What We Learned From Apple's Day in Court

Symposium:
Copyright in the Digital Age: Creators Have Their Say
Scott Turow: The Case for Copyright Reform
Sherman Alexie's Campaign:
Save Independent Bookstores, Save Authors
Moments after Alice Munro learned that she had won the 2013 Nobel Prize in literature, she told Canadian Broadcasting, “I would really hope this would make people see the short story as an important art—not just something you played around with until you got a novel.”

Most commentators on the award noted that Munro, alone, had done that years ago.

LAUREATES: Few books of poetry make the bestseller lists and very few poets earn a living from their poetry. But recognition is growing as some cities appoint poet laureates. These include Houston, Los Angeles, Boise, Idaho; Key West, Fla., and McAllen, Texas.

The latest city to name a laureate is Fresno, Calif. That honor, for two years and $2,000, went to James Tyner, 37. He is a librarian and author of a book of poetry, The Ghetto Exorcist. He wrote a poem for the occasion, and The New York Times quoted the first lines: “I am Fresno/I am the high school kid that can’t wait to get out of this town,/there’s nothing to do here,/nothing ever happens.”

EVERYBODY’S DOING IT: David Fenza, executive director of the Association of Writers and Writing Programs, said that there were 852 degree-conferring creative writing programs on U.S. campuses in 2010. In 1975 there were 79.

ABOUT TIME: Ring Lardner has joined Herman Melville, Walt Whitman and other literary titans as the star of one of Library of America’s fat, black volumes, “printed on lightweight, acid-free paper that will not turn yellow or brittle with age.”

“This is about as overdue as it could be,” commented Jonathan Yardley of The Washington Post, “but it corrects a long-standing injustice, and it underscores the ways in which writing about sports has contributed so much to our literature.”

NEW MODEL: The independent London publisher, And Other Stories, is setting up a New York office.

Founded in 2010 with a focus on contemporary international fiction, the house publishes a small list of English originals and works in translation, using a subscription model “on the principle that great new books will be heard about and read thanks to the combined intelligence of a number of people: editors, readers, translators, critics, literary promoters and academics.” Subscribers sign up to be sent two, four or more listed titles in advance, with no idea what they will be getting (in quality paper editions or e-book form).

The house made a splash last year with Deborah Levy’s Swimming Home, which had been passed on by several big houses as “too literary to prosper in a tough economy,” and was then shortlisted for the Man Booker Prize. And Other Stories’ Fall/Winter 2013/2014 list includes works by authors from Brazil, Argentina, South Africa and Switzerland. Its 11 Commandments of publishing can be perused at www.andotherstories.org/about/11-commandments/.

SERIES RULE: The novel’s hero is Harry Handsome. In the next book by the same author, Harry’s brother Ted is the main man. In the third, their cousin, an orphan who lived with the family, becomes sheriff. Each novel sells more copies than the previous one.

In genre publishing, the connected series has become a popular route to big success. Novels with characters that reappear in a series (or books linked by a single community) have caught on with fans of Debbie Macomber, author of the Dakota series. PW credits her with inventing this approach.

Others who have been successful with linked novels are Sherryl Woods (Trinity Harbor series), Susan Wiggs (Calhoun Chronicles) and Susan Mallery (Buchanan series).

PW reported that Robyn Carr (Virgin River series) took the connected novels route to success. Her latest, The Wanderer, sold 48,000 copies in its first week to become a No. 1 bestseller.

FETE: Harvard University Press is celebrating 100 years of publishing. It began in 1913 and is in the process of converting 10,000 titles into digital format.

The press’s first bestseller was Eudora Welty’s One Writer’s Beginnings in 1984.

I opened my treasured copy of Welty’s memoir to see how well I remembered the last paragraph: “As you have seen, I am a writer who came of a sheltered life. A sheltered life can be a daring life as well. For all serious daring starts from within.”

LIKE FREUD: Novelist Hilary Mantel wrote in The Guardian about how one of Oliver Sacks’s books, Migraine, changed her life. “Like Freud before him,” she wrote, “he has elevated the case history into literature.”

