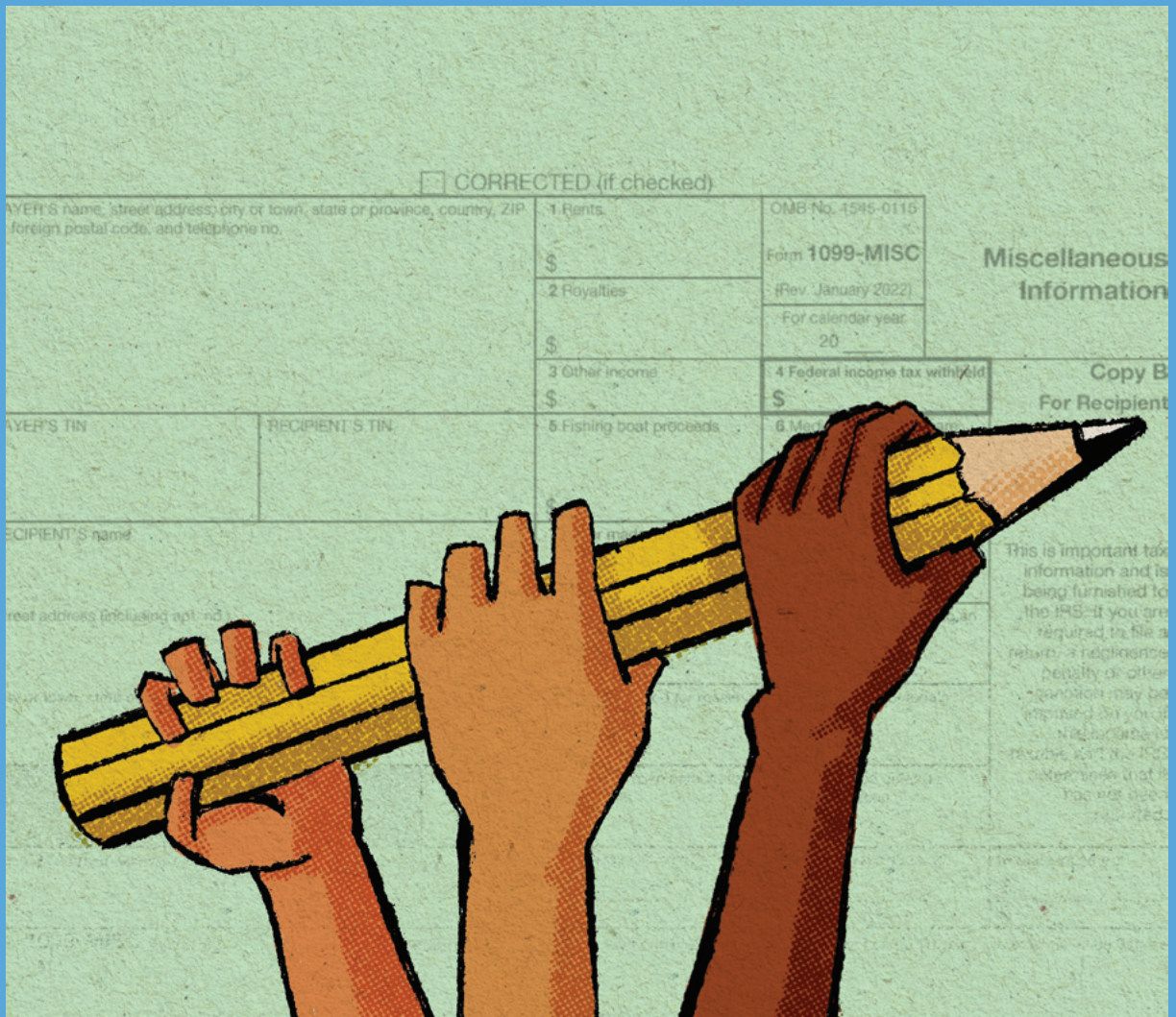


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“OVERHEARD”

“ChatGPT has no inner being, it has been nowhere, it has endured nothing, it has not had the audacity to reach beyond its limitations, and hence it doesn’t have the capacity for a shared transcendent experience, as it has no limitations from which to transcend . . .

This is what we humble humans can offer, that AI can only mimic, the transcendent journey of the artist that forever grapples with his or her own shortcomings.”

—**Nick Cave** from his newsletter, “The Red Hand Files,” Issue 218, January 2023

SHORT TAKES

* LITERARY ARTS EMERGENCY FUND HELPED NONPROFITS THROUGH THE PANDEMIC

The Literary Arts Emergency Fund (LAEF) was formed in 2020 to support nonprofit literary organizations affected by the COVID-19 pandemic. The group was started by the Community of Literary Magazines and Presses, the Academy of American Poets, and the National Book Foundation, with support from the Mellon Foundation.

LAEF held two rounds of funding, in 2020 and 2021, distributing \$7.8 million to 276 organizations, and recently released its impact report for 2021. In total, the group received 410 applications for aid from literary nonprofits in the U.S., including Puerto Rico. Most nonprofits had “meager operating budgets and little or no cash reserve,” and suffered significant losses due to COVID. Because of the shift to digital programming during the pandemic, many had to invest in new technology. The majority reported that serving underrepresented groups was a significant part of their work.

Most recipients reported that financial aid from LAEF meant they did not have to scale back programs or eliminate staff positions, allowing them to continue activities. Recipient organizations run writing programs, publications, grants and awards, and employ

writers on staff. As a result, much of LAEF’s funding has been passed on from the nonprofits to individual writers.

* APPLE LAUNCHES AI-NARRATED AUDIOBOOKS

Apple is now offering audiobooks narrated by artificial intelligence (AI), rather than human narrators, with a goal of dramatically expanding its audiobook offerings. The company is starting with four voices, two male and two female. The *Guardian* reports that Apple contacted independent book publishers about the program last year, offering to pay for the cost of digital recordings. They did not all agree; those who did will have titles released with AI narration. Authors will be paid royalties on sales as usual.

Downloaded audiobooks—not physical audiobooks—have steadily increased in popularity and were among the few publishing categories to see growth in 2021, according to the Association of American Publishers. It is no surprise that Apple is looking for a way to expand its offerings, and the company correctly points out that only a fraction of books are currently available in audio format.

Concerns have been raised about the harm to the livelihoods of audiobook narrators. More broadly, *Ars Technica* points out, “If AI narrators become something readers commonly accept and enjoy, it could increase the leverage Apple and other tech companies

have over publishers and authors who want as many people as possible to see or hear their work.” And, as one literary agent told *The Guardian*, “Companies see the audiobooks market and that there’s money to be made. They want to make content. But that’s all it is. It’s not what customers want to listen to. There’s so much value in the narration and the storytelling.”

* OVERDRIVE RELEASES 2022 REPORT

Overdrive, the largest digital reading platform, released its 2022 book circulation data, finding record circulation of digital materials in libraries and schools. The year saw a 10 percent increase over 2021, with 555 million e-books, audiobooks, digital magazines, comics, and other content borrowed by readers across the U.S.

The report attributes the 2022 usage increase to the company having brought in more publishers, along with an increase in book clubs and community reading programs, libraries expanding access to underserved populations, the addition of many more magazine titles, and improved cultural representation in the e-book catalog.

The most popular e-book borrowed via Overdrive in 2022 was *The Last Thing He Told Me* by Laura Dave. The most popular audiobook was *Where the Crawdads Sing* by Delia Owens, and the top children’s book was *Diary of a Wimpy Kid* by Jeff

Kinney—a longtime favorite, first published in 2007.

* MANUSCRIPT SCAMMER PLEADS GUILTY

An Italian citizen named Filippo Bernardini has pleaded guilty to wire fraud in connection with his theft of more than a thousand unpublished manuscripts since 2016. Bernardini used fake email accounts to impersonate literary agents and publishers and obtain manuscripts from writers and agents. His targets included such well-known writers as Margaret Atwood, Sally Rooney, and Ethan Hawke.

Bernardini was arrested on January 5, 2022, by FBI agents at John F. Kennedy airport in New York City, and the charges were

filed in the Southern District of New York. Initially, Bernardini pleaded not guilty. At the time of his arrest, many in the industry were already aware of the scam but did not know who was behind it or why the person was stealing manuscripts.

The scheme became more widely known after *Vulture* published an article in February 2022, “The Talented Mr. Bernardini,” which suggested that “as far as anyone can tell, the caper itself might have been the point.” *Vulture*, *The New Republic*, and other outlets spoke to dozens of people across the publishing industry, collecting theories. No one believed Bernardini planned to publish the books under his own name. He seemed to have professional publishing ambitions, rather than authorial ones. He was also

an aspiring translator. He obtained a master’s degree in publishing at University College London and held an internship at a literary agency. It was at this point that he began trying to steal manuscripts. While he struggled to ascend the ladder in the publishing world, in 2021 he was hired in the rights department at Simon & Schuster in London.

The scam had no obvious financial incentive and took hours upon hours of effort. Bernardini researched his targets and the people he impersonated, set up dozens of fake email addresses, and corresponded with writers and agents around the world. While he has changed his plea to guilty, the answer to why he did what he did remains a mystery. **AG**

Court Rules Internet Archive Violated Copyright Law

A U.S. District Court decided in favor of four publishers in their lawsuit against the Internet Archive. Hachette Book Group, HarperCollins, Penguin Random House, and Wiley had filed a motion for summary judgment, arguing that IA’s Open Library violates copyright law and is not fair use. U.S. District Judge John Koeltl agreed in a decision released on March 24.

For years, the Internet Archive scanned physical copies of books and lent out the digital versions without the permission of authors or publishers. IA claimed its actions were fair use under a legal theory called “controlled digital lending,” or “CDL,” as long as it didn’t lend out the print and digital editions at the same time. In 2020, IA rolled out its “National Emergency Library,” making books available without even the negligible protection of CDL. The publishers sued IA in June 2020, arguing that there is no precedent under the law for allowing the scanning of thousands of books and making the copies available in their entirety.

In his decision, Judge Koeltl discussed IA’s fair use arguments at length under each of the four fair use factors and found them all to be without merit. The court’s decision states that, “at bottom, IA’s fair use defense rests on the notion that lawfully acquiring a copyrighted print book entitles the recipient to make an unauthorized copy and distribute it in place of the print book, so long as it does not simultaneously lend the print book. But no case or legal principle supports that notion. Every authority points the other direction.”

While IA has promised to appeal the decision, both parties have been directed to submit proposals for a judgment, and we fully expect a permanent injunction to be issued along with damages.

Learn more about the case at authorsguild.org/advocacy/open-library.

FROM THE HOME OFFICE



Dear Members,
How often do we get to speculate about futuristic developments and see them unfold before us, not over a lifetime or even a decade, but in a matter of a few years? At the Authors Guild, we have been writing and speaking about how generative AI systems—artificial intelligence that can generate text, images, music, and other works—would affect the writing profession and other creative fields. We speculated that the day would come soon but did not expect it would be quite this soon. With the release of OpenAI's ChatGPT last November, followed quickly by GPT-4, Bing's new Sydney, and Google's Bard, and GPT-5 now just around the corner, AI-generated writing has clearly arrived, and its use is already exploding.

Since the release of ChatGPT and GPT-4, we have seen a host of e-books and stories written with generative AI technologies on Amazon, in magazine submissions, and other places. We have seen hundreds of e-books on Amazon list ChatGPT as the coauthor, and

we can assume that hundreds or thousands of books were written with ChatGPT and other GPT-powered programs without any acknowledgment. These include children's books, sci-fi pulp fiction, advice books (e.g., get-rich-quick schemes), coding instruction, recipes, and instructions for how to use ChatGPT to write—written entirely by ChatGPT, of course.

Literary sci-fi magazines have seen a surge of submissions authored by AI. Two popular sci-fi and fantasy magazines, *Clarkesworld* and *Grimdark*, recently closed submissions after being inundated by AI-generated stories, and are assessing ways to improve the vetting process and detection of AI-authored works.

Creators of AI books have posted videos and tutorials on YouTube, TikTok, and Reddit telling people how books can be produced and uploaded within a matter of days, or even hours.

These are not the first AI writing aids, however. Tools such as Jasper, Rytr, Copymatic, and Articleforge have been used for a couple of years already, helping to generate marketing content, blogs, social media posts, ads, email newsletters, and website copy. Other tools, like Sudowrite, help creative writers brainstorm and organize drafts, and most of them are based on GPT-3.5.

In journalism, AI has been used for several years to produce short news reports, such as sports stories, but ChatGPT made it possible to write entire articles using it, and allowed a wider array of

news publications to use it as well, including for longer articles. The tech site CNET has been using AI to generate articles about personal finance, and BuzzFeed has started using ChatGPT to create quizzes and other content. *WIRED*, however, recently announced that it will not use AI to write or edit articles, but may use it to generate story ideas and possibly edit them.

When ChatGPT was first released to the public in December, I asked it how AI writing technologies will change the profession of writing. Here is what it replied.

There are several new AI writing technologies that have the potential to change the profession of writing in significant ways. These include:

1. AI-powered writing assistants: These tools use natural language processing (NLP) and machine learning algorithms to help writers generate ideas, organize their thoughts, and check their grammar and spelling. Some examples of AI-powered writing assistants include Grammarly, ProWritingAid, and Hemingway Editor.
2. AI-generated content: There are now AI systems that can generate human-like written content, such as news articles and social media posts. These systems use machine learning algorithms to analyze

large datasets of text and generate new content based on patterns and trends they identify.

3. AI-assisted translation: AI translation tools like Google Translate and DeepL use machine learning algorithms to translate written content from one language to another. These tools can help writers create multilingual content more efficiently, but they also have the potential to replace human translators in some cases.

4. AI-powered content optimization: AI-powered content optimization tools can help writers improve the search engine rankings of their content by analyzing it for keywords and other factors that search engines use to determine relevance.

Overall, these new AI writing technologies have the potential to make the writing process more efficient and effective, but they also raise questions about the future of human employment in the writing profession. Some writers may find that they are able to produce higher-quality work with the help of AI tools, while others may feel threatened by the prospect of being replaced by machines.

Writers have much to celebrate with new tools that can help you brainstorm, develop a plot or characters, organize your thoughts, and outline, as well as suggest synonyms and help you edit. You can also prompt it for text that you then edit, though I suspect that for now, most professional writers will find it more efficient to write their own work than edit AI-generated

text for anything but rote writing. Even that could change quickly, however, with each new version of GPT and Bard. Articles comparing generated output from ChatGPT and GPT-4 using the same prompts show remarkable sophistication, and GPT-5 will be that much better.

At the same time, as writers are starting to employ and appreciate AI writing tools, the risk of generative AI replacing authors and crowding out the market for human-authored books and stories is increasing. Without a doubt, AI will replace some human writers, sooner rather than later, especially at copywriting or entry-level journalism positions.

Given the limitations of AI, some believe it unlikely that AI will ever be able to compete with human-authored literary fiction or nonfiction. The danger remains, however, that popular book markets, including children's, self-help, and genre fiction, will become so saturated that publishers (both traditional and indie) will find it harder to make a sufficient profit to invest in books that by their nature have a smaller market. In recent years, to maintain profits, publishers have already been forced to invest in more books with sure sales, such as those by celebrities and established best-selling authors, and are less able to take risks on books. With AI-written books crowding some of their markets, publishers will be forced to rely on those high-profit books more than ever. When that happens, we will naturally lose diversity and breadth in what gets published.

AG advocacy and policy director Umair Kazi and I recently returned from a trip to Washington, D.C., where we met with over twenty congressional offices to brief them on our concerns with AI and the future of writing. We invited a half-dozen other groups to join us, representing composers, graphic artists, fine artists, musicians, and photographers, as well

Join Us to Stop Book Banning

Battles over banned books show no signs of stopping. According to the American Library Association, the number of books challenged in schools and public libraries in 2022 hit a record high. 2,571 unique titles were targeted for censorship in 2022, a 32 percent increase over the 1,858 unique titles targeted in 2021. Forty percent of the overall books challenged were in cases involving 100 books or more, as national groups compile lists of titles to be challenged.

The Authors Guild has created a Stop Book Bans toolkit you can use to fight back against book bans in your own local schools and libraries. The toolkit provides letter templates and details on how to contact your school boards, write to your state lawmakers, or submit letters to area newspapers and radio stations.

Learn more about how you can help at authorsguild.org/resource/stop-book-bans-toolkit.

as writers. We wanted Congress to be aware of the risks AI potentially poses not only to our literary culture but to our culture at large and the economies it supports—if appropriate guardrails are not put in place. We explained the need to develop sensible policies and regulations governing the development and use of generative AI to ensure the future of journalism, literature, and the arts.

The main issue we discussed is the fact that the recent generative AI systems have been trained on copyrighted human-authored works to mimic those works without permission or compensation. These works were simply scripted off the internet or copied from massive databases compiled without permission. The AI developers claim that it was fair use to copy the ingested works many times over, even though the outputs of their theft will compete in the same markets as the works copied, and often closely resemble the works they were trained on.

Although these generative AI systems have been created from existing works of authorship and arts without compensation, and generative AI would not exist but for the works of human creators, there is no certainty that courts will determine that copying works for AI training is not fair use. This is because many recent fair use cases have adopted an exaggerated version of the test laid out by the Supreme Court in *Campbell v. Acuff-Rose*, 510 U.S. 569 (1994), which favors finding fair use for background copying where the output is non-infringing. Two different cases have been brought already (both against image AI generators), which we are watching closely. But these cases will take time, and in the meantime, generative AI continues to be developed further. As such, we asked Congress to act before this egregious, massive theft becomes de facto fair use.

Specifically we are asking for Congress to help us establish a collective licensing system to train AI, so that funds revert to the authors and publishers who own the copyright in those works. AI developers cannot be counted on to obtain licenses from millions of individual copyright holders, of course, so we need a way to license books, stories, and articles on a collective basis.

Collective licensing is an effective means of paying creators and publishers where licensing on a one-off basis creates market inefficiencies. In the U.S., we already have collective licensing for copying and performing musical compositions, sound recordings, and certain retransmissions of television. Although we have no current collective licenses for literary works, other countries throughout the world, including all of Europe, have collective licensing systems for photocopying, library lending, and other specified uses. For many years now, the Authors Registry and the Authors Coalition of America have distributed royalties received from foreign collective licenses to U.S. authors.

Licensing human creation for AI training will not solve all the issues that AI will present to writers and other creative professionals, but it will put some money back into the pockets of creators and their distributors, and at least partially compensate them for their efforts.

A collective licensing organization will have to be established to offer bulk licenses for books and articles to developers for use in training generative AI systems. The collecting society would then distribute the fees to participating copyright owners. A mechanism would need to be developed by its members to determine how to apportion payments, of course. We hope to work with publishers in developing such a system and look forward to hearing from

our members on this initiative. Unfortunately, it will be expensive to build and will take some time.

There will be more to come on that initiative and some of the other issues we are discussing around generative AI in the coming months.

