



# RAISING THE BAR

IFA LEGAL SYMPOSIUM  
MAY 5-7, 2019 | WASHINGTON, DC



# Digital Transformation in a Franchise System: Keeping Up With the Technology Race Within the Bounds of Existing Franchise Agreements

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# Agenda

- Adopting a Change Mindset
  - Case Studies
- Balancing Innovation and Risk
- Franchisee Participation and Communication
- Implementing Technology Changes Under Existing Franchise Agreements
  - Technology Fund Fee
- Evaluating Different Technologies and Innovative Ways to Deliver Products and Services
- Negotiating and Administering Complex Technology Vendor Agreements

# Adopting a Change Mindset

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# Adopting a Change Mindset

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- “The pace of change has never been this fast, yet it will never be this slow again”

– Justin Trudeau

# The fastest and most adaptable companies win



- Invested \$7 Billion adapt to consumer preferences
- Google Express, Target Restock, Shipt, and Drive Up to advance its shipping and delivery methods
- Data analytics
- Innovative technology

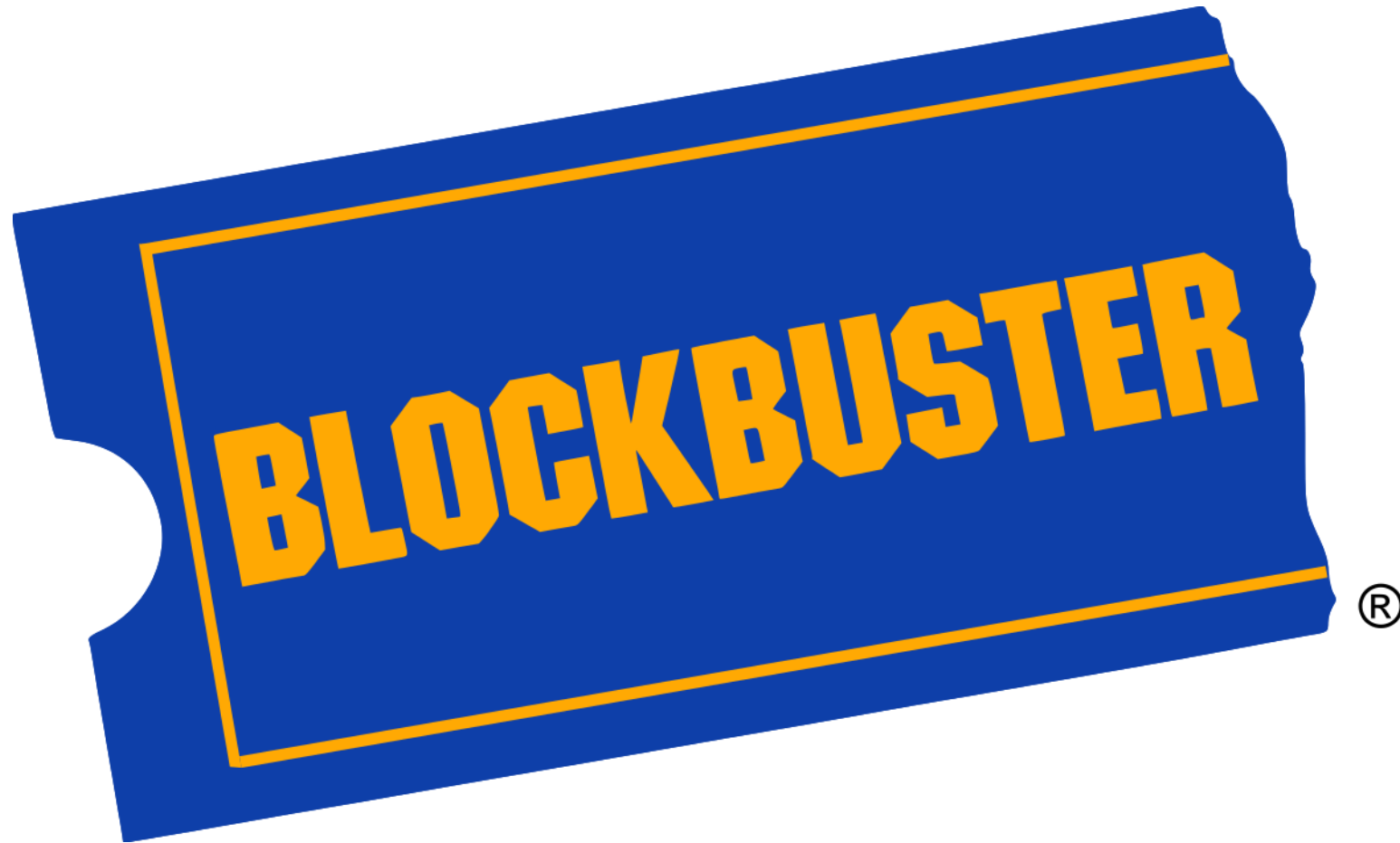
# The fastest and most adaptable companies win