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About the Cover Artist

Elwood H. Smith is an award-winning illustrator
whose work appears regularly in The New York Times
and The Wall Street Journal

Overheard

“Please help me dear God to
be a good writer and to get
something else accepted.”

—From “A Young
Writer’s Prayers”
by Flannery O’Connor,
in The New Yorker
of Sept. 16, 2013
SHORT TAKES

Restrictions Imposed on Apple After Verdict in DOJ Suit

On September 5, Judge Denise Cote, who had ruled against Apple in the Justice Department’s antitrust suit in July, ordered Apple to modify its contracts with publishers. The order forces Apple to exclude any restrictions to e-book discounting for at least another two years in existing and new contracts with the five publisher defendants.

Macmillan, the first publisher to openly defy Amazon by deciding to sell books on agency terms, will be locked out of using the agency model for the next four years. Penguin is restricted for 42 months, Simon & Schuster for 36 months, HarperCollins for 30, and Hachette for 24.

Judge Cote’s order is significantly less punitive than what the Justice Department had recommended, but it includes one element of that proposal: Apple will now be overseen by an external monitor for two years (the DOJ proposed 10 years), with a one-year extension if the court decides it’s necessary.

Apple faces a trial on money damages in spring 2014, and is appealing the recent injunction as well as the original guilty verdict.

Kirshbaum Leaving Amazon Publishing

Two and a half years after launching a general trade book operation, Amazon is dramatically scaling back its publishing ambitions. The retreat was signaled by the news that Larry Kirshbaum, who has headed Amazon’s New York and Seattle adult imprints and children’s publishing since 2011, will leave the company early next year and return to agenting. The website Shelf Awareness, which broke the news, noted that in recent months, “Amazon has not been a factor in bidding on major books the way it had been just two years ago.” The website also reported that Amazon would continue “its more specialized publishing imprints,” including Thomas & Mercer and Montlake Romance.

Amazon’s reduced publishing profile will be welcome news for publishers and bricks-and-mortar booksellers who have balked at the thought of selling titles from a competitor they consider ruthless. While some retailers have refused to carry Amazon books, others have stocked but not promoted the titles.

Meanwhile, Amazon’s sales and stock price continue to soar. Its third quarter results showed that sales increased 24 percent to $17.09 billion, even as operating losses fell by $3 million. The news sent Amazon’s share price up nearly 9 percent, to more than $361.

Harper Lee Sues Local Museum for Mockingbird Infringement

In October, attorneys for author Harper Lee filed a trademark infringement suit against the Monroe County Heritage Museum in Mobile, Alabama’s federal district court.

According to the complaint, the museum uses tokillamockingbird.com as its web address, touts its building as the model for the novel’s courthouse, and uses the novel to market “Mockingbird” trinkets and mementoes.

Despite the museum’s claim that its purpose is historical, Lee’s attorneys say “its primary mission is to trade upon the fictional story, settings and characters that Harper Lee created . . . and [her] renown as one of the nation’s most celebrated authors.” Lee is asking the court to stop the violations, award her money damages and force the museum to give up the tokillamockingbird.com domain name.

In response, the museum’s attorney, Matthew I. Goforth, says that “every single statement in the lawsuit is either false, meritless, or both.” In a statement to ABCnews.com, he placed the blame on Lee’s “greedy handlers . . . who have seen fit to attack the non-profit museum in her hometown that has been honoring her legacy and the town’s rich history . . . for over 20 years.”

Mr. Goforth doesn’t mention, as far as we can tell, that he had filed an opposition to Harper Lee’s federal trademark application on behalf of the museum two months previously. In that document, the museum admits to using various “mockingbird design marks” to sell “aprons, T-shirts and outerwear . . . onesies for babies and T-shirts for toddlers and children”—plus an array of non-wearables, including tea towels, key chains, magnets, car decals, and “beverage huggers.”

In court papers, Lee’s attorneys say the 25-year-old museum has a history of infringing on the author’s trademarks, and has grown more brazen since she suffered a stroke. In the past, it would respond to cease-and-desist demands, such as when it withdrew its Calpurnia’s Cook Book, named for the housekeeper in Mockingbird.