Let me conclude with another response from ChatGPT. I asked, “How will AI affect authors’ ability to make money?” It responded in perfect high-school-essay writing style:

There is potential for AI to affect authors’ ability to make money in a number of ways. One potential impact is through the use of AI-powered writing tools, which can help writers generate content more efficiently. This could potentially lower the cost of producing written works, which could in turn impact authors’ earnings. However, it is also possible that AI-generated content could become more prevalent, which could potentially lead to increased competition for authors. Additionally, the use of AI in the publishing industry could potentially lead to changes in the distribution and marketing of written works, which could also affect authors’ ability to monetize their creations. Ultimately, the impact of AI on authors’ ability to make money will depend on a number of factors, including the extent to which AI is used in the writing and publishing process, and how authors adapt to these changes.

Nothing insightful here but nothing to disagree with either.

—Mary Rasenberger
CEO

Collective Action

**BALANCING THE
SCALES BETWEEN
THE PEOPLE WHO
PRODUCE OUR
CULTURE AND THE
COMPANIES THAT
MONETIZE THEIR
WORK.**

by Zachary Roth and Umair Kazi

The trope of the starving artist goes back centuries, but these days, there's more truth to it than ever. An extensive Authors Guild survey conducted in 2018 found that full-time authors earned an average of just over \$20,000 per year, including income from related activities like speeches, book reviewing, and teaching. That was down significantly from a decade earlier.

CONSOLIDATION IN THE INDUSTRY HAS FURTHER COMPOUNDED THE BARGAINING POSITION OF AUTHORS, ERODING CONTRACT TERMS, AND LOWERING AUTHOR EARNINGS.

A major reason for this decline is the erosion in contract terms for book publishing. Over the last decade, publishers have been reducing and calculating royalties on “net receipts” instead of the book’s list price, expanding discount clauses, and making other contract changes that have chipped away at author earnings. Publishers, on the other hand, are getting squeezed by Amazon’s demands for higher discounts, marketing fees, and other clauses. Authors have been unable to challenge these changes because there are no meaningful negotiations between authors and publishers. Some authors might be able to haggle over the size of an advance, or even get an auction going, but most everything else is set in stone. For most authors, walking away is not an option because when one publisher changes their contract terms against authors’ interests, the others follow.

Consolidation in the industry has further constrained the bargaining position of authors. A string of mergers since the ’90s has left just five big publishers dominating the market, with the threat of the market shrinking to four publishers temporarily abated after the Department of Justice blocked Penguin Random House’s merger with Simon & Schuster in November 2022. The merger, which the Authors Guild had opposed from the beginning, would have given the merged entity control of a 49 percent market share, in essence

creating a monopsony. A monopsony exists when one firm (or a few firms) on the buy side of a transaction has so much market power that it can unfairly lower prices for goods and services—in this case, the price of book publishing rights or author advances. Amazon’s dominance over publishers is another example of a monopsony.

The pattern of buyers unilaterally dictating the terms of work and licensing is not unique to book publishing—or even other writing markets, such as freelance journalism. The same pattern recurs across the creative industries: in music, graphic design, photography, dance, theater, TV, and film. In many of these industries, large companies exercise near total control over contract terms and are able to force creators to sign over more and more rights to their work, while providing less and less compensation in return. These skewed agreements are all the more damaging since freelancers, authors, and other creators already fall outside the structure of fair labor laws—such as minimum wage rules, jobless benefits, paid time off, and more—that traditional employees often take for granted, a problem that was highlighted during the COVID-19 pandemic, when freelancers had difficulty claiming unemployment benefits for lack of a W-2 form.

The obvious solution is for writers and other creators to take advantage of their numbers through collective action. But antitrust law, which aims to promote free-market competition, considers any collective action by freelancers regarding economic terms to be illegal collusion—even though the laws were designed to crack down on the price-fixing pacts and unfair practices that large corporations have used to acquire greater market share. Treating freelance creators as if they are competitive businesses with the power to negotiate on equal terms with large multinational corporations is absurd, and becomes more so each year as the power of the monopsonies grows. The European Union has already recognized this problem. Last year, the European Commission issued new guidelines that exempt freelancers (who are tagged as “solo self-employed people”) from prohibitions against collective action, announcing

that it will not enforce competition and antitrust regulations against freelancers “who are in a weak negotiating position, for instance, when facing an imbalance in bargaining power due to negotiations with economically stronger companies.” In terms of their ability to negotiate the conditions of their work and pay, most freelance creators are instead much more akin to employees, who are exempt from antitrust law precisely because the government has recognized that they need the ability to strike, form unions, and take other forms of collective action. As the National Labor Relations Act (NLRA) preamble says:

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

But freelancers, unlike employees or their counterparts in the E.U., lack clear legal rights to engage in collective activity under U.S. law. What’s more, efforts to classify freelance creators as employees for purposes of labor and employment rights create more problems than solutions. These efforts have potential for other types of gig workers who may be misclassified as independent contractors (who receive 1099s) when they should be employees (who receive W-2s), but freelance creators are independent professionals who earn money through copyright licensing, not simply misclassified workers. The value of the work of freelance creators derives from copyrights. And because copyright law treats any copyrightable material that an employee creates in the course of employment as a “work made for hire”—deeming the employer the author and owner of all works

made for hire—classifying freelance creators as employees would deprive them of their very source of earning.

It bears noting that the concept of freelancers having the ability to act collectively—without being classified as employees—though rarefied, is not wholly alien to U.S. law. In a recent case involving an antitrust action by a Puerto Rican racetrack owner against a group of freelance jockeys who went on strike during a wage dispute, the First Circuit ruled that collective labor action is exempted from antitrust law under two pre-NLRA statutes: the Clayton Act of 1914 and the Norris-LaGuardia Act of 1932. In dismissing antitrust claims, the court found that the jockeys were providing labor, and even though they were not employees covered by the NLRA, they could legally strike under these earlier, broader laws. Importantly, the court distinguished antitrust law’s prohibition against “would-be competitors . . . colluding to increase prices” from the right of laborers to act collectively to negotiate wages. By highlighting how freelancers, including authors and other creative professionals, lack the same rights of collective action enjoyed by employees, the case has added important momentum to the fight. Still, encouraging as it is, the ruling doesn’t give us the assuredness we would like moving forward. For one thing, as of now, it is clearly the law only in the First Circuit, which contains Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico. Second, courts in future cases could view some of the work done by freelance creators as providing goods or services rather than as labor, meaning that, under the First Circuit’s reasoning, the antitrust exemption wouldn’t apply.

Due to the sharp skew in their bargaining power vis-à-vis the companies they work for, creative professionals have been willing to compromise and court risks in order to gain leverage in the marketplace. In some industries, notably film and television, creative professionals skirt antitrust prohibitions against collective action by working as W-2 employees. Because of this, screenwriters, actors, and other professionals who work in film and television are able to secure collective

IT BEARS NOTING THAT THE CONCEPT OF COLLECTIVE ACTION FOR FREELANCERS—WITHOUT BEING CLASSIFIED AS EMPLOYEES—THOUGH RAREFIED, IS NOT WHOLLY ALIEN TO U.S. LAW.

bargaining agreements (CBAs) with production companies that establish mandatory minimums, industry standards, residuals, and other benefits. In addition to the rights under CBAs, they enjoy the same protections—including health insurance and retirement benefits—under labor law as employees. Even though these professionals are W-2 employees, this does not mean that they may only work full-time or for only one production company to earn those benefits. The trade-off, however, is that these creators don't own the copyright in the works they create. (Screenwriters, incidentally, used to be part of the Authors Guild's parent organization, the Authors League of America. According to records in the AG's files, the Guild split off in 1921, precisely so they could set up collective bargaining agreements.) The Dramatists Guild, which represents playwrights, despite facing two antitrust lawsuits—one in 1945 by producers and again in 1983 by a group of theater owners and producers—has standard agreements for different types of theatrical use that all Guild members are required to use. The second suit resulted in a settlement and the current agreement. Because the arrangement has worked for both sides, producers don't have an incentive to challenge it—but there is no guarantee. Indeed,

the 1945 suit was brought by one unhappy producer in unusual circumstances. The Dramatist Guild has tried to lobby for a legislative antitrust exemption for dramatists through the Fair Play for Playwrights Act of 2001 and the Playwrights Licensing Antitrust Initiative (PLAI) Act of 2004 in 2001, and they have joined the new campaign.

The gaps and legal ambiguities surrounding the ability of freelancers to engage in collective action leave them vulnerable to both expensive private lawsuits and government antitrust action. Only action from Washington can provide a lasting solution to the economic precarity plaguing freelance creators. This is why the Authors Guild has united writers, musicians, playwrights, songwriters, graphic artists, photographers, dancers, and others in a campaign called "Creators Together" to urge Congress and the Biden administration to clearly establish the right of professional freelance creators to join together to win fair contracts and conditions. As our coalition wrote in a recent letter to members of Congress: "We have come together to demand the right to negotiate and act collectively . . . as a matter of fairness and absolute necessity."

Action from Washington would help balance the scales between the people who produce our culture and the companies that monetize their work. It's the only way to ensure that we will continue to benefit from the economic activity that these talented, well-educated workers produce, and from the immeasurable creativity, inspiration, and joy that they put into the world.

A Range of Solutions

Several potential approaches can bring legal clarity to the situation, and the new campaign intends to explore all of them.

The most certain and reliable solution would be for Congress to take legislative action, and the clearest means of doing this would be for Congress to enact a simple antitrust exemption for independent freelance creators. Still, lawmakers have historically been reluctant to grant antitrust exemptions for individual industries or

groups—with farmers’ cooperatives and Major League Baseball the principal exceptions, both having had their exemptions for over a century.

In 2021, Congress came close to addressing the issue. The House passed the PRO Act, a broad effort by Democrats to protect the right to organize, which contained a provision that widened the definition of employees to encompass certain independent contractors. The provision’s main goal was to win collective bargaining rights for gig workers such as Uber drivers, but it also would have applied to many independent freelance creators. The AG supported the legislation with an amendment to clarify that these individuals would not be deemed employees under any other law and would retain their copyrights. Before our amendment could be introduced, the PRO Act died in the Senate, where it was strongly opposed by Republicans.

Perhaps the most promising strategy would be a tactic similar in approach to the PRO Act: to amend the NLRA to give freelance creators the same rights of collective action that the law gives employees. The NLRA provides employees with the right “to self-organization, to join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or ensuring protection.” The AG’s proposed amendment would include professional freelance creators as those who are covered by the NLRA’s operative provisions.

Crucially, the amendment would not make these freelancers employees—even within the definition of the NLRA. As we discussed above, copyright law does not give employees copyrights in the works they create for their employer, treating the employer as the author and owner instead. But freelancers in most fields can’t earn enough money to keep creating if they can’t retain their copyrights, and so it is crucial that they do. The measure would not mean that freelancers could be forced by employers to follow company rules on things like hours and working from the office—both of which have been raised as potential concerns by some

freelancers. Nor would the amendment—or indeed any of the approaches outlined above—mean that freelancers would have to join a union in order to take collective action. The NRLA is clear that nonunionized workers also have the right to act collectively.

Another option that the AG is exploring would be for the Federal Trade Commission (FTC) to adopt regulations—like the European Commission’s—that would exempt freelancers from the application of the antitrust laws. In January, the FTC issued a proposed rule to bar companies from imposing noncompete clauses on employees, suggesting that the commission’s current leadership is willing to adopt an expansive view of its regulatory power in the name of protecting workers, even if it incurs the wrath of big business. Such a move, of course, would be vulnerable to being reversed, either by a court ruling that it exceeded the FTC’s authority or by a new administration.

It’s worth recognizing that legislative campaigns in Washington tend to be marathons, not sprints, and that’s especially true in a divided Congress. We don’t expect to reach the finish line this year or next. But by educating lawmakers and building public support, we can lay the groundwork to win when the political moment is right.

We are willing to dig in for the long haul because the stakes are so high—both for the freelance creators we represent and for the country as a whole. Societies have always been held together by culture. Even amid today’s deep-seated political and social divisions, our books, music, art, and performances can help maintain a genuinely shared cultural identity, but only if the people who create that culture can afford to stay in their chosen fields. And for that, they need a level playing field. **AG**

BREAKING THE “CURSE OF BIGNESS”

U.S. v. Bertelsmann and the New Turn in Antitrust Policy

by Umair Kazi

When Penguin Random House (PRH) announced its acquisition of rival publisher Simon & Schuster (S&S) in November 2020, few could have predicted the acquisition’s demise in court on grounds that it violated antitrust law. While the consolidation of two of the five biggest publishers certainly raised antitrust concerns, the Department of Justice (DOJ) had unconditionally allowed a similar deal less than a decade ago—the merger of Penguin and Random House. Moreover, the publishing industry has had a pattern of consolidation since the late ’70s, with a dramatic jump taking place in 2014, immediately after the Penguin and Random House merger, and lasting until 2019, a period during which an average of 20 acquisitions took place every year.

There was also the prevailing belief among merger regulators that antitrust enforcement should be used solely in cases where a merger or other business practice would result in harm to consumers in the form of higher prices or reduced choice. This innovation to antitrust thinking, known as the “consumer welfare standard”—introduced in the late ’70s by Judge Robert Bork and eventually embraced by both Democratic and Republican administrations—rejected the earlier “progressive” view of antitrust law as a vehicle for enhancing competition and promoting fairness in markets. Instead, it claimed that mergers, monopolies, and other anticompetitive practices violated antitrust law only if they resulted in consumer price increases or other harm, not when they displaced competitors and consolidated markets. Unsurprisingly, it was this lax approach to competition regulation that allowed companies like Amazon to deploy “lost-cost” tactics to undersell competitors and take over the publishing economy.

But something else happened in November 2020 to suggest that perhaps the merger was not yet a *fait accompli*: Joe Biden was elected as the 46th president of the United States on an agenda that among other things promised robust antitrust enforcement. As a longtime opponent of publisher consolidation, the Authors Guild had not demurred

from voicing concern, issuing a strong statement on November 25, 2020, the day the PRH deal was announced, and calling for the DOJ's antitrust scrutiny. In a letter addressed to Richard Powers, acting head of the DOJ's Antitrust Division at the time, we reiterated its call for antitrust intervention, citing harms to authors' incomes and a threat to free, diverse expression. President Biden's subsequent nomination of Lina Khan to the FTC and Jonathan Kanter to lead the DOJ's Antitrust Division made us hopeful that the deal would be scrutinized, but we were far from convinced of its defeat in court.

In November 2021, almost a year after the deal's announcement, the DOJ asked the U.S. District Court for the District of Columbia to enjoin the merger, claiming that it would lessen competition in the market for the acquisition of rights to top-selling books, in violation of Section 7 of the Clayton Act. The heart of the DOJ's case was the impact it would have on authors—"the lifeblood of publishing"—and arguments that the Authors Guild had made establishing the connection between consolidations and author incomes. The case—*U.S. v. Bertelsmann*—was litigated over the course of several months, with agents, publishing industry professionals, experts, economists, and authors testifying before judges of the district court. The trial wrapped up in August 2022. The decision came down, surprisingly speedily, on November 7, 2022—almost exactly two years from the date of the acquisition announcement—ruling against the merger.

The news was celebrated by the Authors Guild, the author community, and across the industry. This was the first time a merger of two publishers had been defeated on antitrust grounds. In a long-awaited vindication of our argument, the court recognized how consolidation in the publishing industry and concentration of economic power in the hands of a few large companies negatively impact authors' incomes. It also acknowledged the profound connection between fair competition in the publishing market and the quality of democratic discourse. "It is this commercial market," Judge Florence Pan writes in the opening paragraph, "so

WHAT WE READ, WATCH, AND BUY; OUR MODES OF COMMUNICATION, PUBLIC AND PRIVATE; AND OUR CIVIC INSTITUTIONS ARE ALL IN ONE WAY OR ANOTHER UNDER THE YOKE OF A HANDFUL OF "BIG" ENTERPRISES THAT BROOK NO COMPETITION, USE ANTICOMPETITIVE PRACTICES TO DRIVE OUT RIVALS, AND COERCE SELLERS, WORKERS, AND OTHER MARKET PARTICIPANTS INTO ACCEPTING ONEROUS TERMS. THEIR POWER WAS UNCHECKED UNTIL RECENTLY.

inextricably intertwined with the intellectual life of our nation that the Court examines in this case."

One of the most striking aspects of the court's 80-page opinion is its keen analysis of how the market would have been affected by the merger. Importantly, the DOJ's complaint was not based on potential harm from the merger to the entire market for book rights but to a specific slice of that market—books by top-selling authors. Penguin Random House challenged this definition of the relevant market on the grounds that it was either too narrow or too arbitrary. Unswayed, the court said that the existence of alternative submarkets

IN A LONG-AWAITED VINDICATION OF OUR ARGUMENT, THE COURT RECOGNIZED HOW CONSOLIDATION IN THE PUBLISHING INDUSTRY AND CONCENTRATION OF ECONOMIC POWER IN THE HANDS OF A FEW LARGE COMPANIES NEGATIVELY IMPACT AUTHORS' INCOMES.

or broader markets “does not render the one identified by the government unusable.” The Clayton Act, it stated, “prohibits mergers that may substantially lessen competition ‘in any line of commerce or in any activity affecting commerce.’” In other words, harm to an entire market by a merger is not necessary to trigger antitrust scrutiny: antitrust enforcement may be warranted if a merger has an anticompetitive effect on any submarket defined in accordance with judicial criteria. Nor does defining the relevant market in terms of top-selling books render the impact from mergers on midlist authors irrelevant—it simply provides a reliable and clear lens to analyze the bargaining scale between authors and publishers, and to assess anticompetitive effects.

If you have read this far and are wondering, “Well, what about the consumer welfare standard?”—you’re not alone. In fact, Penguin Random House, in its closing arguments, had raised the same question, criticizing the government for failing to provide any evidence of harm to prices or consumer choice as a result of the merger. At this merger trial, the reigning principle of antitrust law, at least since Judge Bork’s turn with it, was

a virtual no-show. While it may be too soon to say that the death knell has sounded for the controversial doctrine, the *Bertelsmann* case does mark a significant turn away from it. Instead of focusing on higher consumer prices and consumer harm, it focuses on the harm to sellers under a “monopsony,” a condition where a buyer with too much market power can force sellers to accept lower prices. The buyers in the *Bertelsmann* case are publishers, and the sellers are authors.

As the court observed, if the merger had been allowed to go through, the resulting entity would have had a 49 percent market share, far greater than its next biggest competitor’s 22 percent. The resulting Big Four would have a monopsony, since there would be little competition. The largest publishers could easily force down what agents are currently able to negotiate in advances—calling it the “‘single most important’ term in a contract.” The court further emphasized the importance of advances. Because most of the other common publishing terms have been standardized, flatlining competition among the publishers would make competitive bidding and auctions less likely, and “[t]he proposed merger would reduce the number of imprints available to bid independently for any given book, so agents’ ability to play prospective publishers against one another would weaken.” Moreover, despite claims from PRH’s then CEO Markus Dohle that PRH would not restrict independent bidding by the imprints housed under the merged entity, the court speculated that the merged entity’s enormous market power would create an “incentive . . . to obtain a result more favorable to it, and less favorable to the [seller], than the merging firms would have offered separately absent the merger.”