Interactive Entertainment.

- Founded in 1889 making Japanese playing cards
- 1950s they get into board games
- In 1974 bought the rights to distribute video game consoles
- In 1975 began making their own game consoles
- In 2006 introduced the Wii
- Nintendo Switch, Nintendo3DS
- Pokemon Go

# Companies that cannot adapt to digital world will not exist



- Founded in 1985
- Sold for \$18.4M
- 3000 locations, over half a billion in revenue, sold to Viacom for \$8.4B
- 1997 Netflix launched with mail order
- Netflix approached Blockbuster in 2000 to buy for \$50M. Blockbuster declined.
- Between 2008-2010 closed 1000 stores
- Filed bankruptcy in 2010
- 1 location left today



# Companies that cannot adapt to digital world will not exist

- Share Moments. Share Life.
  - In 1877 invented the Kodak Camera
  - In 1935 Kodachrome film came out
  - In 1974 an electrical engineer at Kodak invented the digital camera but because it was a filmless camera management didn't want to tell anyone about it—Registered a patent for it though
  - Started eliminating jobs in 1995
  - Filed for bankruptcy protection in 2012



# Companies that cannot adapt to digital world will not exist



Great disruptor of 1896.

- Came out with a mail order catalogue with largest assortment of things under one roof
- Could buy a house out of the catalogue
- First to adopt no questions asked return program
- First to offer a rewards program
- Sounds familiar to Amazon today? Online catalogue, with free returns and Prime. Why isn't Sears Amazon?

# Companies that cannot adapt to digital world will not exist

- Today Sears is closing stores and in bankruptcy.
- Sears leaders were in denial of the need to change.
- Bad news never makes it to the 50<sup>th</sup> floor—leaders didn't want to hear it.
- Paralysis when they woke up—Sears didn't jump on any bandwagon.