Now, according to the filing, the museum, “apparently believes she lacks the desire to police her trademarks. The Defendant is mistaken.”

Illinois Court Overturns “Amazon Tax” Act

In 2011, Illinois passed the Main Street Fairness Act, requiring online retailers to collect and remit sales tax on purchases made by individuals in all states. The law’s intention was to bring in additional revenue, as much as $24 billion, and to “level the playing field for all business,” specifically to lower the advantage online retailers hold over brick-and-mortar stores, according to the bill’s co-sponsor, Senator Dick Durban (D-IL).
The legislation was often referred to as the “Amazon Tax,” although the company publicly supported the law—despite closing several physical locations in California the same year in direct response to similar legislation passed in that state.

On October 18, the Illinois Supreme Court overturned the law, ruling it unconstitutional and discriminatory under the Internet Tax Freedom Act, a federal law passed in 1998 and renewed in 2007, that was designed to preserve the potential of the Internet by ensuring that no special, additional taxation would be imposed on online activity. As the Illinois court succinctly stated, “State law cannot trump federal law.”

Senators Successfully Renew Push for Shield Law

On September 12, the Senate Judiciary Committee voted to approve the Free Flow of Information Act and send it on to the full Senate. This federal shield law would put greater restrictions on how the government collects journalists’ private information while investigating leaks. The act calls for courts to “apply a balancing test before compelling disclosure” of sources and other information from journalists, to arbitrate government media records requests, and to notify journalists within 90 days of their records being reviewed by the DOJ.

The committee expanded the definition of “covered persons” to include a wide range of information gatherers, including nonfiction authors, bloggers, students and freelancers, whether paid or unpaid. In addition, a federal judge could rule that someone who doesn’t fit into any of the categories laid out in the law is, in fact, covered.

Prior to the committee’s vote, a coalition of media organizations, including the Authors Guild, called on Congress to use this as an opportunity to strengthen the First Amend-

ment protection of press freedom. This summer, the DOJ drafted a new policy for investigating journalists in response to outrage over revelations that it secretly collected the phone records of Associated Press reporters and examined e-mails of Fox News reporter James Rosen in a search for the source of government leaks.

Members of a bipartisan coalition of senators have said that a shield law is needed to ensure that the reforms in this new policy can’t be undone at the whim of government officials. The current bill revolves legislation that Senator Charles Schumer (D-NY) pushed for unsuccessfully in 2009.

23 Million Readers to Receive Credit from DOJ Settlements

More than 23 million “consumer accounts” are eligible to receive refunds from the $166 million pool of money put up by the defendant publishers who settled with the DOJ in the Apple e-book price-fixing case. Those refunds may add up to a mini-stimulus for the book industry, since only 48,124 of those eligible for refunds opted to get a check instead of a credit to their account.

Citing Rust Consulting, the firm retained to administer the fund, PW reported that “23,073,840 customers of Amazon, Apple, Barnes & Noble, Kobo, Google, and Sony have been directly notified via e-mail or by postcard that they are eligible to participate in the settlement.”

Depending on the outcome of a trial to determine monetary damages Apple must pay, scheduled for May 2014, a second round of refunds may follow.

Hotfile.com Found Liable for Housing Stolen Content

In a ruling cheered as a victory for intellectual property rights, a judge found the file-sharing service Hotfile liable on charges of copyright infringement for storing pirated movies and TV shows on its site. The decision was announced this summer, with Variety reporting that “The summary judgment decision from U.S. District Court Judge Kathleen Williams in Florida was the first such ruling on whether cyberlockers can be held liable for the content stored on their site,” according to the Motion Picture Association of America.

The case dates back to 2011, when five U.S. movie studios sued Hotfile for hosting massive amounts of pirated material. Hotfile maintained that it was protected under safe harbor provisions of the Digital Millennium Copyright Act of 1998 because it took down pirated material after it was notified of it. The MPAA has argued that the mass distribution of stolen work was central to Hotfile’s business model.

