook format,  
24 rather than anything else.

25 Q Have you done any research



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2 understanding that iBooks is the Apple ebook  
3 format.

4 Q You testified earlier that in your  
5 view sales during the period 2000 to 2004  
6 reflected the existence of an iBooks brand  
7 identity?

8 A That's right.

9 Q As of that time?

10 A Yes. I was very focused in the  
11 answer. However, I said it represents the  
12 identity to what I posit to be thousands of  
13 people who bought more than one or two iBook  
14 science fiction books in that time period, not  
15 universally or with ubiquity, but to a targeted  
16 audience, which happens to be the same targeted  
17 audience that would be productive for a science  
18 fiction publisher to capture. It's a fraction,  
19 a sliver of the audience that Apple would  
20 consider to be important for an audience.

21 Q You said -- withdrawn. Is it your  
22 understanding that the iBooks imprint and Apple  
23 use different logos in connection with their  
24 iBooks products?

25 A Once again, I'm sort of no

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2 brand -- they would have a real opportunity to  
3 turn that into something that would be a long  
4 way from being Harlequin, but would be on its  
5 way to being something like Harlequin or Baen or  
6 Tor or Orbit.

7 Q You talked about crossing the line  
8 to having a brand. Is it your opinion that  
9 iBooks at any point crossed that line?

10 MR. RASKOPF: Objection to  
11 the form.

12 A You're asking me to generate a  
13 characterization. I'm just simply not  
14 comfortable saying when the lines got drawn. I  
15 go back to what I said, which is that they have  
16 a foundation of knowledgeable people in what  
17 strikes me as sufficient number to make a real  
18 play for a science fiction brand.

19 It's not a dozen people. It's  
20 probably thousands and it may be tens of  
21 thousands of people who consumed enough books so  
22 if -- remember if it was 50,000 people, we're  
23 living in a country of 300 million people. So  
24 whether it be 50,000 of them and you and I may  
25 never meet one with those odds, but if we could

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2 meet those 50,000 people and say do you know  
3 iBooks they'd say I read an Arthur Clarke book,  
4 and then I read something by someone I didn't  
5 know because these people who read 5, 10, 20, 40  
6 science fiction books a year, as I said earlier,  
7 are not reading them from 500 publishers.  
8 They're coming from a dozen publishers. They  
9 would remember iBooks.

10 Q Is it your opinion that iBooks has  
11 made a play to capitalize on those people who  
12 have bought books in the past?

13 MR. RASKOPF: Objection to  
14 the form of the question.

15 A I have not seen the evidence of  
16 it.

17 Q I'd like to show you what we've  
18 marked to save time as Exhibit 14, a book called  
19 Plantepedia by Maggie Stuckey. We've marked as  
20 Exhibit 15 Glide Path by Arthur C. Clarke.  
21 We've marked as Exhibit 16 Arthur C. Clark's  
22 Venus Prime 5. We've marked as Exhibit 17 a  
23 book called Voodoo Moon Trilogy by Cheri Scotch.  
24 We've marked as Exhibit 18 the Dawn of Amber by  
25 Robert Zelazny. We've mark as Exhibit 19 Dorian