# Now we know we need to change, but how do we balance Innovation and Risk?

- Adopting an attitude of risk
- Creating freedom within a framework

# Franchisee Participation and Communication

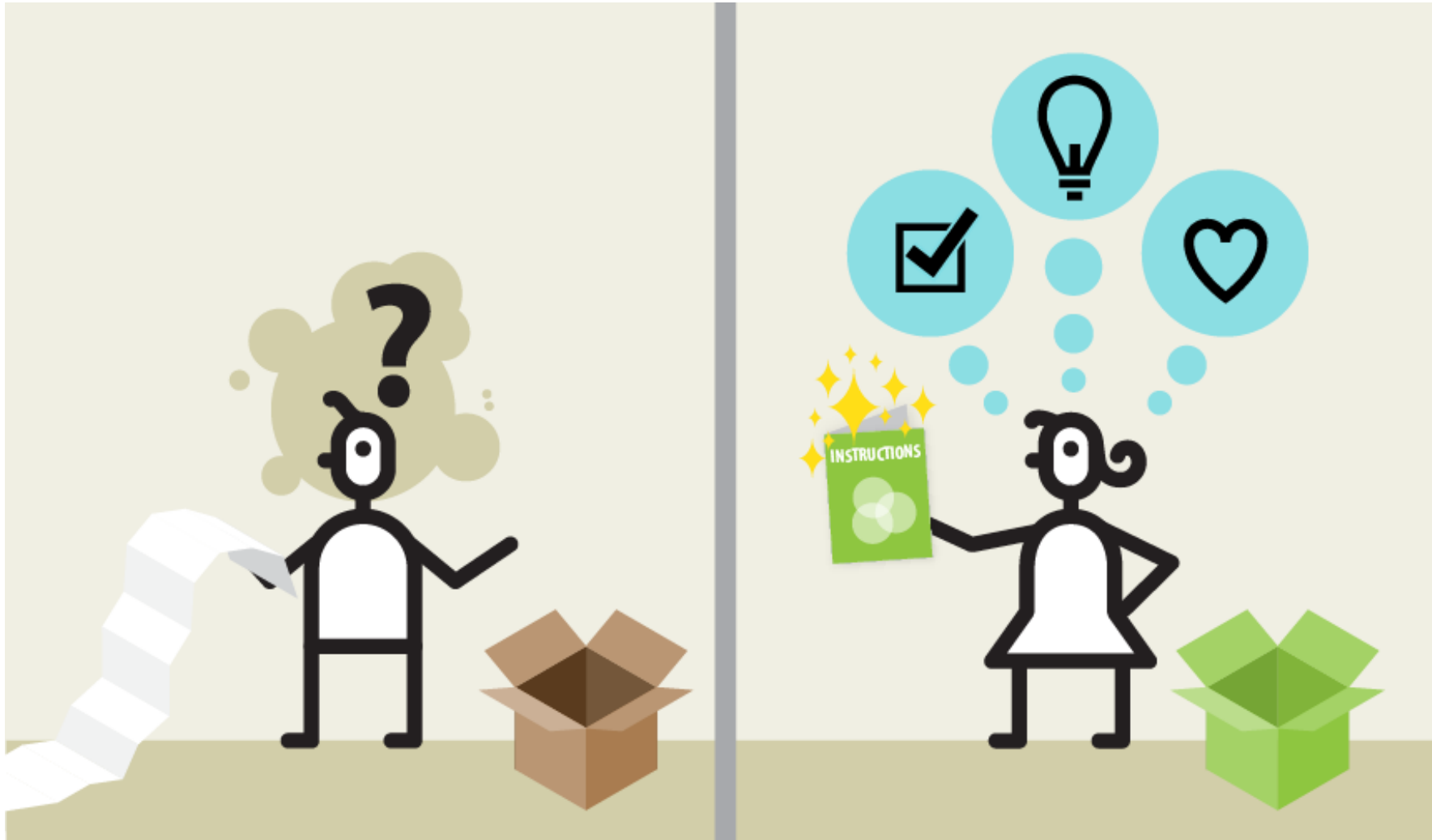


- Franchisee involvement from inception
  - Contribute relatable need
  - Increases franchisee support and advocacy
- Transparent communication
- Business case / research

# Benefits of Early Adopter Programs

Corporately owned units or early franchisee adopter programs or BOTH!

- Understand how the new “change” affects other processes
- Make modifications / improvements
- Increasing franchise system support
- Transparent results



# How Do I Do This?

- Concise and simple instructions
- Clear understanding of the affects of change
- Allow for timing fluctuations

# Communication Process

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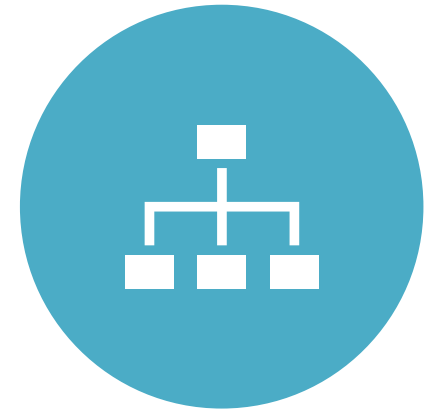
DETERMINE ISSUE  
OR NEED



IDENTIFY  
INFLUENTIAL  
FRANCHISEES



JOINT  
COMMUNICATION  
TO FRANCHISE  
SYSTEM



COMMUNICATION  
STRUCTURE



# Implementing Technology Changes Under Existing Franchise Agreements

- Good Faith and Fair Dealing
- Franchise Agreement
- Operations Manual



# Implementing a Technology Fund Fee

- What is a Technology Fund Fee?
  - Operates in same manner and concept as Advertising Fund Fees
  - Fees are deposited into Technology Fund that the franchisor utilizes for the benefit of the franchise system by investing in new technology opportunities.