If all this sounds familiar, it is because there is already a monopsony in publishing due to Amazon’s nearly insurmountable market power. Amazon’s dominance over book retail, marketing, and distribution, as well as its share of e-book and audiobook sales, allows it to extract huge discounts from publishers, charge marketing fees, and impose other conditions that squeeze publishers’ profits. Publishers in turn pass the costs of doing

business in an Amazon-dominated industry on to authors, leading to lower advances and royalties and an erosion in contract terms.

Today, the “curse of bigness”—to borrow Justice Louis Brandeis’s neologism for concentrations of economic power—runs rampant in markets that give structure to our society. What we read, watch, and buy; our modes of communication, public and private; and our civic institutions are all in one way or another under the yoke of a handful of “big” enterprises that brook no competition, use anticompetitive practices to drive out rivals, and coerce sellers, workers, and other market participants into accepting onerous terms. Their power was unchecked until recently. In January, the Justice Department filed an antitrust lawsuit against Google for monopolizing digital advertising technologies, with grave consequences for the journalism industry as news media revenues from advertising were being decimated. The FTC is investigating how labor monopsonies and anticompetitive terms like noncompete clauses in employment contracts suppress wages, and there is an ongoing legislative push to shore up antitrust law.

The turn in antitrust policy we are now witnessing is built on years of advocacy by civil society groups, including the Authors Guild, and we remain vigorously involved in the efforts to bring fairness to the markets in which authors and other creators primarily participate. To this end, we are leading a coalition of creator groups in lobbying for legislation that will enable independent freelance creators (including authors) to negotiate with the companies that use their work as a group. ([See page 7.](#))

“Bigness,” as we have seen time and again, is anathema to democracy, especially when it interferes in the free flow of expression. Healthy competition in the publishing market is essential to ensure that books representing a broad range of ideas and perspectives are published, not just those that hew to a commercial formula, and that authors be compensated fairly. It is of no small consequence that the most vivid metaphor for free expression is a “marketplace of ideas.” **AG**

‘BIGNESS,’ AS WE HAVE SEEN TIME AND AGAIN, IS ANATHEMA TO DEMOCRACY, ESPECIALLY WHEN IT INTERFERES IN THE FREE FLOW OF EXPRESSION. HEALTHY COMPETITION IN THE PUBLISHING MARKET IS ESSENTIAL TO ENSURE THAT BOOKS REPRESENTING A BROAD RANGE OF IDEAS AND PERSPECTIVES ARE PUBLISHED, NOT JUST THOSE THAT HEW TO A COMMERCIAL FORMULA, AND THAT AUTHORS BE COMPENSATED FAIRLY.



Illustration by Michael Villegas

THE POSSIBILITIES OF CREATIVE AI WRITING

Q&A with
Amit Gupta

Interview by
Mary Rasenberger

In mid-February, in anticipation of the release of GPT-4, Mary Rasenberger, the Guild's Executive Director, spoke with Amit Gupta, the founder of Sudowrite, a highly popular resource for writers that is based on GPT-3.

It was an interview that broke all records for our Q&A slot: the longest, the most tech-focused and educational, arguably the most fascinating, and one that all writers, including those alarmed by all things AI-related, will benefit by reading.

MR: Hi, Amit. Thanks so much for agreeing to speak today. I am intrigued by the way you have married the arts with technology in your multidimensional career. As a photographer you cofounded Photojojo, and as a sci-fi writer you cofounded Sudowrite with James Yu. Can you talk about when you started writing?

AG: Not that many years ago. I think I got into it largely because I had a break in my career, and I had the opportunity to do something different. Writing had been something that I kind of romanticized and pictured as something that I would do when I retired. I grew up reading voraciously, and I wanted to write those stories. When I found myself in this break, I sold a company and decided I wanted to get out of Silicon Valley. I was ready to do something different. So I started writing.

MR: Do you mainly write science fiction?

AG: Yeah, science fiction, mostly short stories.

MR: Did you read a lot of sci-fi when you were a kid?

AG: Definitely, and I think it had a huge influence on what I wanted to do when I grew up and the path that I chose.

MR: Are there any writers in particular who influenced you or that you particularly loved reading?

AG: Definitely the golden age of sci-fi, like Asimov. But also pop sci-fi—I remember reading almost anything that Michael Crichton wrote. I think he did a good job of showing the dangers of technology and the promise, and balancing the two. More recently, I've really enjoyed reading a few lesser-known sci-fi authors. One is William

GPT-3 ENABLED APPS LIKE SUDOWRITE, WHERE YOU CAN TAKE A PIECE OF TEXT AND CHANGE IT IN CERTAIN WAYS. THE SAME WAY YOU MIGHT CHANGE THE BRIGHTNESS AND CONTRAST OF A PHOTO, YOU CAN CHANGE THE INTENSITY, THE ACTION, OR THE PACING OF A PIECE OF WRITING. AND THAT'S REALLY EXCITING, BECAUSE IT UNLOCKS A LOT OF POSSIBILITIES.

—AMIT GUPTA

Hertling; another is Eliot Peper. There are lots of people doing really interesting stuff in near future these days.

MR: Can you tell us a little bit about how Sudowrite came about?

AG: It was a couple of years ago, when GPT-3 was first released by OpenAI. It was the first language model that was large enough that it seemed like you could actually get reasonable prose out of it.

There were models before this. Some authors we know had been playing with them. But they just weren't at a level of quality that made them useful. When GPT-3 came out, James Yu and I started playing with it, and it pretty quickly became apparent that this was a significant step up. Something that was going to unlock a whole new set of possibilities.

Before this, I had started a photo company. I was a hobbyist photographer for a long time, and

to me GPT-3 felt like that Photoshop moment when we went from the darkroom to being able to do really interesting things with photography on the computer. With writing, we've had spell-check and grammar-check, but not much beyond that, because it's much, much harder to write. But GPT-3 enabled apps like Sudowrite, where you can take a piece of text and change it in certain ways. The same way you might change the brightness and contrast of a photo, you can change the intensity, the action, or the pacing of a piece of writing. And that's really exciting, because it unlocks a lot of possibilities.

MR: Sudowrite is a tool that essentially sits on top of GPT-3.5, right? Can you explain how that works? How do you develop a tool using GPT-3.5?

AG: OpenAI grants access to their model through an API (application programming interface), which basically means that we send a command to OpenAI, and they send a response back. The model itself is very, very large, so it requires hundreds of computers to run. We don't have hundreds of computers, so we basically rent the time from OpenAI. Every time we make a request, they charge us based on the length of that request and their response. At a very basic level, that's how it works. And then we do a lot of pre- and postprocessing on our side. So whatever we're sending to them, we've already done some work with our own models to massage it into a format that's going to work best for fiction. Once it gets there and comes back to us, we do some more massaging to improve the output quality.

MR: So you do some programming on top of GPT?

AG: Yes.

MR: Do you do any of your own training of the machine, or are you using the dataset as trained by GPT?

AG: We're using GPT's existing dataset. We haven't done any training on that model. We have done some of our own training for certain features on our website. There's a Related Words feature, so if you select a word and look for related words, it presents a visual map that's like a more expansive thesaurus. It'll show you not just synonyms but adjacent words and groupings. We've done our own

training for those types of models, but for the large language model, we're just using what OpenAI has developed. Long term, we would like to do more training and fine-tuning. I think that will be especially important as we move forward, because OpenAI doesn't really care about fiction. They care that you're able to ask a question and get a factual answer. Fiction is not factual; it's imaginative. So we already have to do a lot of work to get the types of responses that we want from GPT-3 or 3.5. We probably have to do even more, because GPT-4 is trained further in the vein of being a fact-based responder, instead of a fiction assistant.

MR: Does Sudowrite depend entirely on GPT data mining, or have you given it some further data or training?

AG: We haven't given it any further data yet. I think we will explore that in the future. We still have to do a lot of work to get it to give us the kind of prose we want.

MR: Can you describe some of the ways that writers could use Sudowrite to help them in their writing?

AG: We've found that different writers use it in different ways. Some writers are "pantsers"; some are plotters; some love world-building but hate dialogue or description, or whatever. So it really depends on who you are as a writer and what you like or don't like doing. One of the things that people enjoy using it for is description. There's a feature where you can select a word or a passage, ask for a description, and it'll give you ideas in each of the five senses, or even metaphorical suggestions, to work into your piece to make it come alive. There are parts of the program that people use for outlining. Some people really struggle when trying to come up with a structure for their story, but once they have it, they can run fast with it. Sudowrite can help with outlining in a variety of story structures.

Maybe you want to use the hero's journey, or fit it to a structure of your own. It can also help you come up with characters. Maybe you want to fill out the cast a little bit if you're writing genre fiction. What else can it do? One of the newest features we've developed is called First Draft, which

helps you write a first draft. My partner is a writer, and she needed a prophecy for something she was writing recently. It was part of her novel, but she wanted it to be in the language of a prophecy and to rhyme. She didn't know how to write a prophecy, so she instructed First Draft to write it for her. She edited the draft and used it as part of the novel. I could go on and on. There are tons of different things it can do.

MR: How do you give it instructions to do that? When I was a student, and earlier in my career, my issue was structure. That's where I would get bogged down. So how would I tell Sudowrite to help me with the structure for something?

AG: How you would do it today is you would make a new document in Sudowrite, and you would use the First Draft feature. There's a little link there that says, "Generate First Draft," and this is where the skill comes in, because even though it's a tool to help you with your writing, it still requires you to learn how to use the tool, to make it work for you. So you'll have to describe what it is that you're asking for. In this case, you might say, "Write me an outline for a romantic comedy" or whatever genre you like.

Or you might tell it you're writing a near-future science-fiction novel, using, say, *Save the Cat!* or *Story Circle*, and then you give it some details. Whatever you know already. Perhaps you have a setting; perhaps you have some characters. Maybe you have a few of the plot points. You could say, "Include these people and this setting, and I want this to happen in the first act." And you might end by saying, "Give me twelve scenes and a sentence, or two descriptions for each scene."

MR: You can be that specific about what you want. Wow!

AG: Yeah. And you can change all of this. You can omit some of this. You can add more ideas. Basically, you're just helping it understand what you want. And it'll do its best job to meet you where you are.

MR: And then, if it gives you back something and you want more help, like you want to change things up, how do you do that? You edit what it gives you?

I THINK IT'S MORE APPEALING TO THE PEOPLE WHO ARE LOOKING TO CHANGE SOMETHING. MAYBE THEY'RE NOT PUBLISHING AS MUCH AS THEY WANT TO. MAYBE THEY'RE HAVING TROUBLE GETTING TO THE FINISH LINE, OR REVISING THAT LAST DRAFT OR GETTING STARTED. WHATEVER, THEY'RE HAVING SOME ISSUE, AND THAT'S WHEN, I THINK, SUDOWRITE STARTS TO GET INTERESTING. FOR SOMEONE FOR WHOM BASICALLY EVERYTHING IS WORKING GREAT? THEY DON'T HAVE A NEED FOR IT.

AG: Yeah, you edit what it gives you, and you can remove parts and ask it for a new suggestion in that part. Anything like that.

MR: Oh cool. I'll have to play around with it a little bit more.

AG: By the time this is printed, we'll have a new tool for outlining that works even better. Many people use sticky notes to outline their story. So the new tool simulates that. You can move things around and it'll learn from that, or you can remove one of the stickies and have it give you three more suggestions for that plot point. Eventually you'll

be able to take a story outline you've built out and quickly convert it to different story structures to see which fit best.

MR: I read somewhere that you've reached out to some sci-fi writers to help with the development of Sudowrite. What kind of input did you get from them?

AG: It's been a variety of things. Some writers give us feedback on how they're using it. Others have told us why they wouldn't use it, which is equally helpful, because there are parts that aren't quite there yet. In general, I'd say that the people who are the most experienced, who are already publishing at a high level, most don't see the utility quite yet. I think it's more appealing to the people who are looking to change something. Maybe they're not publishing as much as they want to. Maybe they're having trouble getting to the finish line, or revising that last draft or getting started. Whatever, they're having some issue, and that's when, I think, Sudowrite starts to get interesting. For someone for whom basically everything is working great? They don't have a need for it. That makes sense to me, because if everything's going great, why change it? That's definitely been a lesson. And I think the other learning is that even for people who have a great process, it can still help with a part of their process that they don't enjoy. One writer told us that he hates outlining. He just feels like it's work, and he doesn't want to do it, and he's used Sudowrite for that.

MR: How would someone use it to help them write a paper for school?

AG: I assume there are people who are using it for writing papers for school. It's not great for that because it's so tuned for fiction, so it's not going to be factually correct. If you're writing a paper, there are other writing tools that are more fact focused, but ours is geared toward making stuff up, so I wouldn't use it for that.

MR: What about ChatGPT? People are saying that they fear that students are going to use it for writing papers. On the other hand, I would think it would be great, because in the future everyone's going to have these tools, right? So why not learn how to use them? I don't think kids should be just

typing in a few words and then saying, “Write my paper for me.” But, on the other hand, it might help you organize your thoughts.

AG: Totally. I think it’s similar to the calculator or the computer. All these tools came into education, and with each of them, there was a lot of fear and doubt about what this was going to do to young minds and how this was going to destroy our ability to think. I think we have those same fears today, and they’re warranted. I think we need to be careful whenever we do anything new, especially in the educational process.

MR: I agree.

AG: But I think you’re right that this will be a part of our tool set in the future.

And when these kids grow up, it’s going to be a part of their workplace, and it’s going to be a tool in whatever they do. So they should know how to take advantage of it, and they should know how to use it in a productive and creative way. That doesn’t mean, “Write me a paper on *Oliver Twist*.” It means, “How do I interact with this entity, whether it’s Chat GPT or some other tool, in a way that helps me shape a narrative, helps me shape an argument that’s unique to me, and that’s helping me learn as I do it?” I think there are ways to do that. For example, there isn’t just one way to write an essay about a book, right? There are tons, and it’s a real skill to get these tools to give you what you want, what’s true to you, and that connects to your own personal experiences. It requires some nuance and understanding of how these tools work. And that needs to be learned.

MR: It’s interesting to compare it to the calculator because people were afraid—how are they going to learn their multiplication tables and how to add and subtract? My kids are in their mid-twenties now. They had to memorize their multiplication tables, but it wasn’t drilled into them the way it was for me. And why? Because you don’t need to know your multiplication. It’s good to be able to do stuff in your head, but it’s not as imperative now that we’ve all got calculators on our phones. Same with handwriting.

AG: I think something similar is happening with writing, where over time you kind of move up a

level of abstraction. With math, it’s still useful to be able to know the concepts, and even if you go deeper into math, it’s useful to know those base-level concepts. But you’re not using them every day. You’re using a calculator. You usually have to buy one as a student and have one for many of your classes, even in high school. That frees you up to learn higher-level concepts because you’re not spending all the time doing the lower-level stuff.

I think the same will be true of writing, eventually. You’ll be more of a creative director and developmental editor, moving up the stack instead of spending your time getting the grammar right on a particular sentence. I think that’s exciting and scary, because it will help a lot more people enter the field. I saw this happen with photography. When I started with photography, I was in the darkroom, and a few years later, digital cameras started to come out. Maybe a decade later, everyone had a camera in their pocket because it was part of their phone. This was terrifying for professional photographers. They were all up in arms about it because they figured, “Oh, no one’s going to hire me to shoot their wedding. They’re just going to have Uncle Bob use his Samsung to take the shots.” But that’s not what happened. What actually happened was, we all became fluent in the language of photography, and now nearly everyone knows what makes a good photo rather than a bad photo. We began communicating with photos, and photography became more important because each of us became creators of photography, not just consumers.

MR: So we’re better critics of photography, too, which makes us recognize a really good photo. In a way, since we are all photographers now, we appreciate the work of professional photographers even more.

AG: Yeah, we have a place for it that we didn’t before, as a society.

MR: That’s a really interesting way to think about it, because there’s a lot of fear right now, and I have to admit that I have this fear too. I think of AI as potentially having great tools, but how many writers is it going to put out of work? I don’t think it’s

in danger of putting many human writers out of work yet. But AI technology is advancing so fast, I could see GPT-4 writing certain kinds of books. For instance, it could be used to write romance or mysteries, and could that put some current novelists out of work? Will it crowd out the field? How will you distinguish yourself from AI-written books when you're a romance writer?

AG: I think it'll become even more important that the writer has something to say, and that they have a reason for saying what they're saying. I think all art derives its meaning from the life of the artist. Any painting you see in the museum, you think, "Oh, my kid could have made that," or whatever. But the reason it's art is not because of the pigment or the pixel; it's because of the story behind it. I think that will become even more important in the future. Understanding why this story was told by this person, what's the context, was it grounded in their life? All that becomes more and more important.

MR: What I worry about is, because AI-created works will be so much cheaper to produce, I could see publishers using AI to write first drafts and maybe hiring writers to fix it up for a lot less money than they get for writing the book. And then the market pressures will crowd out the real writers. Visual artists are very concerned about this with all the image generators coming out now. And if AI-created works take over the market, I can hear a lot of people in the tech sector saying, "Well, so artists and authors lose their jobs, who cares?"

The problem, from my understanding of AI, is that it really is a kind of rehashing of what's been written before. It creates super-sophisticated mashups. So, to your point, what makes art? It's human experience. It's the human emotion. It's our relationship to our world. It relates to our experience today.

You'll never have AI creating true art in that sense. And if you want to get dystopian about it, you could see us in a world of only commercially derivative artwork, in which the markets can't support a marketplace for creators, and only the rich or sponsored can go into the field. What's your reaction to that?

AG: In some ways, I would say we're already there today. It's so hard to make a living as a working writer today or a working artist in many fields. There are certainly people that do, but it's the upper echelon.

The majority of writers write because it's something that feeds their soul, not because it fills their stomach. And that's a real shame. I hope AI can help with that. One analogy I was just thinking of before this call was that musicians don't make very much money no matter how many times you stream their music on Spotify or whatever. Even historically, they made most of their money through performance, not through CD sales, not even the most successful ones.

If we can find new ways to enable that kind of revenue stream for writers, it would be really interesting. Because the stories that become these big blockbuster movies create a ton of value, but very little of that value trickles down to the author. So, what can you do as a writer to make more money in the future? There's the obvious solution—you can write more. Perhaps you could create artifacts around your stories, around your world, that are not experienced just through reading a novel, but potentially interacting with characters. I could see, for instance, a very near future where I create a fantasy world, I write a series of novels, and then I feed these things to an AI, which creates an interactive environment where people can talk to my characters or live in that world and kind of interact with each other in that world. As a writer I don't need to write what these characters are saying in response to each of these people, I don't need to generate anything new, I've already done the work, and now that same work is being used in a new way that can potentially make me money in a new avenue. I could also see a way for writers to create derivative works of their fiction. So maybe I can create a graphic novel version, using various tools. Or I can create a video version for TikTok or whatever.