Authors Guild Bulletin  Summer/Fall 2013
From the President

BY SCOTT TUROW

This summer, Penguin and Random House completed their merger—announced last year in late October, during a week when many on the East Coast were without power, but still glued to their smartphones, during Hurricane Sandy. The company released a new logo too: the familiar penguin enclosed in its oval beside the stately “random house” drawn by the artist Rockwell Kent in 1927. The logo does not transform the old colophons, but simply places them side by side above the similarly stable new name, Penguin Random House.

The merger created our first mega-publisher, and we’ll need some time to understand what this means for writers, booksellers, agents, and the publisher(s) themselves. The new logo and the new name suggest the companies will be working side by side, allies rather than competitors, in a marriage of equals.

I’m optimistic that Penguin Random House will have strong negotiating leverage against bookselling giants such as Amazon. On the other hand, I worry that authors—particularly writers whose work depends on the investment of publishers, such as historians and biographers, and, of course, novelists—will have fewer options in an already shrinking marketplace. This will affect all of us, writers and readers alike.

As we look to where things are headed, size seems to matter more and more. Most experts think the union of Penguin and Random House won’t be the last of the megamergers, and, in another arena, we may see other major changes: Maria Pallante, Register of Copyrights at the Library of Congress, has called for a comprehensive review of U.S. copyright law. This is long overdue—the last major overhaul was the 1976 Copyright Act. Let’s hope that the next Copyright Act takes less than two decades to negotiate, as that one did.

Ms. Pallante is a sophisticated and articulate advocate for authors and other creators. As she noted in a prepared statement delivered to the House Judiciary Committee in March, “authors do not have effective protections, good faith businesses do not have clear roadmaps, courts do not have sufficient direction, and consumers and other private citizens are increasingly frustrated.”

She’s right; change is needed. We no longer live in the world of 1976, or 1986, 1996 or even 2006. Mass digitization is a reality, not just a threat. Piracy is seen by many as unstoppable, and copyright law has become strangely controversial. However, it need not be demonized on the one side, or wielded as a blunt weapon on the other. A proper overhaul, one that simplifies the processes for protecting copyrighted work and maintains the original purpose of copyright as laid out in the Constitution, will be beneficial to players on all sides.

Piracy is seen by many as unstoppable, and copyright law has become strangely controversial. However, it need not be demonized on the one side, or wielded as a blunt weapon on the other. A proper overhaul, one that simplifies the processes for protecting copyrighted work and maintains the original purpose of copyright as laid out in the Constitution, will be beneficial to players on all sides.

I am concerned, however, because business matters not only in the business arena, as exemplified by Penguin Random House, Amazon, and the others, but in the political arena as well. Money speaks in Washington, and those with the most money to throw around usually prevail. Some of the largest and wealthiest companies in the world will be pushing their way into the conversation on copyright law, and most of them are not on the side of the creators.

These are challenging times in the industry, no doubt. However, I’m happy to report that the reading public is coming through, as seen in 2013’s first quarter sales figures, which were generally solid. Not stellar, but solid. E-book sales continue to increase, albeit at a slower pace than in the past couple of years, resulting in lowered sales of mass-market paperbacks but an overall increase in adult trade sales. Children’s and Young Adult suffered a bit without any blockbuster hits on the (digital and physical) shelves, such as last year’s The Hunger Games trilogy. But the U.S. remains a country with lots of readers—and for that, we should all remain grateful.

Overall? Good news—steady as she goes.
Authors Guild Benefit

The Authors Guild continued its centennial observance at its 21st Annual Benefit Dinner May 29. The event was held at the Edison Ballroom, the sort of forgivingly lit venue that obscures sartorial improvisation, promotes literary excellence, and allows writers with long overdue books on their conscience to pass unnoticed by their editors.

After Guild President Scott Turow and Foundation President Sidney Offit welcomed guests, Executive Director Paul Aiken hit the centenary note, recalling the lawsuit that led to the founding of the Guild, when Aurther Train sued McClure’s over the English rights to a story he had written, and no, there was no connection to Google.