# Technology Fund Fee

*The Franchisee will, for the entire term of this Agreement, remit to Franchisor weekly Technology Fees of \_\_\_% of the Franchisee's weekly Gross Revenues which are received, billed, or generated by, as a result of, in connection with or from the Franchised Business operated pursuant to this Agreement (the "Technology Fee"). The weekly Technology Fees paid by the Franchisee to Franchisor will be deposited in the Technology Fund and will not be refundable to the Franchisee under any circumstances. Franchisor reserves the right to increase the amount of the weekly Technology Fee. Any increase in the weekly Technology Fee will not take effect until the Franchisee has been given at least 90 days prior written notice of the increase. Any increase will not exceed the maximum \_\_% of the Franchisee's weekly Gross Revenues.*

# Implementation Strategies

- Proactive implementation
  - New franchise agreement being signed
    - New franchisee sale
    - Acquisition of existing franchise
    - Territory expansion
    - Franchisee renewal

# Implementation Strategies

- Existing franchisee implementation incentives
  - Short-term royalty reductions
  - Deferring the fee implementation for a period of time
  - Discounting or waiving early renewal fees
  - Increasing the term of the franchise agreement

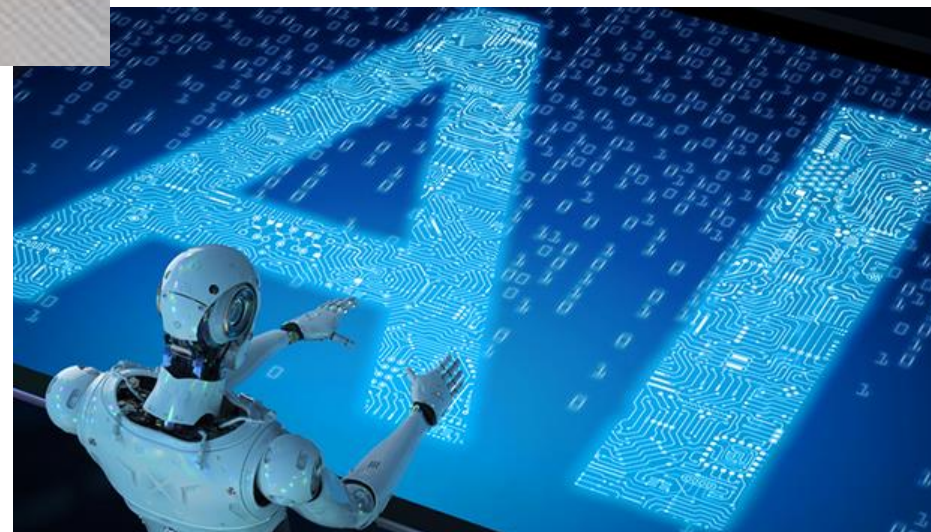
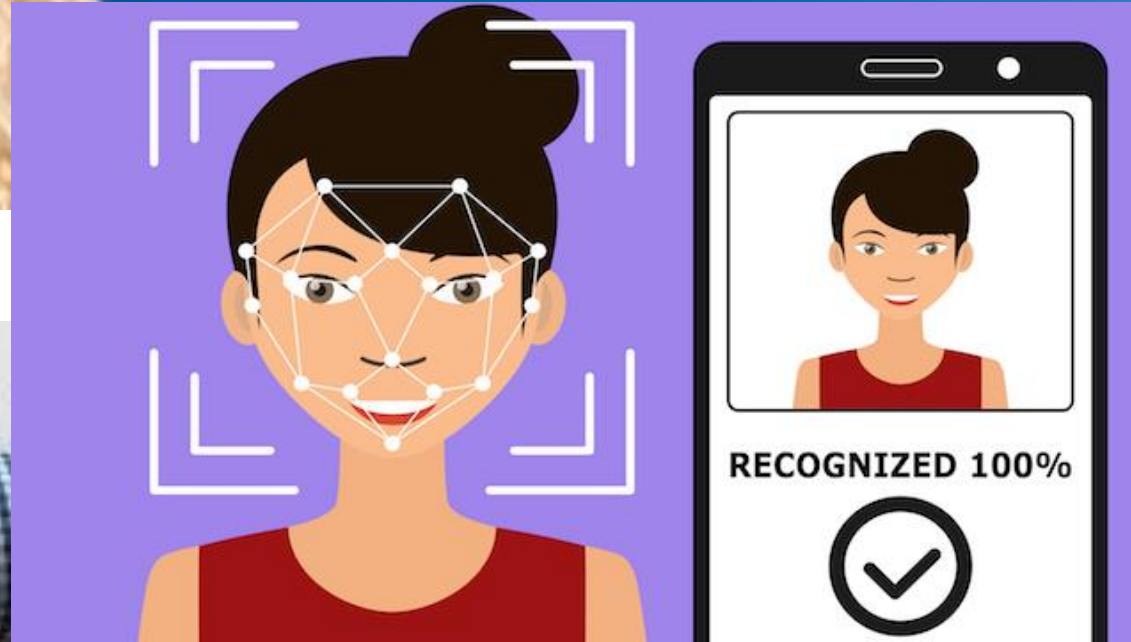