MR: So writers could do it themselves, instead of having to sell rights to a third party, where they get just a portion of the fees? More and more writers are making money from self-publishing. It still requires a lot of know-how, particularly the market-

ing, and how to get your book into sales channels. I'm a total believer in the promise of the digital age to disintermediate, get rid of the middleman. If we can really achieve that for creators, and particularly talented creators, I think that would be really amazing.

I'm a believer in professional classes of creators—those who have put in the ten thousand hours and can express truth in a way that is so perfect, so beautiful, or so true, or that makes us imagine how things might otherwise be. Do you think with AI we'll be able to retain a writing profession?

AG: I think there's always going to be an appetite for quality, and I think the more writing there is, the higher that bar will go. Because we always want the best. So, yeah, I think there will be a lot of room for people to excel and to go deeper and deeper into the craft.

MR: I like that answer. It makes me feel much more optimistic. So, I just have to ask you this, because people are really concerned that generative AI is trained on preexisting works. From a pure copyright standpoint, that involves copying, which is an infringement unless it's fair use.

With generative AI, there's still a question mark out there about whether or not it's fair use. As I've said, I don't know that I want to leave that to the courts because courts are not positioned to make broad policy decisions, but only to decide the facts of the particular case in front of them. Does it concern you at all that AI generators of books are trained on existing books? And should there be any compensation for the writers of the books that they are trained on?

AG: You're asking my opinion?

MR: Yeah, I'm asking your opinion.

AG: I'm not a lawyer. But I'll give you my opinion.

MR: This is from a pure ethical standpoint. Should people be compensated?

AG: I think ultimately people should be compensated for their work. In a proper and just world, we should find a way to compensate all these people whose work is being used for training. How do we do that? How we figure this stuff out, and where we draw the line is complicated. When I talk about the line, I mean we've used lightweight AI models

I COULD SEE, FOR INSTANCE, A VERY NEAR FUTURE WHERE I CREATE A FANTASY WORLD, I WRITE A SERIES OF NOVELS, AND THEN I FEED THESE THINGS TO AN AI, WHICH CREATES AN INTERACTIVE ENVIRONMENT WHERE PEOPLE CAN TALK TO MY CHARACTERS OR LIVE IN THAT WORLD AND KIND OF INTERACT WITH EACH OTHER IN THAT WORLD.

for things like grammar-check and spell-check for years, or even optical character recognition on our phones or any number of other things. These machine learning models were all trained on something. We just haven't been paying attention to what it was trained on.

Even the autocorrect on your phone keyboard is trained on text. The thing that's transcribing our call, if you choose to have it transcribed, is also trained on voices and text. All this stuff is trained on something, and we haven't been paying attention. We haven't been compensating the right people. That's not to say we shouldn't do it in the future, but we have a big problem, and we need to figure out a comprehensive solution that helps us direct our efforts in the right place across the board. What should we do? It's really hard to say. As an AI company, I feel like we're in a really tricky spot, because the AI models that we're using were trained on these vast swaths of writing,

AS AN AI COMPANY, I FEEL LIKE WE'RE IN A REALLY TRICKY SPOT, BECAUSE THE AI MODELS THAT WE'RE USING WERE TRAINED ON THESE VAST SWATHS OF WRITING, INCLUDING BASICALLY EVERYTHING ON THE INTERNET, LOTS OF PUBLIC DOMAIN BOOKS, LOTS OF STUFF THAT WAS OUT THERE AND MAY HAVE BEEN COPYRIGHTED AND WAS STILL SLURPED UP BY OPENAI TO TRAIN GPT-3.

know. I could see in the future, if there are enough people raising a stink about this, that there are a variety of models available. I think there will be a variety of models no matter what, because all these big tech companies are going to want to enter the space and offer this, and potentially, some of them will find a more ethical way to do it or be forced to find a more ethical way to do it. Which would be great, because then we can use it. But I don't know what that looks like. It's definitely a problem I wouldn't want to have to solve, so I'm glad someone else is thinking about it . . .

MR: Well, that's our problem at the AG. We have been busy looking into possible legislation and possible collective licensing solutions so that at least there is some money going back to creators. What I'm curious about is, whether we can convince AI developers to adopt a system like that for copyrighted works. In the long run, I think it's got to be an automated collective licensing system, and obviously, that's all very hard.

AG: It's a daunting technical problem and an equally daunting human one. **AG**

including basically everything on the internet, lots of public domain books, lots of stuff that was out there and may have been copyrighted and was still slurped up by OpenAI to train GPT-3. And that's the case for everyone who's using AI right now, because they're using, usually, one of these models. And there's no way that we ourselves can say to OpenAI, "Only give us a model that's only trained on these things." Or, "Don't give us responses if they're based on copyrighted material," or something like that. We don't have that ability. So it's either a choice of offering the product or not offering the product today.

MR: My understanding is they didn't track what they used—that there's no record of what was scooped up.

AG: I don't know. But they haven't been totally clear about what they know and what they don't

ON REVISION

Writers share useful tips and strategies on how they go about improving their work.

By Barbara DeMarco-Barrett

Writers have a love-hate relationship with revision. On the one hand, we hate it because we want our pieces to come out right the first time, and the drafting process is so much more fun, full of promise and discovery, that we'd rather be writing than revising. On the other hand, we love making it to the revision phase because that means we at least have something on the page, something we can work with—a delicious feeling.

Bernard Malamud said, “Revision is one of the exquisite pleasures of writing.” It may take you a minute to get your head around this thought, but consider the word *revision*. It means to re-see. In revision, we have a chance to take a step back and *re-vision* our work and make it perfect, or at least as close to perfect as we are able.

First, let's get a few things straight, the first of which is: nothing ever comes out perfect the first time. When Margaret Atwood was a guest on my podcast, *Writers on Writing*, she claimed that a piece of writing had to go through at least seven drafts. I'm not sure how she came up with the number seven; I didn't ask, and who's going to quibble with, or question, Margaret Atwood?

Counting drafts, though, can be tricky. How massive does a draft have to be to count as a draft? Do minor tweaks count? In the days of typewriters, it was easier to count drafts. These days, not so much.

So how do writers revise? You may have a method that works for you, or you may be looking for new ways to revise your work. Read on. Hopefully, you will find something useful here, a new spin on revision, some trick that reinvigorates you to re-see.

Where to Begin

Award-winner Richard Bausch (*Playhouse*) begins each writing session “by reading what I have through to the point of jumping the gap across the silence . . . It really is like somebody taking a running start before leaping over a chasm . . . though with a novel, I might begin reading toward the jump-off a

I MIGHT ADD A WHOLE NEW CHARACTER OR CHANGE THE POINT OF VIEW FROM FIRST TO THIRD PERSON WHEN I'M STUCK. I DO THAT JUST TO SEE HOW A CHARACTER SOUNDS OR WHAT I LEARN ABOUT THEM IN THE PROCESS. THEN I CAN GO BACK TO THE ORIGINAL POINT OF VIEW WITH A FRESH SET OF EYES.
—LISA CUPOLO

little closer to where it falls in the narrative—but I'm always looking into what I have throughout."

Kelly Caldwell, journalist, essayist, and dean of faculty at Gotham Writers, prints her draft and cuts it into paragraphs. "That way I can arrange them on the floor and move them around. More than once, this has helped me realize I've buried my lede. It helps me see if I'm repeating myself, if I'm lingering on one idea too long. It also lets me see if my paragraphs are too uniform in length. Paragraphs, like sentences, need their own shape and rhythm, which they definitely will not have if I lapse into the habit of hitting the Return key after roughly the same number of words."

Editing is her favorite part of the process, says short story writer Lisa Cupolo (*Have Mercy on Us*). "Getting the bones of the structure of a story down is so incredibly difficult for me," she says. "But once it's there, I print the work, read it aloud, make note of where the story slows down, and write in

the margins and underline. Usually for me, adding action or dialogue is needed when I get back to the page on the screen. But my approach is always changing. I might add a whole new character or change the point of view from first to third person when I'm stuck. I do that just to see how a character sounds or what I learn about them in the process. Then I can go back to the original point of view with a fresh set of eyes. . . . When I get my characters talking, that's when things really take shape."

Revising as You Go

Novelist Jeffrey Fleishman (*Good Night, Forever*) revises as he goes along. "I need to see a chapter in full and then connect to the next chapter," he says. "This makes my first version slower in coming, but it helps in later rounds of revisions that I've done a lot of editing along the way. I find it helps with nuance and layering too. I try to write 500 good words a day. The end of the writing session is editing to which 500 words I'll keep. It helps me see clearly where to begin the next day."

Jordan Harper, author of *Everybody Knows*, says, "I do dozens of drafts, starting with a handwritten draft that types into a very rough draft that is totally unreadable to anyone but me. I'll do several large passes after that, until it starts to really feel like a cohesive book, and then I'll start doing more targeted drafts—one draft focusing on a specific character, one focused on dialogue, one focused on atmosphere and background, etc. Those I do fairly quickly, maybe a couple of dozen times all together."

For Tod Goldberg, author of *The Low Desert*, the process depends on what he's writing. "When I'm writing a novel, I tend to revise while I work versus writing 'drafts.' So each day, I'll write and the next day, I'll review the previous day's work, do rewrites on those pages, then any pages that need to be changed because of the changes I've just made. I then do block rewrites at certain stages. After the first 100 pages, for example, I'll pause and review from page one on, to make sure it's all working and try to lock those pages in as much as possible. And then page 200, then 300, etc. This

way, by the time my book gets to my publishers, if there are rewrites to be made, they're rarely fundamental rewrites of the existing text, and more likely structural changes: adding new chapters, cutting things back, that sort of thing. My novels tend to be over 400 pages in manuscript, so there's no 'shitty first draft' for me. By the time I'm done, the book should be pretty good, I hope. There's no number of rewrites per se, it's all a living creature.

"For a short story, I use that same method of writing and rewriting daily, but if the story isn't working, I'm apt to just ditch it versus spending weeks on end trying to get it to work. Sometimes, your story just doesn't work. I'm better off starting something else and stealing from the old story for parts than spending inordinate amounts of time trying to get a broken thing fixed."

Beta Readers

Peter Ho Davies, novelist and author of *The Art of Revision: The Last Word*, notes that writers often get stuck after workshopping a piece because there's so much to address and so many choices presented. "I try to make a first pass to fix the easy stuff—everything from typos to small issues where I agree with the feedback and can already see how to respond. That step is good for morale—the story is moving forward again, and I'm refamiliarizing myself with it, making it mine again. The next step for me, when assessing all the choices—the *coulda*, *shoulda*s of feedback—is to attend to what I *wanna* change, to start with the change that most excites me, rather than the one that feels like a chore suggested by others. Following that excitement makes revision easier and more fun, but I also think that sense of excitement is a tip-off, that in revision, new discoveries and potentials can be found in a draft."

Kelly Caldwell credits her nonfiction writing group for helping her improve the work. "I rely heavily on these brilliant writers to tell me when I'm not making sense, or things aren't working. If my writers group says take something out, I usually take it out."

Jordan Harper says he brings in readers "when I don't know if what I've done is good, but I know

MY THEORY FOR BETA READERS IS THAT THEY SHOULD ALWAYS BE LISTENED TO, BUT IT'S UP TO THE AUTHOR TO FIGURE OUT WHAT THE ACTUAL PROBLEM IS. SOMEBODY MIGHT NOT LIKE CHAPTER TWELVE OF THE BOOK, BUT THAT DOESN'T MEAN CHAPTER TWELVE IS ACTUALLY THE PROBLEM. MAYBE YOU FAILED TO SET SOMETHING UP PROPERLY IN CHAPTER SIX.

—JORDAN HARPER

that if I keep working on it, it will get worse. My theory for beta readers is that they should always be listened to, but it's up to the author to figure out what the actual problem is. Somebody might not like chapter twelve of the book, but that doesn't mean chapter twelve is actually the problem. Maybe you failed to set something up properly in chapter six."

At the other end of the spectrum is Richard Bausch, who says no one sees his work till he believes it's ready. "I had a deeply gifted twin brother who wrote as well or better than I ever did, and we never saw each other's work until it was in print."

Let It Rest

"When my first draft is done," says Jeffrey Fleishman, "I let it sit for a few weeks. Then I pick it up,

WHEN I HAVE A COMPLETED DRAFT, I WILL LOOK AT THE CHAPTERS THAT CONTRIBUTE TO ONLY ONE CHARACTER'S ARC. I LOOK AT THEM CONSECUTIVELY TO MAKE SURE THEY MOVE THAT CHARACTER IN THE RIGHT WAY. THIS APPLIES TO PROTAGONISTS AS WELL AS OTHER MAIN CHARACTERS. EVERYONE IN THE BOOK IS SUPPOSED TO CHANGE.
—CARL VONDERAU

read it through, and begin revisions. I usually do two revisions concentrating on plot, style, character, and voice. I spend a lot of time on making the voice distinct. The revisions must ensure that the world the reader enters is consistent and alluring, all threads connected, all characters, even small ones, sketched in full. I read out loud—not too loud—while doing revisions. The ear is often better than the eye or mind at catching a phrase/passage that doesn't work."

"Often," Kelly Caldwell says, "after I've let a piece rest, I'll open the story back up and it'll be so obvious what needs to be cut. This happened with an essay I wrote recently—I let it rest for a couple of weeks, and when I opened it up again, I saw that a full section just wasn't working. It strayed too far from the central question. First round, I knew it was too long, but I had no idea what to cut. I didn't even consider cutting that section, because

I wrote it first and it was what inspired me to write the essay at all. So it felt essential. But it wasn't. I couldn't see that until I'd left it alone for a while."

How Many Revisions Are Enough?

T. Jefferson Parker, author of *The Rescue*, says he revises in two stages. "One is as I'm writing, which entails going back to see what I said earlier, and leads me into all sorts of additions, changes, deletions. I basically drop everything and work out the problem/question, then go back to where I was, and move forward. The other is the big one, at the end, when I start from page one, read carefully, and make the changes that seem right. That can take weeks. I do another big revision after I get editorial notes, then again with the copyedit, and again with first pass. By the time I'm done with that I'm ready to call it a day. One thing I've learned over the years is that even the most labored-over published book could have been made better."

"For short stories I usually try to go for that punch at the end of the tale, so I for sure sweat that aspect," says Gary Phillips, author of *One-Shot Harry*. "Revisions are undertaken when the pages are printed out and I read the story from the start with, hopefully, fresh eyes. A scene could get cut or shifted around. A minor character might be eliminated if what I put them in for can be attributed to another, more firmly established character."

"I usually revise a book at least 10 times," says Carl Vonderau, author of the forthcoming *Saving Myles*. "I revised my first book more than 20 times. One way to get a new perspective on a chapter is to print it out single-spaced rather than double-spaced. My mind sees it in a new way then. When I have a completed draft, I will look at the chapters that contribute to only one character's arc. I look at them consecutively to make sure they move that character in the right way. This applies to protagonists as well as other main characters. Everyone in the book is supposed to change. I will also look specifically at dialogue to make sure the voice is there and to take out the repetition. Often the internal voice will repeat what's already in the spoken

dialogue and I need to take out one or the other. I also go through gestures to make sure I'm not using the same sighs and shoulders slumping and slapping tables too much. Another pass will make sure that the characters react to what other characters say without disrupting the tension of the scene. Then there are the subplots and flashbacks. I constantly move these around. I don't want the reader to lose track of these supporting characters and their dilemmas."

Writer's Digest Self-Published Book Awards winner Deborah Gaal, author of *Synchronicities on the Avenue of the Saints*, says, "How many times do I revise? I'm not sure, but it's a lot. At least 100. It feels endless since it takes me years to finish a manuscript. But I also allow the manuscript space and time to rest, like resting a piece of meat or fish after it comes off the grill prior to the meal. Throughout this resting phase, I'll periodically read the story through with my left brain and stop when my interest drains. That's where I know the story needs an infusion of energy. I switch to my right brain and see if I can get a spark. What is missing? If I can't get a hit, I let the story rest some more. If the story doesn't thrill me, how can I expect it to thrill anyone else?"

Useful Tips

"For some kinds of revisions, word processing is very helpful," says Richard Polt, author of *The Typewriter Revolution* and professor of philosophy at Xavier University. "For instance, I catch a certain kind of stylistic defect and then do a search through my whole text to see whether I'm repeatedly guilty of it."

Yes, we all overuse certain words. In Matt Bell's book on revision, *Refuse to be Done: How to Write and Rewrite a Novel in Three Drafts*, there's a page of those pesky words. In the book he also recommends highlighting the weakest sentence in each paragraph and considering whether it can be deleted. For the minimalists among us, he suggests seeing if you can write between sentences or paragraphs, filling things in. "You may be escaping a scene too early," he says. "Look for places where

MATT BELL RECOMMENDS HIGHLIGHTING THE WEAKEST SENTENCE IN EACH PARAGRAPH AND CONSIDERING WHETHER IT CAN BE DELETED. FOR THE MINIMALISTS AMONG US, HE SUGGESTS SEEING IF YOU CAN WRITE BETWEEN SENTENCES OR PARAGRAPHS, FILLING THINGS IN.

things are static, where you might go from summary to scene."

"I'm not sure how unusual this tip is, but here's an anti-intuitive one," says Peter Ho Davies. "We often get stuck in revision when we face a choice: Should the story be in this point of view or that one? Should it be in this tense or that one, etc., etc.? We freeze, because we fear making the wrong choice, and wasting time (there's that impatience!), but as a result we find ourselves paralyzed, unable to go on. And yet we can't make these choices with perfect information; we have to take a leap of faith. If we pick the wrong one, that's not necessarily a failure, since it may reveal that the alternative was right. In other words, the only way to choose . . . is to choose, and even the wrong choice may reveal the right one."

By the way, it took seven passes to finalize this piece, just as Margaret Atwood advised. **AG**

LIBEL IN FICTION: AN ANALYSIS OF RECENT CASES

How creators can minimize the risk of a defamation case.

by Carolyn Schurr Levin
and Gillian Vernick

Most authors are aware of the risks of libel claims when writing about real, living people, especially when the work deals with controversial subjects. What they may not realize is that fictional works, where the characters and scenarios are purportedly not real, can also be susceptible to libel litigation. In this article, we will parse the legal issues raised in recent (2021–2023) libel cases against works of fiction. While many of these cases were brought against streaming platforms, they nonetheless provide insights into claims that could similarly be made against writers and publishers. In analyzing these cases, we offer suggestions about ways to lessen the risk of these types of claims.

Libel and defamation are civil causes of action provided by state law. While specific elements of a “libel” claim may be different across jurisdictions, generally speaking a plaintiff bringing a libel claim must prove that the defendant made a false statement of fact regarding the plaintiff that caused them harm and was at least negligent about the truth or falsity of the statement. If the plaintiff is a public figure or the statement was made in connection with an issue of public concern, then the plaintiff must prove the defendant’s malice or reckless disregard in making the statement.