The versatile Andy Borowitz, bestselling author and funny man, then took over as Master of Ceremonies, setting a high tone for the evening.

“Philip Roth and me, people like that, were sitting around trying to come up with a theme for tonight,” he said. He reported that he and Roth had tossed around lines like “Amazon is trying to kill us” for a while but decided to go with a good news theme instead—the golden possibilities for writers in the greeting card field.

Noting that the award-winning poet Maya Angelou had recently turned her hand to commercial greetings, he offered up a few of his own, inspired by such legendary poets as Dylan Thomas, Samuel Coleridge and Geoffrey Chaucer.

When that April with his showres soote
The droughte of March hath perced to the roote,
And bathed every veine in swich licour,
It's just five months til Yom Kippur.

—Geoffrey Chaucer

Between dinner and dessert Mr. Borowitz interviewed Calvin Trillin, a famous and cash-proud poet himself, a New Yorker humorist, and a Benefit regular who has earned a rest after many years hosting the evening himself. This time he got to sit in a chair while Mr. Borowitz asked him about the old days in publishing. Answering off-the-cuff, he proved just as amusing as when standing on his own two feet, especially when recollecting the author-friendly laws he caused to be passed.

The annual black-tie event raises funds for the Authors Guild Foundation and the Authors League Fund, which was launched in 1917, five years after the League got underway. The Foundation educates authors about their rights and promotes the importance of writing, publishing, free speech and copyright; the Fund helps professional writers in dire financial need, often due to medical emergencies. ✨
Bulletin Q&A: Sherman Alexie
Why He’s Putting Indies First

By Karen Holt

On Saturday, November 30, while many Americans were shaking off their post-Thanksgiving torpor with a day of shopping, authors around the country reported to work at their local independent bookstore, participating in the Indies First grassroots movement Sherman Alexie sparked with his open letter this summer.

"Here’s the plan: We book nerds will become booksellers,” he wrote. “We will make recommendations. We will practice nepotism and urge readers to buy multiple copies of our friends’ books. Maybe you’ll sign and sell books of your own in the process. I think the collective results could be mind-boggling (maybe even world-changing).” Alexie, who lives in Seattle where there’s a thriving indie bookstore scene, timed the event to coincide with Small Business Saturday.

The National Book Award winning-author, whose debut collection, The Lone Ranger and Tonto Fistfight in Heaven, was released recently in a twentieth anniversary edition, explained in an interview shortly after launching Indies First why he owes his career to independent booksellers, how literary diversity is already suffering under retail consolidation and why the idea of authors pitching in to help bookstores appeals to his inner commie-capitalist.

How did you come up with the idea for Indies First?

Janis Segress at Queen Anne Book Company (Seattle) said “Why don’t you come to the store for a day and be a bookseller?” It was just kind of a friendly thing to do locally and then even as it was happening, I thought, “this could be bigger.” And then Betsey Burton from the ABA called and it finally came to us: this is the idea. It’s not that I thought of it. The idea was in the air and we all grabbed it.

How did the response compare to what you were expecting?

It was much bigger than I thought it would be. I heard from a lot of readers. That was what got me excited, that readers love the idea of going into the store and having that connection with writers. That’s something that doesn’t happen electronically. You get to smell the writer. So I was really heartened by that reaction. I built my career being an in-person writer and it felt validating. And hundreds of writers have signed up. It felt like Occupy Bookstore.

When you were a Bookseller for a Day at Queen Anne did you sell a lot of your own books?

I sold a few; it ended up being kind of a reading. But this is being advertised as something much different. It is the idea of being there not just for your own books but being there for other people’s books as well. One of the things about the independent book world is how collegial it is, how there’s this partnership between booksellers and publishers. One of the things that Amazon introduced is this really rapacious capitalism. I’m fine with capitalism, but to do it in an old fashioned way, where we’re all partners and we all benefit from it. This really appeals to the commie-capitalist in me.

In your letter you say, “The most important thing is that we’ll all be helping Independent bookstores, and God knows they’ve helped us over the years.” How have independents helped you?