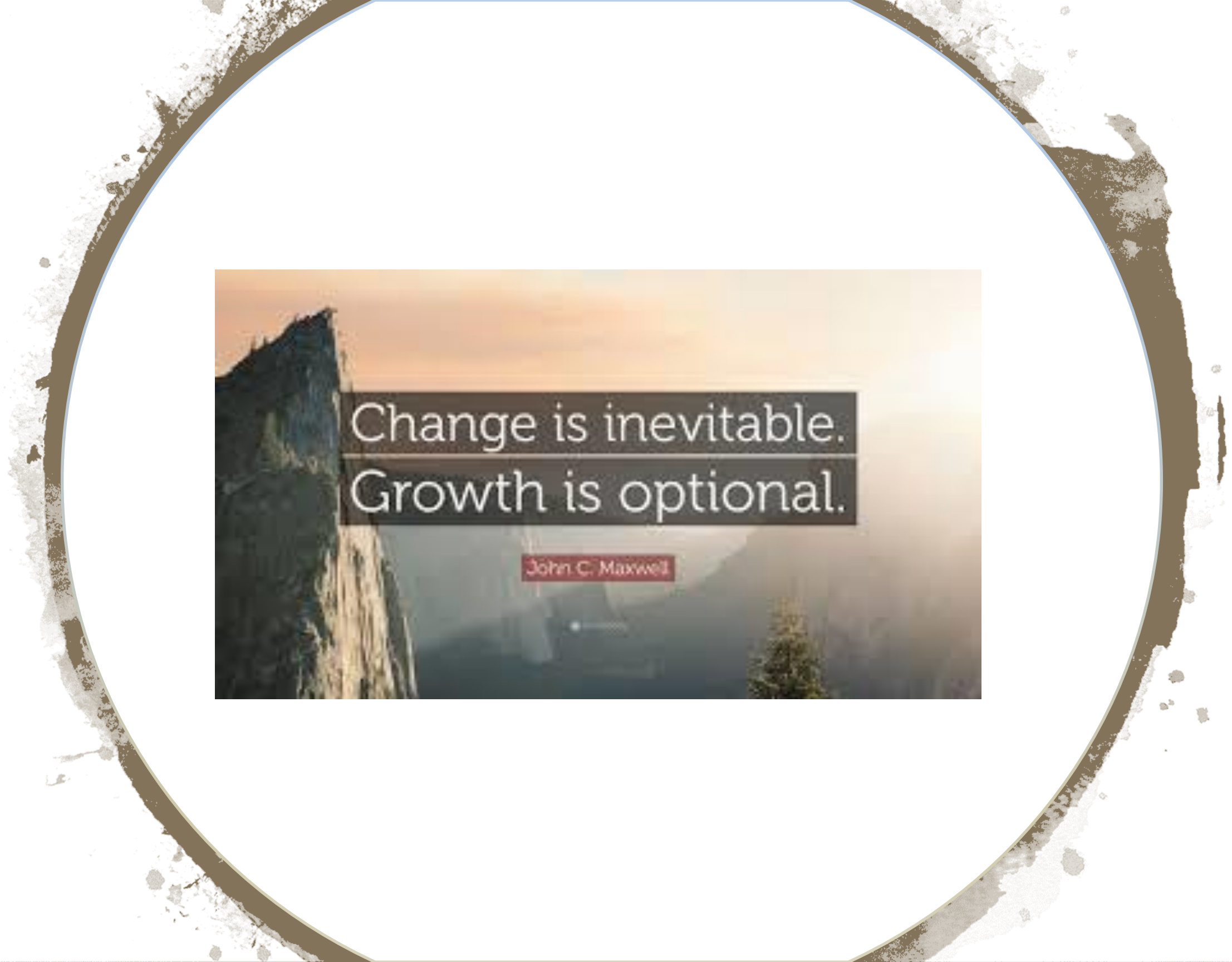
# The World is Changing

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Change is inevitable.  
Growth is optional.