Many fictional books, as well as movies, TV shows, and other types of media content, are inspired by true events and real individuals. In some situations, the living person who inspired a fictionalized character sues an author, filmmaker, or creator for defamation and related claims arising out of the character’s portrayal. Whether a work expressly names a character after a real person, alludes to the person, or does neither, courts have found that a characterization that hems too close to reality can harm the reputation of a living person and may support a claim for defamation or related privacy claims such as false light.

Authors and other creators should be aware that simply labeling a work as fiction does not insulate that work from defamation claims, a lesson Netflix learned the hard way in a recent \$5 million federal defamation and false light invasion of

privacy case in California. In the suit, arising out of the award-winning series *The Queen's Gambit*, Georgian chess champion Nona Gaprindashvili claimed that Netflix had belittled her achievement in being the first woman in chess history to be named a grandmaster. Gaprindashvili's claim was based on one scene in the show that stated that Gaprindashvili had never faced a man in a chess match—a statement refuted by the fact that she had indeed competed against a multitude of men. A California federal court found that while the show was fictional, the reference to Gaprindashvili could be interpreted as a true historical detail, noting that “Netflix does not cite, and the Court is not aware of, any cases precluding defamation claims for the portrayal of real persons in otherwise fictional works. On the contrary, the fact that the Series was a fictional work does not insulate Netflix from liability for defamation if all the elements of defamation are otherwise present.”¹

As in defamation cases arising from nonfiction, courts analyze allegations of libel in fiction by reviewing the elements of the claim. In 2021, former New York prosecutor Linda Fairstein filed a defamation suit against Netflix for its portrayal of her in a fictionalized docuseries about the Central Park Five. A New York federal court found that numerous allegedly defamatory scenes in the film, including those depicting Fairstein at the crime scene, drafting a press release, and fighting over how to handle the case, were not capable of defamatory meaning because such scenes did not depict Fairstein in a negative light and were not so inflammatory as to expose her to “public contempt, ridicule, or disgrace, or induce an evil opinion of her.” However, the court also held that other parts of Netflix's portrayal of Fairstein in the case were not substantially true, such as its representation that Fairstein took a lead role in the investigation, when in fact she did not. The court thus found that Fairstein's version of events would have “plausibly had a different effect on the mind of the viewer, one that did not depict Fairstein

as the prime mover in marshalling evidence and drawing conclusions.” The court held that scenes depicting Fairstein withholding evidence from the defense and manipulating the DNA test could be understood by the audience as “depictions based on undisclosed facts known to the defendants,” not dramatized opinion, and were therefore capable of supporting a defamation claim. An “average viewer could reasonably interpret” the statement that Fairstein “coerced those boys into saying what they did” to be a factual assertion capable of supporting a defamation claim.²

Opinion or satire can insulate authors and other creators from liability for depictions of real people in works of fiction. In 2021, a New York federal court found that the digital media company Barstool Sports' eight-minute video depicting comedian Michael Rapaport as a cartoon, while summarizing a public feud between the company and the comedian less than a week after Barstool fired him, was not actionable because it created a reasonable expectation of presenting a biased viewpoint as opposed to an accurate, factual portrayal of Rapaport.³ In a similar case in New York federal court, former Alabama judge and senatorial candidate Roy Moore and his wife, Kayla Moore, brought a defamation action against comedian Sacha Baron Cohen arising from a satirical TV interview with the couple that Cohen did in disguise. The court found the claim to be barred because the interview was political satire involving commentary on matters of public concern—a bedrock First Amendment principle. (In addition, there was a consent agreement between the parties waiving legal claims related to the interview.)⁴

In some recent cases, works of fiction have expressly named and depicted real people but fictionalized the plot, details, or characterizations to such a fantastical and unbelievable extent that no reasonable person would understand the

1 *Gaprindashvili v. Netflix, Inc.*, No. 221CV07408VAPSKX, 2022 WL 363537, at 5 (C.D. Cal. Jan. 27, 2022).

2 *Fairstein v. Netflix, Inc.*, 553 F. Supp. 3d 48 (S.D.N.Y. 2021).

3 *Rapaport v. Barstool Sports, Inc.*, No. 18 CIV. 8783 (NRB), 2021 WL 1178240 (S.D.N.Y. Mar. 29, 2021), recon. denied, No. 18 CIV. 8783 (NRB), 2021 WL 2635821 (S.D.N.Y. June 25, 2021).

4 *Moore v. Cohen*, 548 F. Supp. 3d 330 (S.D.N.Y. 2021).

AUTHORS AND OTHER CREATORS SHOULD BE WARY OF BASING A STORY ON A REAL, LIVING PERSON AND THEN DEPARTING FROM REALITY IN A WAY THAT DISPARAGES THE SUBJECT . . .

representation as portraying facts sufficient to support a claim. Inna Khodorkovskaya, the wife of a Russian dissident, brought a false light suit against the playwright and director of fictional play *Kleptocracy* for statements made in the play falsely portraying her as a prostitute and murderer. A federal appeals court in Washington, D.C., found that the context of a theatrical drama for a live audience and several unbelievable and fantastical aspects of it weighed in favor of finding that the production could not reasonably be interpreted by the audience as conveying actual facts, and therefore was not actionable.⁵ Similarly, in the Barstool Sports case, the court found that because the cartoon depicted obviously unbelievable and fantastical fictional scenes and did not imply undisclosed facts that would defame Rapaport, no reasonable reader would interpret the cartoon as asserting any facts about him supporting a defamation claim.⁶

Authors and other creators should be wary of basing a story on a real, living person and then departing from reality in a way that disparages the subject. In a 2022 case, a man named Cory Holland Sr. sued Lionsgate, alleging plotlines in the TV show *Power* defamed him by basing two characters

on his adult and young adult life as a drug kingpin, but making the characters “psychopathic murderers.” The court found that the plot was “of and concerning” the plaintiff, such that a person who knows him “would have no difficulty linking [him] to the fictional character,” given evidence that the character had the same street moniker as the plaintiff, Ghost, and that people in the plaintiff’s life questioned whether he killed real family members based on the show’s story line.⁷

A plot that includes fictional details sufficiently distinguishing a real person, such as involvement in activities or employment that the person never engaged in, can sufficiently separate a fictional character from a potential plaintiff so that “the requisite connection” for a legal claim cannot be drawn. In a 2021 New York state defamation suit alleging TV show *Billions* falsely portrayed a woman as having been involved in illegal business dealings, bribery, and blackmail of a public official, an appeals court upheld the trial court’s finding that the episode was not “of and concerning” the woman. The court found that the fictional character was not “so closely akin to [her] that a viewer ‘would have no difficulty linking the two,’” despite the character being of the same Native American nation and having the same surname and a similar position as the plaintiff. The court affirmed that “the requisite connection could not be drawn” between the show’s character and the plaintiff, given fictionalized elements attributed to the character, including involvement in the negotiation of real estate deals and electoral issues.⁸

Many of the recent cases of libel in fiction have been dismissed by the courts. Others settled out of court, and there is no way of knowing how many claims were resolved before making their way into the courts in the first place. But the cost of defending against any such claim in terms of both money and time is significant.

5 *Khodorkovskaya v. Gay*, 5 F. 4th 80 (D.C. Cir. 2021).

6 *Rapaport*, 2021 U.S. Dist. LEXIS 59797 at 17.

7 *Holland v. Lions Gate Ent. Corp.*, No. 21 CIV. 2944 (AT), 2022 WL 6770060 (S.D.N.Y. Oct. 11, 2022).

8 *Cayuga Nation and Clint Halftown v. Showtime Networks, Inc., et al.*, No. 2020-03854, 2021 WL 683344 (1st Dept. Feb. 23, 2021).

So what can authors and other creators do to minimize the risk that such a claim will be brought?

* **Work with an attorney to craft an appropriate disclaimer.** A disclaimer at the beginning and end credits of the film *The Wolf of Wall Street*, “making clear that the characters in the Film are fictionalized,” contributed to a finding that the filmmakers and production company did not act with actual malice in depicting a character that a former Stratton Oakmont executive alleged was a defamatory representation of himself.⁹ A disclaimer, though, is not foolproof. The Central Park Five documentary had a disclaimer, albeit “inconspicuous” and “in small font late in the credit rolls,” and the court still found some aspects of the film’s portrayal of Fairstein as capable of defamatory meaning.¹⁰

* **Change identifying details about real, living people so that they are beyond recognition.** This one should make fiction authors happy. Have fun fictionalizing! Mash up multiple inspirations into one character, making any individually identifiable features too attenuated to link. In the *Power* case, using the same street name was a dead ringer for the plaintiff. However, in the *Billions* case, involving the character in activities the plaintiff had never been involved in was enough for the court to hold that the claim failed. Merely changing a name likely will not be sufficient—make your character as unidentifiable as possible.

* **Avoid disparaging any characters inspired by a real person.** If you’re going to draw inspiration from a real person who might be identifiable, exercise caution if your work will change the person into a psychopathic murderer à la *Power*. If inspired characters

are *worse* than their real-life counterparts in an unfavorable or criminal way, use your fictionalization skills to significantly change their depictions.

* **But if you’re going to disparage—be funny or topical.** Like Barstool Sports and Sacha Baron Cohen, if you’re going to depict or fictionalize events surrounding real people, make sure it is obviously satire or parody. Clearly present a biased point of view as opposed to creating what could be found to be a factual portrayal. Even better if you’re satirizing a matter of public concern, as the court noted in *Moore*, that protection for satire was even more important when it concerns “a public figure, given satire’s ‘prominent role in public and politics debate.’”¹¹ In the *Khodorkovskaya* case, depictions of the plaintiff as a prostitute and murderer “against [the] backdrop” of a dramatic fictional play inspired by historical events with “fantastical elements” like a talking tiger, ghost, and a poetry-reciting Vladimir Putin, reinforced a finding that these were not “actual facts.”¹² The court gave more latitude to the representation because it was a “fictional theatrical production . . . inspired by historical events.”

While nonfiction authors routinely have their books legally vetted for potential issues before publication, it may also be worthwhile for fiction authors whose works are based on real events and real people to undertake the same review process. This enables authors to identify and work to minimize risk before publication. **AG**

9 *Greene v. Paramount Pictures Corp.*, 813 F. App’x 728, 732 (2d Cir. 2020).

10 *Fairstein*, 553 F. Supp. 3d at 60.

11 *Moore*, 548 F. Supp. 3d at 345.

12 *Khodorkovskaya*, 5 F. 4th at 86.

LEGAL WATCH

* AUTHORS GUILD HELPS BLOCK THE BAN OF TWO BOOKS

In August 2022, the Authors Guild, along with ten other interested organizations, successfully blocked an effort to have a Virginia Beach court find the books *Gender Queer* by Maia Kobabe and *A Court of Mist and Fury* by Sarah J. Maas “obscene for unrestricted viewing by minors.”

The Guild submitted an amicus curiae brief in this case because a finding of obscenity could have blocked schools and libraries across the state from providing the two books, based solely on Virginia Beach’s community standards, and would have hindered booksellers’ rights to sell them as well. (Barnes & Noble was also served in this litigation.) The petitioner here, Tommy Altman, had ready a long list of additional books to go after if the effort had proven successful, and there remains a strong possibility that even though this effort failed, similar lawsuits may be attempted in other jurisdictions.

By asking a court to find these books obscene, these petitions reflect an expansion of already broad efforts across the country to prevent students from accessing select books by removing them from local schools and libraries. Altman, the local citizen-politician who filed the petitions before the Virginia Beach Circuit Court, alleged that these works were “hyper-sexual.” Historically, works that address LGBTQ+ and gender themes, as well as stories of people of color,

have been preeminent targets for book bans.

This suit applied an old Virginia statute that allowed for any citizen (or commonwealth attorney), of any county or city where a book is sold or distributed, with “reasonable cause to believe that any person is engaged in the sale or commercial distribution of any obscene book,” to bring a petition before the court to determine whether the book was in fact obscene. The amicus brief that the Guild jointly submitted argued successfully that:

- * the statute is unconstitutional on its face and when applied to the facts of the case, and unconstitutional in that it permits a prior restraint in violation of the First Amendment;
- * the law stands against the constitutional test laid out in the Miller test for obscenity (*Miller v. California*, 413 U.S. 15 [1973]);
- * the law is unconstitutional in that it attempts to bring all people in the state under its control, from selling or lending the book even in places where the book would likely not be viewed as obscene;
- * the statute is unconstitutional on its face, in violation of due process by allowing judgment with-

out fair notice to the affected parties; and

- * the statute is unconstitutional and violates the First Amendment as it imposes strict liability on persons who have no prior knowledge that a book might be considered obscene.

The Guild, and those who joined in the brief, recognized what was at stake, and we will continue to endorse and protect freedom of expression and the exchange of ideas. We vowed to watch this case and act if necessary, we are pleased with the results, and we fervently hope that it will serve to limit future attempts to prevent access to certain themes and ideas.

* NETFLIX FILES COMPLAINT AGAINST BRIDGERTON FAN FICTION

Last summer, Netflix found itself involved in the world of fanfic (fan fiction) when it filed a lawsuit against the Grammy-winning pair Barlow & Bear, charging both copyright and trademark infringement related to the popular Netflix series *Bridgerton*, adapted from the novels of Julia Quinn.

The creators of *The Unofficial Bridgerton Musical*, Abigail Barlow and Emily Bear, originally envisioned their adaptation of *Bridgerton* as a musical on TikTok. Ironically, Netflix was among

their early supporters, tweeting, “Absolutely blown away by the Bridgerton musical playing out on TikTok.” The videos drew millions of views, while the pair brought the idea to life as a music album, resulting in a Grammy and, subsequently, in a musical performance at the Kennedy Center on July 26, 2022. At the time, Netflix and Shondaland, *Bridgerton*’s producer, were on a multicity U.S. live tour, presenting an immersive pop-up experience for fans, with stops in D.C. close to the time of the Kennedy Center performance. Netflix filed suit within days of *The Unofficial Bridgerton Musical* performance.

The suit alleged that Barlow & Bear had gone beyond fan-generated content and illegally infringed on Netflix’s hard work and creativity. In particular, Netflix asserted that the pair took “valuable intellectual property from the Netflix original series . . . to build an international brand for themselves.” As the owner of the exclusive right to create and license any musicals or derivative works, Netflix argued it did not give the pair permission to exploit *Bridgerton*. Netflix also alleged that Barlow & Bear did so under the representation of the Netflix-owned trademark.

Before bringing suit, Netflix argued that it had repeatedly warned Barlow & Bear that their use was unlawful, including and up to the Kennedy Center performance, to no avail. Netflix asked the court to make the following rulings:

- * That the pair had infringed its copyright, and did so liberally, particularly in that the pair’s “reproduction, public performance, distribution and/or creation of new derivative works based on *Bridgerton*” was done without license and was injurious.

- * That defendants used a reproduction and copy of the Netflix-Studios’ registered trademark (BRIDGERTON) to conduct their own business without permission, which ultimately confused and deceived consumers about the origin of *The Unofficial Bridgerton Musical*.
- * In relation to the trademark, Netflix claimed that the defendants had violated the Lanham Act.
- * Netflix also sought a declaratory judgment, arguing that no relationship between Netflix and the defendants existed, and that the defendants lacked approval or the right to exploit Netflix’s work in *Bridgerton*.

The lawsuit has since been dismissed and was possibly settled by Netflix before the defendants were scheduled to answer Netflix’s complaint—leaving the question unanswered of whether fan fiction went too far in this case. **AG**

Legal Services Scorecard

From 7/1/2022 to 4/10/2023, the Authors Guild Legal Services Department handled 1,344 legal inquiries. Included were:

311

Book contract reviews

72

Agency contract reviews

40

Reversion of rights inquiries

137

Inquiries on copyright law, including infringement, registration, duration, and fair use

23

Inquiries regarding securing permissions and privacy releases

27

First Amendment queries

734

Other inquiries, including electronic rights, literary estates, contract disputes, contract questions, translation contract reviews, translation contract queries, periodical and multimedia contracts, movie and television options, internet piracy, liability insurance, finding an agent, and attorney referrals

ADVOCACY NEWS

* COPYRIGHT CLAIMS BOARD

The Copyright Claims Board (CCB) opened its doors on June 16, 2022, and is now fully operational. It has already taken in hundreds of claims from creators, who are mostly representing themselves before a three-member board.

The CCB, a virtual tribunal housed within the Copyright Office, is a product of a dozen years of advocacy by the Authors Guild and other groups to create an alternative relief process for creators whose rights have been infringed or who have been accused of infringement unfairly. Prior to the creation of the CCB, the only legal action a copyright owner could take to remedy infringement was federal litigation, a cost-prohibitive endeavor for the vast majority of writers, given that the average cost of a copyright lawsuit is upward of \$400,000, and the maximum statutory damages (where the plaintiff need not prove actual losses) are \$150,000 for intentional infringement. The CASE Act (passed in 2020) established the CCB as a small-claims tribunal that would present an affordable, streamlined dispute-resolution process for creators to settle copyright-related issues. Having an easy process to resolve claims was a goal steadfastly underscored by the Guild.

There are differences between the CCB and federal court. Damages are limited in the CCB. The cap is set at \$30,000 in total and \$15,000 per work infringed. Further, this process is voluntary.

The respondent, the party who is essentially the defendant in CCB cases, can opt out of the proceedings if they choose to do so. Opting out of the CCB proceedings make those specific proceedings come to a halt, but claimants can still file a case in the federal court system where damages are not capped, the process is not streamlined, and the judges are not copyright experts. Libraries and archives can utilize a blanket opt-out that allows them to opt out in advance from any claims brought against them in the CCB. Finally, most of the proceedings in the CCB are paperless and expedited, and parties can represent themselves if they wish. The CCB has a guidebook on its site meant to walk claimants and respondents who are representing themselves through every step of the proceedings. If a claimant or respondent does not choose the self-representation route, the CCB allows for representation by attorneys and by supervised law students.

Only three types of claims can be brought in the CCB. The first type is claims of copyright infringement. This occurs when a party violates the exclusive right a copyright holder has without permission and includes reproducing, distributing, displaying, or publicly performing a work. The second type is declarations of noninfringement. This occurs when a party accused of infringement is seeking a declaration that its actions are not copyright infringement. The third type is misrepresentation claims. These claims occur when misrep-

resentations are made during the DMCA takedown notice and counternotice process. As in federal court, the respondent can bring counterclaims related to the same transaction or occurrence that was the original subject of the claims.

Filing a claim (as a claimant) with the CCB requires a few steps.

To start, a claimant must pay a \$40 filing fee (with a \$60 filing fee later in the process, \$100 in total), which is substantially lower than filing in federal court. The claimant must provide the work's copyright registration number along with contact information for the person or persons (respondent) they are making the claim against. Additionally, claimants will need to provide the facts and the circumstances related to the dispute.