Frankly speaking, independent bookselling is a story of college-educated white women. It’s college-educated white women who are the most willing to cross real and imagined barriers and boundaries to read other people. White women are the adventurous readers. And they’re the ones who gave me a career. They’re

Karen Holt is a frequent contributor to the Bulletin.
the ones who reached across to promote a Native American. And it's no accident that as the independent bookstore's cultural power has waned there haven't been a whole lot of brown-skinned careers launched. When I started writing there were 30 or so native writers publishing with major houses, university presses, prestigious small presses. That's really not the case anymore. No native writer has leaped onto the literary scene in a big way since Susan Power in 1996.

For authors, is supporting independents about giving back or enlightened self-interest?

Both. They were loyal to me. I'm going to be loyal to them. It's a partnership. They sell most of my books. And they're the ones most interested in me. They're my family. They're my tribe. It's not just artistic interest. It's also political alignment, cultural alignment.

Are there one or two booksellers you can single out as being especially helpful in your career?

Rick Simonson at Elliott Bay (Seattle), the first bookstore that asked me to come do a reading, and who over the years has become one of my great friends. There are so many. Another is Bookworks in Albuquerque, which is so involved in the native community there and does such a great outreach. I doubt there's another writer who shows up in Albuquerque and gets 2,000 people for a reading.

Two thousand people? That's incredible.

They have to put me in a giant lecture room. I'll be signing books until one in the morning.

Bookworks in Albuquerque is one of Alexie's indie favorites, known for its well stocked shelves and community outreach.

At Elliott Bay Book Company in Seattle in February, Alexie joined forces with fellow Pacific Northwest Bookseller Association winner G. Willow Wilson for back-to-back readings.

Isn't that most writers' dream come true?

Yeah. Those bookstores in Indian country have been completely open and excited about reaching out to a different audience. They respond to their communities.

"Bookstores in Indian country . . . know their communities. What does Amazon know about Albuquerque?"

ties. They know their communities. What does Amazon know about Albuquerque?

It may have an algorithm.

Yeah, you know what? Indians don't fit into algorithms.

Is there anything else you want to say about Indies First?

I think this could be a regular thing. I have plans and ideas about making it a consistent, constant thing. The phrase that keeps going through my head is “a monthly salon.” The details I don’t know yet. It’s a way to highlight what’s great about independent bookstores, what only independent bookstores can do.
No Matter How You Slice the Apple...

BY KAREN HOLT

For three weeks in June, a who's who of executives from the worlds of book publishing, retailing and technology trooped into open court to answer pointed questions under oath and see their (formerly) private e-mails publicly parsed by attorneys on both sides of the Department of Justice's e-book price-fixing case against Apple.

The proceedings gave us a peek at the behind-the-scenes maneuvering in the e-book market in those heady, pivotal days, when Apple beckoned as the last, best hope for publishers being squeezed by Amazon's $9.99 loss leader pricing. "There is no one outside of us that can do this for you," the tech giant warned publishers. "If we miss this opportunity, it will likely never come again."

The case isn't over. Apple is appealing both Judge Denise Cote's ruling that it orchestrated a conspiracy between five major publishers and the punishing restrictions she ordered to ensure the company minds itself in the future. Next spring Apple faces another trial, which will determine how much it must pay to reimburse e-book buyers forced to spend more than $9.99.

For now, though, the pause in the action gives us time to reflect on what we learned from the Apple price-fixing case.

Apple mulled over a plan to help Amazon corner the e-book market.

"I could see a scenario where iTunes becomes an e-book reseller exclusive to Amazon and Amazon becomes an audio/video iTunes reseller exclusive to Apple," Eddy Cue wrote to his boss Steve Jobs in February 2009.

"I can't see them agreeing to this but if they really value books and want to own the category going forward than [sic] maybe they would consider it. At this point, it would be very easy for us to compete and I think trounce Amazon by opening up our own e-book store. The book publishers would do almost anything for us to get into the e-book business."

John Sargent wasn't afraid of an ass-kicking.