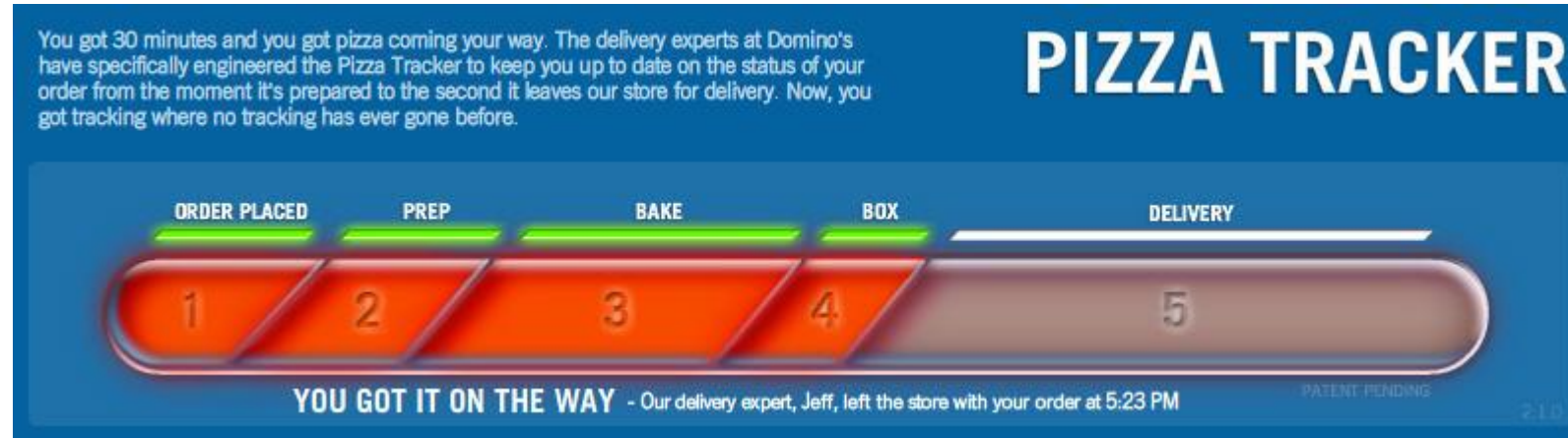
John C. Maxwell



# Flashback: Pizza Delivery Industry 2009



# 10 Years Later...



# Growth is Good

- 4/1/2009

**\$6.42**

- 4/1/2019

**\$249.45**



# Challenges in Implementing Innovative Ways to Deliver Products and Services

- Franchise Agreement
  - Territory Rights – is it a contractual right or obligation?
    - Company retains all rights
    - Franchisee required to participate
    - Middle ground
  - Applicable Royalties, Fees, Costs

# Challenges in Implementing Innovative Ways to Deliver Products and Services

- Business Considerations
  - Participation:
    - Included or Excluded
    - Optional or Mandatory
  - Requirements for Participation
  - Costs to Franchisees
  - Timing of Implementation (Pilot or Phased Approach)

# Franchisee Impact

“Technology should not be  
a burden to franchisees”

- Training
- Cost
- Revenue
- Client Migration



- Communication
- Pilot program
- Enlisting support of franchisees
- Additional incentives or benefits
- Transparency of successes and failures

# Negotiating and Administering Complex Technology Vendor Transactions

- Allocating Risk for Data Breach and other Privacy Issues
  - Establishing a Privacy and Data Security Vendor Management Process
    - Pre-Engagement Due Diligence
      - Add security questions to RFP process
      - Standard Contract Provisions
      - Ongoing oversight



# Negotiating and Administering Complex Technology Vendor Transactions

- Service Level Requirements
  - Service Availability
  - Scheduled Downtime
  - Support Hours
- Remedies for Failure to Satisfy Service Level Requirements
  - Service Credits
  - Termination