Once a claim is filed, a CCB attorney performs what is called a "compliance review" to make sure that the claim falls within the CCB's jurisdiction and that all the necessary information has been provided. Based on data obtained from the CCB, early noncompliance is one of the dominant barriers to successful filing at present, and therefore it is important to be on the lookout for responses from the CCB. If a claim is found to be not compliant, a claimant has 30 days to amend it. If after amending the claim it is still not compliant, a claimant will receive an additional 30 days to amend and correct the claim. After a further issue of noncompliance, the claim will be dismissed without prejudice.

If the claim is compliant, the claimant must serve the respon-

dent with a notice of the claim within 90 days. Once the respondent is served, they can opt out of the CCB process within 60 days. If they do not opt out, the claim becomes active. As a reminder, the CCB process is completely voluntary for respondents as well as claimants.

Once the case is active, the respondent has an opportunity to respond to the claim, including raising any counterclaims. A CCB officer will then hold a conference laying out the process and proceedings, with the potential for a settlement between the parties. There is a limited discovery process with interrogatories and document requests, with forms provided by the CCB, but no third-party subpoenas and depositions. After discovery, a CCB officer will conduct a virtual meeting with the parties, after which both parties will present their cases in the form of written statements, laying out why they believe they should succeed in the case—including any witness statements and evidence. The CCB will then review all relevant information and positions (including holding a hearing if helpful) and issue a decision with an analysis designed to resolve the issues presented.

Once a final determination is made, parties may request reconsideration, review by the Register of Copyrights, and in very limited situations, have a federal court review the decision.

Current data points to the CCB as being a valuable resource. Through the end of January 2023, 324 cases have been filed. Of these 324 cases, the board has dismissed claims in 173 cases and issued orders for the claims to be amended in 84 cases. Of the 176 cases that have not been dismissed due to a failure to comply with CCB procedures or withdrawal of the claim, there have been 25 instances of opt-outs. Most of the cases before the CCB involve copyright infringement. The vast majority of

those involve pictorial, graphic, and sculptural works—followed by motion picture and audiovisual works and literary works. Sound recordings and musical works seem to appear the least. As likely testament to the CCB's ease, nearly two-thirds of the claims have been filed without attorneys.

So far only 46 cases relating to literary works have been filed. Of these 46, only 16 are considered open, and only 9 have so far made it past compliance review. Seven of these cases have been related to nonpayment of fees or royalties. Of these 7, only 6 are considered open, and only 4 of them have made it past compliance review. Generally, the law treats such claims as contract breaches and not copyright infringement, meaning the CCB usually does not have jurisdiction to hear them. However, if your publisher is not paying you per the contract, you might be able to terminate the contract for material breach, and we recommend that you first get AG legal services' help by submitting a legal help request. Once your contract is successfully terminated, if the publisher continues to distribute your work, that would be copyright infringement—as the CCB acknowledged in approving at least two cases involving literary works and nonpayment—and you can then bring a claim in the CCB.

The AG legal services team is here to help guide you through any CCB claim. If you would like to bring a claim, you can submit a request for legal services on our website or contact us at staff@authorsguild.org. ^{AG}

Request Legal Help

The Authors Guild legal department can help you navigate the legal and business aspects of writing.

To initiate a query, go to go.authorsguild.org/account/legal_help.

Be sure to include all relevant information related to your query (for example, copies of your contract, correspondence, website screenshots, etc.). This will help expedite your request. Our staff attorneys will communicate with you directly, and may request further information as needed.

AUTHORS GUILD MEMBERS ELECT NEW LEADERS

Outcomes of the 2023 Authors Guild Annual Meeting

Members of the Authors Guild, the largest organization of published book authors in the U.S., elected Maya Shanbhag Lang as president at the Guild's annual meeting on March 23. They also elected Mary Bly as co-vice president, and Amy Bloom as secretary. W. Ralph Eubanks was reelected as co-vice president and Peter Petre as treasurer.

"Each of us has an individual story to tell," said Lang. "But we are also in a unique position, as members of this powerhouse organization, to shape a collective story—one that can ensure writers everywhere, from all walks of life, can be represented. Literary culture will be richer for it."

"I am thrilled to welcome Maya as she takes the helm as president of the Authors Guild," said CEO Mary Rasenberger. "Now thirteen thousand strong and with a membership that is more active than ever, the Guild is poised to do great work under her leadership. Her passion and deep connection to the community of working writers, combined with her experience as a teacher, editor, and fierce authors' advocate, will be an incredible resource and help guide us in our continuing efforts to advocate for authors, copyright, and writing as a livelihood. While not the first woman to serve in this role, Maya is notably our first person of color, the Indian American daughter of immigrants, who brings an acute understanding of the need for greater diversity, equity, and inclusion in our industry, and who is committed to helping us achieve those aims."

Guild members also newly elected authors Sarina Bowen, Christopher Castellani, Roxane Gay, Mira Jacob, Jaron Lanier, Courtney Maum, and Jaunique Sealey to serve on the Authors Guild Council.

New Council Officers

Maya Shanbhag Lang is the author of *What We Carry*, named a *New York Times Book Review* Editors' Choice and a "Best of 2020" by Amazon. She is also the author of *The Sixteenth of June*, a modern reinterpretation of *Ulysses* that was long-listed



for the Center for Fiction First Novel Prize. Lang's essays have been widely published and anthologized. In 2021, the American Civil Rights Museum named her a "Woman You Should Know."

Winner of the Neil Shepard Prize in Fiction, she serves as president of the Authors Guild. After graduating magna cum laude from Swarthmore College, Lang earned her MA from NYU and her PhD in comparative literature from SUNY Stony Brook. Her dissertation, "The Hypochondriac: Bodies in Protest from Herman Melville to Toni Morrison," won the Mildred and Herbert Weisinger Award. A passionate teacher, editor, and author advocate, she enjoys working with established and aspiring writers alike. Lang is the daughter of South Asian immigrants and lives outside New York City with her daughter. She is also a competitive-class weight lifter.

Mary Bly is the author of *Queer Virgins and Virgin Queens on the Early Modern Stage*. She is currently working on *The Geography of Fashion*;

some of this work has been published in the *PMLA* and the collection *City of Vice*. Other articles include "Defining the Proper Members of the Early Modern Theatrical Community" in *Renaissance Drama* and "The Lure of a



Good Satin Suit: London's Sartorial Seduction" in *A Handbook of Middleton Studies*. As Eloisa James, Bly writes popular fiction and memoir. Her latest novel is the *New York Times* bestseller *Four Nights with the Duke*. Earlier work includes 24 historical romances and a memoir, *Paris in Love*. Her website is EloisaJames.com.

Amy Bloom is the author of four novels, *White Houses*, *Lucky Us*, *Away*, and *Love Invents Us*; and three collections of short stories, *Where the God of Love Hangs Out*, *Come to Me* (finalist for the National Book Award), and *A Blind Man Can See How Much I Love You* (finalist for the National Book Critics Circle Award). Her first book of nonfiction,



Normal: Transsexual CEOs, Crossdressing Cops, and Hermaphrodites with Attitude, is a staple of university sociology and biology courses. Her most recent book is the widely acclaimed *New York Times* best-selling memoir *In Love*. She has written for publications such as *The New Yorker*, *The New York Times Magazine*, *Vogue*, *Elle*, *The Atlantic*, *Slate*, and *Salon*, and her work has been translated into fifteen languages. She is the director of the Shapiro Center at Wesleyan University.

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New Council Members

Sarina Bowen is a 24-time *USA Today* best-selling author and a *Wall Street Journal* best-selling author of contemporary romance novels. Formerly a derivatives trader on Wall Street,



Bowen holds a BA in economics from Yale University. A New Englander whose Vermont ancestors cut timber and farmed the north country in the 1760s, Bowen is grateful for the invention of indoor plumbing and Wi-Fi during the intervening 250 years. She lives with her family on a few wooded acres in New Hampshire. Bowen's books have been published in over a dozen languages with fifteen international publishers.

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Christopher Castellani has published five books, most of which center on the Italian, Italian American, and/or queer experience. His first novel, *A Kiss from Maddalena*, won the Massachusetts Book Award in 2004; its follow-up, *The Saint of Lost Things*, was a BookSense



(IndieBound) Notable Book; the final novel in the trilogy, *All This Talk of Love*, was a *New York Times Book Review* Editors' Choice and a finalist for the Ferro-Grumley Literary Award.

The Art of Perspective: Who Tells the Story, a collection of essays on point of view in fiction, was published in 2016 by Graywolf Press and is taught in many creative writing workshops. His most recent novel is *Leading Men*, for which he received fellowships from the Guggenheim Foundation, MacDowell, and the Massachusetts Cultural Council. *Leading Men* was published in February 2019 by Viking Penguin and is currently being adapted for film by Peter Spears (Oscar-winning producer of *Nomadland*) and acclaimed Italian director Luca Guadagnino (*Call Me By Your Name*). Castellani is the current writer in residence at Brandeis University. He is also on the faculty and academic board of the Warren Wilson College MFA program and the Bread Loaf Writers' Conference. Since 2019, he has chaired the writing panel at YoungArts, formerly the National Foundation for Advancement in the Arts. For nearly twenty years, Castellani was in executive leadership at GrubStreet, where he founded the Muse and the Marketplace conference and led the development of numerous literary programs for adults, teens, and seniors; he continues to work with GrubStreet in the role of senior advisor to the national conference. The son of Italian immigrants and a native of Wilmington, Delaware, Castellani was educated at Swarthmore College, received his master's in English literature from Tufts University, and an MFA in creative writing from Boston University. He lives in Boston and Provincetown, Massachusetts.

Roxane Gay's writing appears in *Best American Mystery Stories 2014*, *Best American Short Stories 2012*, *Best Sex Writing 2012*, *A Public Space*, *McSweeney's*, *Tin House*, *Oxford American*, *American Short Fiction*, *Virginia Quarterly Review*, and many others. She is a contributing opinion writer for the *New York Times*. She is the author of the books *Ayiti*, *An Untamed State*, the *New York Times* best-selling *Bad Feminist*, the nationally best-selling *Difficult Women*, and the *New York*

Times best-selling *Hunger*. She is also the author of *World of Wakanda* for Marvel. She has several books forthcoming and is also at work on television and film projects. She also has a newsletter, *The Audacity*, and once had a podcast, *The Roxane Gay Agenda*.

Mira Jacob is a novelist, memoirist, illustrator, and cultural critic. Her graphic memoir *Good Talk: A Memoir in Conversations* was short-



listed for the National Book Critics Circle Award, long-listed for the PEN Open Book Award, nominated for three Eisner Awards, and named a *New York Times* Notable Book, as well as a best book of the year by *Time*,

Esquire, *Publishers Weekly*, and *Library Journal*. It is currently in development as a television series. Her novel *The Sleepwalker's Guide to Dancing* was a Barnes & Noble Discover Great New Writers pick, short-listed for India's Tata Literature Live! First Book Award, long-listed for the Brooklyn Public Library Book Prize, and named one of the best books of 2014 by *Kirkus Reviews*, the *Boston Globe*, Goodreads, *Bustle*, and *The Millions*. Her writing and drawings have appeared in *The New York Times Book Review*, *Electric Literature*, *Tin House*, *Literary Hub*, *Guernica*, *Vogue*, and the *Telegraph*. She is currently an assistant professor at the creative writing MFA program at the New School, and a founding faculty member of the MFA in creative writing program at Randolph College.

Jaron Lanier is one of the most celebrated technology writers in the world, and is known for charting a humanistic approach to technology appreciation and criticism. He was awarded the Peace Prize of the German Book Trade in 2014. His book *Who Owns the Future?* won Harvard's Goldsmith Book Prize in 2014, was named the most important book of 2013 by Joe Nocera in the *New York Times*, and was also included in many other "best of" lists. *You Are Not a Gadget*, released in 2010, was named one of the ten best books of the year by Michiko Kakutani. He writes and speaks



on numerous topics, including high-technology business, the social impact of technological practices, the philosophy of consciousness and information, internet politics, and the future of humanism. In recent years he has been named one of the hundred most influential people in the world by *Time* magazine, one of the hundred top public intellectuals by *Foreign Policy* magazine, and one of the top fifty world thinkers by *Prospect* magazine. His writing has appeared in the *New York Times*, *Discover* (where he has been a columnist), the *Wall Street Journal*, *Forbes*, *Harper's Magazine*, *Nature*, *The Sciences*, *WIRED* magazine (where he was a founding contributing editor), and *Scientific American*. He has edited special "future" issues of *SPIN* and *Civilization* magazines.

Courtney Maum is the author of five books, including the groundbreaking publishing guide that *Vanity Fair* recently named one of the ten best books for writers, *Before and After*



the Book Deal, and the memoir *The Year of the Horses*, chosen by the *Today* show as the best read for mental health awareness. Maum is a writing coach, executive director of the nonprofit

learning collaborative The Cabins, and educator, and her mission is to help people hold on to the joy of art-making in a culture obsessed with turning artists into brands. You can sign up for her publishing tips newsletter and online master classes at CourtneyMaum.com.

Jaunique Sealey is a well-respected and established thought leader whose unique experience-based insights on entrepreneurship, resilience, brand development, and social media have been popular features in national publications and platforms such as *Forbes*, *Huffington Post*, *Mashable*, *TechCrunch*, Fox News, *Business News Daily*, *National Journal*, *EURweb*, and many more. She's been a featured speaker at SXSW, Loyalty World,

NAMM, SF MusicTech, and the Congressional Black Caucus Author Pavilion. A serial entrepreneur, she has built and rebuilt several brands from the ground up, leading to nearly 500 media placements and a featured debut on QVC.



A Harvard-trained attorney and Duke-trained engineer, Sealey brings a practical perspective to her writing, making it easy to read, understand, and integrate for immediate better living and to serve as powerful motivation for the accomplishment of personal and professional goals. **AG**

DOUGLAS PRESTON'S DEPARTING WORDS

On the Importance of Writing, Advocacy, and Community Building in the Literary World

The following remarks were made at the Author's Guild annual meeting on March 23, 2023, where after four years of service, Doug concluded his tenure as president. In recognition of Doug's service and his incredible fundraising and personal giving, the Author's Guild will name a major award after him—the Preston Award for Distinguished Service to the Literary Community.

I'm happy to report that the Authors Guild is in very good shape. We're financially sound, and over the past year thousands of members have taken advantage of our free legal services. The Guild staff attorneys have reviewed many book contracts, agency agreements, and television and film contracts, saving members potentially millions of dollars in legal fees. And I'm one of those who took advantage of that free legal advice. I must say, for \$135 a membership in the Guild is like having a lawyer on retainer. It's the biggest bargain in the business.

The Guild this past year successfully took on a number of bad actors and crooked publishers. We are fighting back vigorously and effectively against the current wave of book banning. We intervened on behalf of many authors, especially self-published ones who are having problems with Amazon. We successfully shut down the two probably largest e-book piracy operations in the world that stole hundreds of millions, if not billions, of dollars' worth of copyrighted books. That's Kiss Library and Z-Library. We're going after a third one and suing a fourth, and our efforts are going to continue in that direction.

Our membership has grown tremendously. It's now at 13,000, the highest it's ever been—with the highest renewal rate in our history, which I like to think indicates we're serving our members. But of course we always like your suggestions on how we can do better.

Our educational programs and boot-camp series on the business of publishing reached tens of thousands of authors, our regional chapters are growing, and our online forum is booming.

We appreciate being able to create community for authors because it's essentially a lonely occupation that we engage in. The Guild's new WIT Festival in the Berkshires last September was a huge success, with every venue ticketed to capacity, and we're going to do it again this year with an incredible lineup of authors and other interesting people.

So that's the good news.

I guess the bad news, we all know . . .

Perhaps never in the history of American literary culture have we authors found ourselves in such a challenging environment. And we all know what that environment is because we're living here: the devaluation of creative content by the internet, the consolidation of publishing houses, the relentless undermining of copyright by Big Tech and its "information wants to be free" philosophy, the explosion of piracy, and now this sudden AI revolution. Never have authors needed an organization like the Authors Guild as much as we do today.

I feel that book publishing and writing are at a watershed moment. The Guild is out there leading the fight to protect the livelihood and creative work of authors and journalists. We have a powerful legal team, and we're the only writers group with a full-time lobbying firm in Washington, D.C.

We're already jumping on the AI issues that pose existential threats and also opportunities to authorship and creative work. Our CEO, Mary Rasenberger, and advocacy director, Umair Kazi, are going to Washington next week with our lobbyists to meet with key members of Congress to make sure that they understand that authors' rights and their ability to make a living must be protected during this AI revolution that has so suddenly and shockingly been thrust upon us.

The Authors Guild is a remarkably effective and powerful organization. We do amazing things with well-deployed resources. And we are also parsimonious. We spend money very carefully. What I like most about the Guild is that we're not so much about talking. I feel like the world is full of talking and that's good, but what we do is effective and serious action that actually benefits authors across

PERHAPS NEVER IN THE HISTORY OF AMERICAN LITERARY CULTURE HAVE WE AUTHORS FOUND OURSELVES IN SUCH A CHALLENGING ENVIRONMENT.

the board—not just our members, but all writers. This is what I love most about the Guild, our effectiveness and our ability to actually make a difference for authors.

I just wanted to conclude by saying this is my last meeting as president. It's been a great honor and pleasure serving you all. We've done good things together these past four years, and I want to thank you all, all the members, from the bottom of my heart for supporting the Guild and in so doing supporting and nurturing American literary culture. Thank you. **AG**

MEMBER NEWS

* BOOKS BY MEMBERS

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Laura Nagle (Transl., and Prosper Mérimée): *Songs for the Gusle*; **Lauren Napa**: *Mexican Phantasy*; **Lisa R. Neuder** (Ema Lee Oshima, Illus.): *The Sweet Friendship*; **Alison Mills Newman**: *Francisco*; **Lesléa Newman**: *123 Cats: A Cat Counting Book*; **Valerie Nieman**: *In the Lonely Backwater*; **Alyson Noël**: *Field Guild to the Supernatural Universe*; **Barbara Novack**: *Heart Like Leaves*; **Patricia A Nugent**: *Healing with Dolly Lama: Finding God in Dog*; **Jennifer Ohman-Rodriguez**: *A Time to Mourn & a Time to Dance: A Love Story of Grief, Trauma, Healing, and Faith*; **I. J. E. Okello**: *The Van Clydens' Family Fortune*; **Bonnie Oldre**: *Silent Winter*

Solstice; **Rebecca Olmstead**: *Promise of the Day Devotional for Victorious Living*; **Once Upon a Dance**: *Dance Stance*; *Frankie's Wish*; **Jacquelyn A. Ottman**: *Ottman & Company: Meatpacking District Pioneers*; **Derek Owens**: *The Villagers*; **Ellen Pall**: *Must Read Well*; **Gigi Pandian**: *Under Lock & Skeleton Key*; **Jodie Parachini** (Keiron Ward and Jason Dewhurst, Illus.): *Togo & Balto: The Dogs Who Saved a Town*; **Sara Paretsky**: *Overboard*; **Kelly G. Park**: *Just Like Me: When the Pros Played on the Sandlot, Volume 2*; **Ann Parker**: *The Secret in the Wall*; **Dorothy Hinshaw Patent** (Nate Dappen and Neil Losin, Photog.): *The Lizard Scientists: Studying Evolution in Action*; **Denise Lewis Patrick** (Alleanna Harris, Illus.): *If You Lived During the Civil War*; **James Patterson** (and Benjamin Wallace): *The Defense Lawyer: The Barry Slotnick Story*; **Sasha Paulsen**: *Where Time Begins*; **Pamela Manché Pearce, Anthony Valerio** (and Kate Farrell): *Charles Street Trio: A Novel in Three Voices*; **Susan J. Pearson**: *The Birth Certificate: An American History*; **Judith Peck**: *Art and Social Interaction: A Guide for College Internships Serving Correctional, Rehabilitation and Human Service Needs*; *Dynamic Play and Creative Movement: Powering Body and Brain*; *Naked Under the Lights*; **S. J. Peddie**: *SONNY: The Last of the Old-Time Mafia Bosses*, John "Sonny" Franzese; **Peggy O'Neal Peden**: *Gone Missin'*; **Marko Perko** and **Stephen M. Stahl**: *Tesla: His Tremendous and Troubled Life*; **Leila Philip**: *Beaverland: How One Weird Rodent Made America*; **Greta Picklesimer**: *Second Chance at Happiness*; **Walter W. Pickut** (and Kay Haas): *The First Counterspy: Larry Haas, Bell Aircraft, and the FBI's Attempt to Capture a Soviet Mole*; **Michelle M. Pillow**: *Bad to the Gnome: A Collection of Cozy Paranormal Mystery Romances*;

Fire Prince; *Portal Healers: The Complete Divinity Healers Series*; *Portal Warriors: The Complete Divinity Warriors Series*; *The Seventh Key: A Paranormal Women's Fiction Romance Novel*; *A Streak of Lightning*; **Daniel H. Pink**: *The Power of Regret: How Looking Backward Moves Us Forward*; **Mark I. Pinsky**: *Drifting into Darkness: Murders, Madness, Suicide, and a Death Under Suspicious Circumstances*; **Bob Pisani**: *Shut Up and Keep Talking: Lessons on Life and Investing from the Floor of the New York Stock Exchange*; **Margaret Porter**: *The Myrtle Wand*; **Gail Post**: *The Gifted Parenting Journey: A Guide to Self-Discovery and Support for Families of Gifted Children*; **Ellen Prager**: *Escape Undersea*; **Gregor Pratt**: *Dragon's Eye*; **Skip Press**: *The College Savings Resource Guide: How to Save on College from Pre-K to Post Grad*; **Douglas Preston** and **Lincoln Child**: *Diablo Mesa*; **Paula Priamos**: *Appraise Her*; **Alta L. Price** (Transl., and Mithu Sanyal): *Identitti*; **Dorothy H. Price** (Shiane Salabie, Illus.): *Jalen's Big City Life*; **Laurence Pringle** (Kate Garchinsky, Illus.): *The Secret Life of the Sea Otter*; **Laurence Pringle** (Meryl Henderson, Illus.): *Wolves!: Strange and Wonderful*; **Betsy Prioleau**: *Diamonds and Deadlines: A Tale of Greed, Deceit, and a Female Tycoon in the Gilded Age*; **Janis A. Pryor**: *Mother's Madness, a Daughter's Report: Surviving Abuse at the Crossroads of Race, Class and Lunacy*;

Pearline Raphaelita Rance: *A Pearl from the House on Queen Street*; **Willard Sterne Randall**: *The Founders' Fortunes: How Money Shaped the Birth of America*; **Weina Dai Randel**: *The Last Rose of Shanghai*; **Bob Reiss**: *Still Hungry: Tales from the Shadows*; **Nicholas Reynolds**: *Need to Know: World War II and the Rise of American Intelligence*; **Suzanne Rhodenbaugh**: *The Girl Who Quit at Leviticus*; **Richard Rhodes**:

Scientist: E. O. Wilson: *A Life in Nature*; **Teresa J. Rhyne**: *Poppy in the Wild: A Lost Dog, Fifteen Hundred Acres of Wilderness, and the Dogged Determination That Brought Her Home*; **June Rifkin** (and Ada Aubin): *The Complete Book of Astrology*; **Brett Riley**: *Freaks*; **Woody Rini**: *HELP! I'm Overwhelmed!*; **J. D. Robb**: *Abandoned in Death*; **Nora Roberts**: *The Becoming*; **Julia Rocchi**: *Amen?: Questions for a God I Hope Exists*; **Lisa LaBanca Rogers**: *Discover Her Art: Women Artists and Their Masterpieces*; **Michael Rogers**: *Email from the Future: Notes from 2084*; **Ron Roman**: *Of Ashes and Dust*; **Robert Ronning**: *Wild Call to Boulder Field*; **Bill Roorbach**: *Lucky Turtle*; **Robert Rosen**: *A Brooklyn Memoir: My Life as a Boy*; **Léonie Rosenstiel**: *Protecting Mama: Surviving the Legal Guardianship Swamp*; **Michael Elsohn Ross**: *John Audubon and the World of Birds for Kids: His Life and Works, with 21 Activities*; **Dan Rottenberg**: *The Education of a Journalist: My Seventy Years on the Frontiers of Free Speech*; **Kaira Rouda**: *Somebody's Home*; **Kate Rounds**: *Catboat Road*; **Karen Gray Ruelle**: *Surprising Spies, Unexpected Heroes of World War II*; **Katie Runde**: *The Shore*; **Albert Russo**: *The Chambers of My Heart: Venice, Paris and New York*; *Corona Zapinette in Tel Aviv*; *Marcel Proust, Paris et moi: A Photographic Essay*; **Roxanne Rustand**: *Christmas Danger*; **Christopher X. Ryan**: *Heliophobia*; **Erin Kate Ryan**: *Quantum Girl Theory*; **Mikael Sahrling**: *Layout Techniques for Integrated Circuit Designers*; **Jill Sanders**: *Angel Bluff; Secret Charm; Secret Desire*; **Sandy Eisenberg Sasso** (and Amy-Jill Levine; Annie Bowler, illus.): *The Good For Nothing Tree*; **Caitlin Scarano**: *The Necessity of Wildfire*; **Steven Schindler**: *Fallout Shelter*; **Jeff Schnader**: *The Serpent*

Papers; **E. M. Schorb**: *Five and Ten: A Fairy Tale, a Few Poems, and a Fable*; **Valerie Schultz**: *A Hill of Beans: The Grace of Everyday Troubles*; **Maxine Rose Schur**: *Child of the Sea*; **Bobbie Scopa**: *Both Sides of the Fire Line*; **Brenda Seabrooke**: *Sherlock Holmes: The Persian Slipper and Other Stories*; **Burning Secret**: *Burning Secret*; **KJ Serafin**: *No Need to Apologize*; **Dorinda Shaw**: *Broken into a Million Pieces: A Will to Live*; **Faith Shearin**: *Lost River, 1918*; **Kim Shegog**: *Crossing Over*; **Charlotte Watson Sherman** (Geneva Bowers, illus.): *Mermaid Kenzie: Protector of the Deep*; **Elizabeth Shick**: *The Golden Land*; **Nancy Shiffrin**: *Game with Variations; This Sacred Earth*; **Laura Shin**: *The Cryptopians: Idealism, Greed, Lies, and the Making of the First Big Cryptocurrency Craze*; **Deborah Shlian**: *Lessons Learned: Stories from Women Physician Leaders*; **David Sines**: *Nora and Alai: Trust*; **Sonee Singh**: *Lonely Dove*; **Patricia Skalka**: *Death Casts a Shadow*; **Sharon Skinner**: *Lostuns Found*; **Anne Skomrowsky**: *The Carriers: What the Fragile X Gene Reveals About Family, Heredity, and Scientific Discovery*; **Dashka Slater**: *The Book of Stolen Time*; **Amber Smith**: *Code Name: Serendipity*; **Joann Smith**: *A Heaven of Their Choosing*; **James Solheim**: *Eat Your Woolly Mammoths!: Two Million Years of the World's Most Amazing Food Facts, from the Stone Age to the Future*; **Larry F. Sommers**: *Price of Passage: A Tale of Immigration and Liberation*; **Róisín Sorahan**: *Time and the Tree*; **Traci Sorell**: *Powwow Day*; **Graham Spanier**: *In the Lions' Den: The Penn State Scandal and a Rush to Judgment*; **Ronald H. Spector**: *A Continent Erupts: Decolonization, Civil War, and Massacre in Postwar Asia, 1945–1955*; **Cornelia Maude Spelman**: *Missing*; **Marianne Sprangers**: *Cheesecake Loves My Thighs and 27 Other Reasons Why Cheesecake Is Better Than*

Men; **Bonnie Stanard**: *Curious Design*; **Diane Stanley** (Jessie Hartland, illus.): *Alice Waters Cooks Up a Food Revolution*; **Michael Stanley**: *A Deadly Covenant*; **Kelly Starling-Lyons** (Wayne Spencer, illus.): *King of the Ice*; **Joe Samuel Starnes** (and Leth Oun): *A Refugee's American Dream: From the Killing Fields of Cambodia to the U.S. Secret Service*; **Mary Helen Stefaniak**: *The Six-Minute Memoir: Fifty-Five Short Essays on Life; The World of Pondsides*; **Laura Segal Stegman**: *Summer of L.U.C.K.* (2nd ed.); **R. L. Stine**: *Stinetingers: All New Stories by the Master of Scary Tales*; **Emily Stoddard**: *Divination with a Human Heart Attached*; **Lane Stone**: *The Collector*; **Raymond Strait**: *Bughouse Blues*; **Emma Straub**: *Very Good Hats*; **Patrick Strickland**: *The Marauders: Standing Up to Vigilantes in the American Borderlands*; **Anthony M. Strong**: *Dark Force*; **Nancy Rubin Stuart**: *Poor Richard's Women: Deborah Read Franklin and the Other Women Behind the Founding Father*; **VL Stuart**: *Orb and Arrow: Exploration; Orb and Arrow: Honor*; **Emily Suárez**: *The Healing Journal: Guided Prompts & Inspiration for Life with Illness*; **Nita Sweeney**: *Make Every Move a Meditation: Mindful Movement for Mental Health, Well-Being, and Insight*; **Mary Swigonski**: *Letters from Eleanor Roosevelt*; **Helen M. Szablya**: *From Refugee to Consul: An American Adventure*; **Mitzi Szereto**: *The Best New True Crime Stories: Crimes of Famous & Infamous Criminals; The Best New True Crime Stories: Unsolved Crimes & Mysteries*; **Anca L. Szilágyi**: *Dreams Under Glass*; **Sue Tabashnik**: *Patsy Swayze: Every Day, a Chance to Dance*; **Natasha Anastasia Tarpley** (Charnelle Pinkney Barlow, illus.): *Keyana Loves Her Family*; **Zoe Tasia**: *Bagpipes and Basil; A Happy Christmas Ceilidh*; **Don Tassone**: *Collected Stories*; **Meredith Tax**: *The Rising of the Women: Feminist*

Solidarity and Class Conflict, 1880–1917; **Courtney Faye Taylor**: *Concentrate*; **Susanne Tedrick**: *Innovating for Diversity: Lessons from Top Companies Achieving Business Success Through Inclusivity*; **P. David Temple**: *Five Times Lucky*; **Adrea Theodore** (Erin K. Robinson, Illus.): *A History of Me*; **Brenda Clark Thomas**: *The Surrogate*; **Jan Thomas**: *Even Robots Aren't Perfect!*; **Tamika Thompson**: *Salamander Justice*; **Janis Thornton**: *The 1965 Palm Sunday Tornadoes in Indiana*; **J. E. Tobin**: *When We Were Wolves*; **Camilla Trinchieri**: *Murder on the Vine*; **Robert Tucker**: *The Discontent of Mary Wenger*; **Terica Turner**: *Tackling the Taboo: Navigating Anxiety, Depression, and Other Mental Illnesses as a Christian*; **Anne Tyler**: *French Braid*; **Lisa Unger**: *Secluded Cabin Sleeps Six*; **Rachel Vail** (Hyewon Yum, Illus.): *Sometimes I Gramblesquinch*; **Kelsi Vanada** (Transl., and Andrea Chapela): *The Visible Unseen*; **Jere Van Dyk**: *Without Borders: The Haqqani Network and the Road to Kabul*; **Irina VanPatten**: *Mail-Order Family*; **Jonathan Vatner**: *The Bridesmaids Union*; **Angela Velez**: *Lulu and Milagro's Search for Clarity*; **Audrey Vernick** (Cannaday Chapman, Illus.): *All Star: How Larry Doby Smashed the Color Barrier in Baseball*; **Caroline Vézina**: *Jazz à la Creole: French Creole Music and the Birth of Jazz*; **Phyllis Vine**: *Fighting for Recovery: An Activists' History of Mental Health Reform*; **Iris Wainright**: *I Never Knew You: From Tragedy to Triumph*; **Vince Waldron** (and Ronnie Spector): *Be My Baby: A Memoir*; **Ashley Walker** and **Maureen Charles**: *Music Mavens: 15 Women of Note in the Industry*; **Carol Wallace**: *Our Kind of People*; **Lyzette Wanzer** (Ed.): *Trauma, Tresses, and Truth: Untangling Our Hair Through Personal Narratives*; **Adrienne N. Warfts**: *Love as*

of Late; **Tammah Watts**: *Keep Looking Up: Your Guide to the Powerful Healing of Birdwatching*; **Stephanie Weaver**: *The Migraine Relief Plan Cookbook*; **Hillary S. Webb**: *The Friendliest Place in the Universe: Love, Laughter, and Stand-Up Comedy in Berlin*; **Stephen Wechselblatt**: *Worse Than Murder*; **Margo Weinstein**: *Jalan-Jalan: A Journey of Wanderlust and Motherhood*; **Alan Weisman**: *The World Without Us* (Reissue); **Kaitlyn Wells**: *A Family Looks Like Love*; **Abigail Hing Wen**: *Loveboat Reunion*; **Julie Weston**: *Moon Bones*; **Gemma Whelan**: *Painting Through the Dark*; **Alana White**: *The Hearts of All on Fire*; *The Sign of the Weeping Virgin*; **James W. White**: *Carp Café; Helen and Her Brothers; Made Up Stories*; **Joseph A. White Jr.**: *The Between State*; **Larisa A. White**: *World Druidry: A Globalizing Path of Nature Spirituality*; **Lisbeth White**: *American Sycamore*; **Rhonda Wiley-Jones**: *Song of Herself*; **Candace Willrich**: *I Stood as a Poet: Overcoming Human Trafficking Abuse*; **J L Wilson**: *Mirrored*; **Linda C. Wisniewski**: *Where the Stork Flies*; **Victory Witherkeigh**: *The Girl*; **L. A. Witt** (and Anna Zabo): *Scoreless Game*; **Diane Wolff**: *Fish Shoes: A Palace Drama*; *The Khan's Mistake: The Fight for the Throne*; **Norah Woodsey**: *The Control Problem*; **Karen Yin** (Lavanya Naidu, Illus.): *Doug the Pug and the Kindness Crew*; **Karen Yin** (Bonnie Lui, Illus.): *So Not Ghoul*; **Anne Ylvisaker** (Mark Hoffman, Illus.): *Iamasaurus*; **Keith Yocum**: *Best You*; **George W. Young**: *Time Blink*; **Sarah Young**: *Expansive Impact: An Invitation to Lead in Everyday Moments*; **E. Lily Yu**: *Jewel Box*; **Alex Zucker** (Transl., and Bianca Bellová): *The Lake*; **Alex Zucker** (Transl., and Jan Patocka): *The Selected Writings of Jan Patocka: Care for the Soul*; **Shad'e Zuiweta**: *Beyond Our Imperfections*.

* MEMBERS MAKE NEWS

The 2022 Andrew Carnegie Medals for Excellence were announced on January 23, 2022. **Tom Lin's** *The Thousand Crimes of Ming Tsu* won the Fiction medal. **Lauren Groff's** *Matrix* was named a finalist.

The 2022 Lambda Literary Award finalists were announced on March 15, 2022. **Lauren Groff's** *Matrix* was named a finalist for Lesbian Fiction. **Rosamond S. King's** *All the Rage* was named a finalist for Lesbian Poetry.

On April 28, 2022, the Mystery Writers of America announced the winners of the 2022 Edgar Awards. **Elon Green's** *Last Call: A True Story of Love, Lust, and Murder in Queer New York* won the award for Best Fact Crime. **Ellen McGarrah's** *Two Truths and a Lie: A Murder, a Private Investigator, and Her Search for Justice* was also nominated for Best Fact Crime. **James McGrath Morris's** *Tony Hillerman: A Life* was nominated for Best Critical/Biographical. **Gigi Pandian's** "The Locked Room Library," featured in *Ellery Queen Mystery Magazine*, was nominated for Best Short Story. **Marthe Jocelyn's** *Aggie Morton*, *Mystery Queen: The Dead Man in the Garden* was nominated for Best Juvenile.

The National Book Critics Circle Awards were announced on January 20, 2022. **Susan Bernofsky's** *Clairvoyant of the Small: The Life of Robert Walser* was a finalist in the Biography category. **Jocelyn Nicole Johnson's** *My Monticello* was a finalist for the John Leonard Prize for best first book. **Christopher Irmischer** was a finalist for the Nona Balakian Citation for Excellence in Reviewing.

PEN America announced the winners of their 2022 Literary Awards on March 1, 2022. **Julia Sanchez's** translation of *Migratory Birds* by **Mariana Oliver** won the PEN Translation Prize. **Kareem**

James Abu-Zeid's translation of Najwan Darwish's *Exhausted on the Cross* was a finalist for a PEN Award for Poetry in Translation.

Sean Cotter's translation of *FEM* by **Magda Cârneci** and **Alta L.**

Price's translation of *New Year* by **Juli Zeh** were finalists for the PEN Translation Prize.

James Botsford's *imageries (images and epigrams)*, with photographs by Stephen Stolee, was the 2022 winner of the Eric Hoffer Book Award for Art. The book was also short-listed for the Grand Prize and a finalist for the da Vinci Eye (for cover design).

Dianne Braley's *The Silence in the Sound* won the 2022 NYC Big Book Award in the category of Women's Fiction.

Lukman Clark's *The Transfiguration of Brandon Blake* was named a finalist in the Readers' Choice Best Fiction Award.

Jo Dinage's *The Intruders: In This War They Had the Advantage* won the 2022 Moonbeam Children's Book Award Bronze Medal in the category of Young Adult Fiction.

Lauren Groff won the 2022 Joyce Carol Oates Prize, which comes with a \$50,000 award for a midcareer author of fiction "who has earned an extraordinarily distinguished reputation and garnered the widespread appeal of readers."

Dawn James's *Unveiled* won the 2022 Readers' Favorite Award's Silver Medal in the category of Spirituality.

Elizabeth Johnson was named the 2021 Author's Porch and *PULSE* magazine's Author of the Year. The City of Palm Bay, Florida, also honored her with a Proclamation for Black History Month 2022.

Leslie Kain's *Secrets in the Mirror* was named an American Fiction Awards finalist in the category of Family Saga as well as an American Writing Awards finalist in the categories of Best New (Debut) Fiction and Fiction-General.

Megan Marshall won the 2022 BIO Award, presented by the Biographers International Organization for her "contributions to the advancement of the art and craft of biography."

Danielle McClean's *Secrets of Oscuros: The Whisperer's Warning* won the 2022 Bocas Lit Fest Children's Book Prize.

Roslyn Reid's *The Spiricom* won the 2021 N. N. Light Book Award for Paranormal Mystery.

James F. Richardson's *Ramping Your Brand: How to Ride the Killer CPG Growth Curve* won a 2021 Best Indie Book Award in the category of Nonfiction: Business.

John Russell's *Riding with Ghosts, Angels, and the Spirits of the Dead* won a Silver Award in the 2021 Nonfiction Book Awards and a bronze medal from the 2021 Readers' Favorite International Book Award Contest. *A Knock in the Attic* won a Gold Award from the 2021 Nonfiction Book Awards and was honored as a Top Notable Book in the Shelf Unbound 2021 Best Indie Book Competition.

Albert Russo's *Three Colors of the Rainbow: Arco's Fabled Paris, Venice and New York* won the Independent Press Award's 2022 Distinguished Favorites in the category of World Literature. He also received third place in the *Europaesie/UNICEF* award in the Short Story category.

Donna Sandstrom's *Orca Rescue!: The True Story of an Orphaned Orca Named Springer* was named the 2021 Best Children's Book by the Science Writers and Communicators Canada (SWCC). It was also a finalist for the 2022 Washington State Book Awards.

E. M. Schorb's *Once Upon Each Time* received a 2022 London Book Festival Honorable Mention for Poetry. His novel *Needleneck* was awarded Honorable Mention for Genre-Based Fiction from the 2022 Los Angeles Book Festival.

Kim Shegog's short story collection *Crossing Over* was selected

as winner of the inaugural 2021 Converse MFA Alumni Book Prize.

Pat Silver-Lasky's *John Law: Money to Burn: A Biographical Novel* received the "Highly Recommended" Award of Excellence from the Historical Fiction Company.

Elizabeth Strout's *Oh William!* was short-listed for the 2022 Booker Prize.

E. S. Thornton's *Touch the Dead* was named a 2022 Military Writers Society of America Award finalist in the Mystery/Thriller category as well as an Honorable Mention in the Readers' Favorite category.

Janis Tomlinson was awarded the Royal Order of Isabel la Católica for her works contributing to the knowledge of the culture and history of Spain.

Irina VanPatten's *Mail-Order Family* received the Silver Award in the spring 2022 BookFest contest in the category of True Stories & Memoir.

Jesmyn Ward won the 2022 Library of Congress Prize for American Fiction, which honors a writer whose body of work is "distinguished not only for its mastery of the art but also for its originality of thought and imagination." The award was presented at the 2022 National Book Festival on September 3, 2022.

Deanna Witkowski's *Mary Lou Williams: Music for the Soul* won the 2022 ASCAP Foundation Deems Taylor/Virgil Thomson Book Award in Pop Music, the 2022 Jazz Journalists Association Award for Biography/Autobiography of the Year, the 2022 Catholic Media Association honorable mention in Biography, and the 2022 Association of Catholic Publishers second-place award for Biography.

* IN MEMORIAM

Russell Banks, 82, died on January 1, 2023 in Saratoga Springs, New York. He was the author of 21 books, including both fiction and

nonfiction works, with two of his novels (1985's *Continental Drift* and 1998's *Cloudsplitter*) finishing as finalists for the Pulitzer Prize.

Barbara Ehrenreich, 81, died on September 1, 2022 in Alexandria, Virginia. She wrote over 20 books and was a *New York Times* columnist, but was best known for 2001's *Nickel and Dime: On (Not) Getting By in America*, which chronicled her time spent trying to survive on minimum wage jobs as an undercover journalist.

Cai Emmons, 71, died on January 2, 2023. The novelist and playwright became famous late in her life for maintaining a blog on her last years after she was diagnosed with bulbar-onset amyotrophic lateral sclerosis in February of 2021. She also previously served as an Authors Guild ambassador.

Nicholas Evans, 72, died on August 9, 2022 in London. He was best known for 1995's *The Horse Whisperer*, which went on to have a very successful movie adaptation as well.

Ian Falconer, 63, died on March 7, 2023 in Norwalk, Connecticut. He was a well-known children's author whose most famous work was the Olivia series of books about a smart young piglet, which began in 2000 with a book of the same name.

John Jakes, 90, died on March 11, 2023 in Sarasota, Florida. He was a very well-known author of historical fiction, mainly on the American Revolution and the Civil War, but wrote more than 60 books total including westerns, mysteries, fantasy, and even children's books.

Kenzaburo Oe, 88, died on March 3, 2023. The Japanese author was well known for being highly critical of modern Japan and its similarities to the lead-up to World War II, and won the Nobel Prize in Literature in 1994.

Ni Kuang, 87, died on July 3, 2022. He was born in Shanghai but ended up fleeing for Hong Kong, where he came to widespread fame

among Chinese-speaking audiences for his popular *Wisely* series of science fiction novels.

Joan Lingard, 90, died on July 12, 2022. The Scottish author was a prolific writer of more than 60 books, for both children and adults alike, and was most famous for *Kevin and Sadie*, a quintet of YA books set in Belfast in the 1970s.

Hilary Mantel, 70, died on September 22, 2022 in Exeter, England. The acclaimed British novelist was best known for her trilogy on the life of Thomas Cromwell—*Wolf Hall*, *Bring Up the Bodies*, and *The Mirror and the Light*.

Javier Marias, 70, died on September 11, 2022 in Madrid. The well-known Spanish novelist penned works such as *All Souls* and *A Heart so White*, and also moonlighted as a columnist and translator.

Kevin McIlroy, 69, died on September 30, 2022 in Asheville, North Carolina. He was the author of six novels and many short stories and poetry work, and taught at New Mexico State University for nearly 40 years.

Nelida Pinon, 85, died on December 18, 2022 in Lisbon, Portugal. A prolific Brazilian author of more than twenty books, including novels like 1972's *The House of Passion* and 1984's *The Republic of Dreams*, Ms. Pinon won the Prince of Asturias Prize for Literature (Spain's equivalent of a Nobel) in 2005.

Julie Powell, 49, died on October 26, 2022 in Olivebridge, New York. She was well known for her popular online blog the Julie/Julia project, in which she profiled her attempts to cook every one of the 524 recipes from Julia Child's 1961 cookbook *Mastering the Art of French Cooking, Volume 1*. It would later become both a book and a film starring Meryl Streep and Amy Adams.

Marcus Sedgwick, 54, died on November 15, 2022 in France. He

was the author of more than 40 books for both children and adults, and his work had been shortlisted for more than 30 different awards. His most recent work were a series of handbooks for children called *Be the Change*.

Susie Steiner, 51, died on July 2, 2022. She was best known for her Manon Bradshaw series of detective books, and was also a staff writer and editor with the *Guardian* newspaper in London for 11 years.

Peter Straub, 79, died on September 4, 2022 in New York. He was a major figure in the horror fiction boom of the 1970s and 1980s, with several of his works such as 1975's *Julia* and 1979's *Ghost Story* receiving film adaptations as well.

Kate Sullivan died on May 6, 2022. She was a Tampa-based writer, author, and podcast host, as well as an Authors Guild ambassador dating back to 2018.

Xi Xi, 85, died on December 18, 2022 in Hong Kong. The author of more than 30 books, she was the first Hong Kong resident to win the Newman Prize for Chinese Literature.

A.B. Yehoshua, 85, died on June 14, 2022 in Tel Aviv. A renowned Israeli author of 11 novels, Mr. Yehoshua's books such as 1977's *The Lover* and 1984's *The Late Divorce* innovated in how they told often fraught stories of modern life in Israel.

* DECEASED MEMBERS

Joseph Abrahams
Juan Alonso
Amalie A. Ascher
Mary Ellin Barrett
Eleanor Bluestein
Richard Warren Brewster
Joan Simpson Burns
Robert Day
Walter Joseph Deptula
Howard Eisenberg
Cai Emmons
Dixie Fairbanks
Morton David Goldberg
Joseph Kennedy Hillstrom
Gerelyn Hollingsworth
Marjorie Deiter Keyishian
Lawrence Malkin
Michael C. Malone
Gordon McAlpine
Kevin McIlvoy
Mameve Medwed
Roberta D. Miller
Paul Edward Mills
Lael Morgan
Flo Morse
J. Michael Norman
Michael Perkins
Michael R. Phillips
Jonathan Will Rinzler
Arthur D. Rosenberg
Michele Sobel Spirn
Philip G. Spitzer
Suzanne Fisher Staples
Kate Sullivan
Carl Watson
Stuart Woods
Robert Zipf

Victor Saul Navasky July 5, 1932–January 23, 2023

With great affection and gratitude, the Authors Guild remembers Victor Navasky, a member of the Guild since 1972 and an active Council member since 1974. He was an enterprising, imaginative, meticulous, and admired journalist whose prose switched effortlessly from dead serious to comical. He started his career while a student at Yale Law School, launching a satirical magazine with a friend. His principal interests, as a freelance journalist and later as editor of *The Nation*, were politics and justice, the subjects of his two best-known books: *Kennedy Justice* (1971), on Robert Kennedy's shift as attorney general, and *Naming Names* (1980), an exploration of the 1940s Hollywood blacklist trials for which he won the National Book Award.



His extended freelance life was punctuated by a two-year stint with the *New York Times* and ended when he joined *The Nation* as editor in 1978, the magazine's 113th year and Victor's 46th. He revived the publication by searching out more women contributors, quadrupling subscriptions, and expanding the magazine's influence. He would frequently say, "If it's bad for the country, it's good for *The Nation*," with a mischievous wink.

In 1995, he became publisher and director of the magazine, and in 2005 he went freelance again, teaching at Columbia University, writing books, and faithfully turning up at the Guild's Council meetings including the spring galas with his wife, Annie.

"Navasky raised skepticism and irreverence into a fine art," said Douglas Preston, president of the Authors Guild. "He was a virtuoso at taking apart treasured beliefs and received wisdoms with a restless, as-tringent, and keen intellect."

"He was a fearless and pugnacious journalist," said Scott Turow, past president of the Authors Guild. "An exuberant opponent of mis-used power. And an eternally warm and endearing friend. He was a person of uniquely large capacities."

Victor was an Upper West Side mensch, bar none, wise and beloved. As Authors Guild Foundation vice president Wendy Strothman said, "They don't make them like this anymore. He was definitely one of a kind. Always a twinkle in his eye and a razor mind."

Ex-officio Council member and past president Letty Cottin Pogrebin added: "He was a captivating storyteller, a world-class listener, a fiercely loyal friend."

REGIONAL CHAPTERS UPDATE

In the second half of 2022, our regional chapters created multiple opportunities for our members to meet, as well as to hear expert discussions concerning all elements of the business side of writing. A happy return to in-person events has begun, although most events continue to be Zoomed or hybrid, making it possible for more members to attend.

In July, the Portland and Seattle chapters cohosted a meeting with agents Fiona Kenshole (Transatlantic Agency) and Lindsay Guzzardo (Martin Literary Management) for members throughout the Pacific Northwest. Topics ranged from how to find an agent to how to part with your current one. Rounding out the summer, in August, Teri Emory, our Las Vegas ambassador, hosted a general meeting for current and potential members in Nevada.

Autumn brought a whole new slate of events. On September 4, Shay Vasudeva led a group of Arizona members on a tour through the Frida Kahlo exhibit at the Walter Where?House in Phoenix. On September 14, Boston ambassadors Nancy Rubin Stuart and Stephanie Schorow led a panel discussion titled “Publishers’ Expectations for Writing in the Twenty-First Century.” Liza Dawson, head of Liza Dawson Agency, and former Random House editor Diane O’Connell discussed what publishers are looking for when they buy manuscripts and whether popular writing styles have evolved since the last century.

On September 28, our new slate of New York City ambassadors, Catherine Torigian, Ginger McKnight-Chavers, and Diana Altman, led a packed house at a panel event hosted by the New York Society Library that was live-streamed for those who couldn’t make it in person. The discussion focused on short fiction as seen from the perspective of writers, editors, and agents. The panelists were Hilma Wolitzer, Megan Cummins, Adam Dalva, Gessy Alvarez, and Marya Spence. The event was highly successful, and while we hope there will be more in-person events throughout the country, we will continue to encourage Zoom and hybrid events, as the accessibility of Zoom is beneficial to many of our members.

Three chapters held events in October. On October 18, Washington, D.C., ambassadors Michon Boston, Lesley Harris, and Donna Hemans hosted an event with author and screenwriter Suzanne Allain, who discussed how she adapted her novel into both short and full-length screenplays. The next day, Los Angeles ambassador Paul Peress hosted a talk with bestselling novelist Lynn Hightower, focusing on techniques of craft, how to tap into your creativity, and how to thrive as a writer. On October 20, the Las Vegas and Phoenix chapters met over Zoom for a general meeting.

The Philadelphia chapter started off November with a general meeting hosted by longtime ambassador Sally Wiener Grotta, who was joined by newly vetted

ambassadors Valerie Harris and Leah Mele.

On November 17, Chicago ambassador and entertainment attorney Charles Grippio offered guidance on estate planning for authors, including how authors’ heirs can receive maximum financial benefits from copyrights while preserving an artistic legacy.

Raleigh-Durham ambassadors Kelly Starling Lyons and Judy Allen Dodson hosted the last event of the year on December 7, with the help of guest Valonda Calloway, the author of *Tips from the TV Lady: A Guide for Making a Great Impression on Camera and in Person*, who delivered the goods.

* NOTIFICATIONS

Los Angeles ambassador Tisha Morris has decided to end her co-ambassadorship after two fruitful years of service. Fellow ambassador Paul Peress will stay on, and we will begin the search for a replacement.

With great sadness, we report the deaths of two of our ambassadors: Tampa ambassador Kate Sullivan in August 2022 after a long illness, and former Portland ambassador Cai Emmons this January, also after an extended illness. We are grateful for their contributions to the Authors Guild, and our condolences go out to their families, friends, and chapter colleagues.

—Melissa Ragsley
Manager of Regional Chapters

CONCLUDING REMARKS

A spirited farewell
from Laura
Pederson after four
years as president
of the Authors
Guild Foundation

Good morning, afternoon, or evening depending on where you are. This is my last meeting in a managerial capacity, and the marvelous and capable Marie Arana will soon be taking the reins. I joined the Authors Guild in my twenties. Suddenly sixty is on the horizon. I can't recommend aging—it's not for everyone.

I also wish to thank Mary and Lynn and the magnificent staff at the Authors Guild, and especially Doug, for his outstanding leadership, and most of all his kindness. He certainly did more fundraising than me—he's not just a pretty face—and I'm thrilled that Doug will continue to offer his valuable time and talent to the organization.

My Buffalo grandfather never learned to write in cursive, because during the 1918 pandemic it was necessary to leave the schoolhouse windows wide open all winter long, and he couldn't practice writing while wearing wool mittens. I've been thinking how the 1918 pandemic was followed by the Roaring Twenties and a cultural flourishing: the age of art deco, hot jazz, Coco Chanel, Walt Disney, F. Scott Fitzgerald, Edith Wharton, and Langston Hughes—new genres, new styles, new ways of communicating, and new calls for social change. And how writers are typically at the heart of such movements.

For instance, the 1935 George Gershwin opera *Porgy and Bess* was adapted from the play *Porgy*, which was an adaptation of DuBose Heyward's 1925 novel. This breathtaking and groundbreaking opera would then be broadcast over the radio, into the homes of average Americans around the country, including those who could never have afforded a ticket. And it was beloved by people like my other grandfather, who worked his entire life as a waiter on Long Island.

Last week I was surprised to read that more books are published in the U.S. than in any other country. We publish more books than China, yet they have four times as many people. Furthermore, we buy at least three times as many books as do people in any other country.

Still, as writers, there's always some new

WIT: Words, Ideas, and Thinkers Festival

September 21–23
Shakespeare & Company
Lenox, MA

The Authors Guild Foundation is excited to host our second annual WIT: Words, Ideas, and Thinkers Festival this September at Shakespeare & Company in Lenox, Massachusetts. WIT means to expand our understanding of critical issues, celebrate America's literary culture, and amplify new voices and perspectives. It is free and open to the public so everyone can participate in the dialogue without barriers.

For this year's event, we will explore the theme "Changing the Narrative" through a series of thought-provoking conversations with novelists, poets, playwrights, biographers, and journalists. Speakers include Marty Baron, Michael Cunningham, Rita Dove, Isaac Fitzgerald, Saeed Jones, Patrick Radden Keefe, Maya Shanhag Lang, Stacy Schiff, Jane Smiley, Emma Straub, Jonathan Taplin, and Margaret Verble. Festival attendees will have the opportunity to interact with speakers in Q&A sessions, book signings, and receptions. Dinners with speakers and additional special guests will be available for ticketed purchase. For details, visit authorsguild.org/witfestival.

Authors Guild Foundation Giving Society members can register early for individual sessions, receive preferential seating, and can purchase tickets in advance for our hosted dinners. To learn more and become a member, visit authorsguild.org/foundation/giving-society.

technology threatening our livelihoods, and we need to remain vigilant and continue to protect our work. Currently it's ChatGPT, although I'm not worried that it is a substitute for our own imaginations and experiences. Yesterday I was in Central Park and a man walking a few feet in front of me, speaking loudly on his cell phone, said, "What do you mean you don't know how to get rid of a dead body?" Then I plopped down on a bench and the woman sitting next to me—in the middle of Central Park—tells the person she's talking to on the phone, "Okay, Mark, I have to run, they're calling my flight."

While working on a book, I'll often recall that the Greek philosopher Socrates was against writing, saying that it would introduce forgetfulness into the soul of those who would otherwise learn things. And that Plato wanted to ban all the storytellers, because if they were really good, then they were a danger to society. I'm old enough to remember people wanting to ban television because it would brainwash everyone—okay, they were right about that.

So let me take this final opportunity to express my gratitude for your service to this organization, to writers who cannot represent themselves, and most of all, to readers. Plato was right in that storytellers are powerful—you help us fight an uncomfortable randomness by locating plots, patterns, and purpose, giving us unlimited potential for learning and compassion, and, most important, an understanding of what it means to be human.

Thank you. **AG**

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