On January 28, 2010, a friend of Macmillan CEO John Sargent sent him an e-mail asking what he thought of the iPad.

"It made my life hell for the last three weeks," Sargent responded. "But it gave me a chance to change the entire business model for digital books."

Later that day, Sargent would inform Amazon of Macmillan's plan to sell e-books through the agency model when the iTunes store launched that spring, igniting the now infamous buy button removal skirmish.

Anticipating that it would get ugly, Sargent cheerfully concluded his e-mail: "Am on my way to Seattle to get my ass kicked by Amazon. The device rocks!"

Brits really know how to pay a compliment.

Following Sargent's stand-off with Amazon, in which the e-tailer capitulated and restored the buy buttons to all Macmillan titles, a number of publishers sent Sargent congratulatory messages.

David Young, the Englishman who was then CEO of Hachette, proved the most succinct. His entire message: "Well done, Sir!"

Fellow Brit John Makinson, global head of the Penguin Group, was slightly chattier then:

Makinson: "Just to say that I'm full of admiration for your articulation of Macmillan's position on this. Bravo."

Sargent: "Thanks John. I have stepped into a shitstorm."

Makinson: "But you're still smelling great."
Amazon absolutely did not play Jedi mind tricks on publishers.

Attempting to show that Amazon manipulated publishers into adopting an agency model it secretly wanted, Apple lawyers pointed to an e-mail in which Kindle executive Laura Porco wrote, “Hysterical isn’t it? Jedi mind tricks here in Seattle.”

Porco’s explanation at trial? Sarcasm. “I meant quite the opposite,” she testified.

Less is more (compared to even less)

While the standard description of agency pricing says publishers set the sale price for e-books and get a 70 percent cut, Apple wasn’t about to let them have full control over the cost of digital editions. In her ruling, Judge Cote wrote at length about the price caps Apple imposed on publishers. The deal included a requirement that New York Times bestsellers sell for $12.99.

Though $2 less than what some publishers wanted, compared to Amazon’s $9.99, it was an offer too good to refuse, according to Judge Cote, who wrote: “Apple convinced the Publisher Defendants that Apple shared their goal of raising e-book prices and helped them realize that goal.”

Steve Riggio might be too nice to win in the e-book wars.

In March 2010, Penguin CEO David Shanks sent Steve Riggio, then CEO of Barnes & Noble, an e-mail appealing to his sense of fairness as a self-described “nice” guy.

“When you go to the Kindle website, it could be the Random House home page. Amazon is showing us what they do to people who do not do what they want. Since Penguin is looking out for B&N’s welfare at what appears to be great cost to us, I would hope that B&N would be equally brutal to Publishers who have thrown in with your competition with obvious disdain for your welfare.”

“You once told me,” Shanks continued, “that you were nice and Amazon played hardball and they were winning. I hope you make Random House hurt like Amazon is doing to people who are looking out for the overall welfare of the publishing industry.”

—Penguin CEO David Shanks in a March 2010 email to Steve Riggio, then CEO of Barnes & Noble

Sometimes Steve Jobs’s genius gene took a day off.

In opening statements, a DOJ lawyer highlighted a Wall Street Journal interview in which Jobs was asked how Apple could expect to compete selling e-books for $14.99 when Amazon was pricing them at $9.99. “That won’t be the case,” Jobs told the reporter, “the prices will all be the same.”

Attorney Elisa Rivlin pasted a copy of Jobs’s remarks into an e-mail to her boss, Simon & Schuster CEO Carolyn Reidy, adding: “I cannot believe that Jobs made the statement below. Incredibly stupid.”

The first actually will be last.

As part of her “injunctive remedy” (measures designed to prevent future price collusion), Cote ordered that Apple amend its contracts with the five publisher defendants in the case to eliminate any restrictions on discounting for at least two years, after the ruling goes into effect. After that, publishers will be free to renegotiate their deals, including moving to the agency model. But they’ll have to take turns, one every six months, according to a schedule set by the court.

Macmillan—whose CEO Sargent took the lead nearly four years ago in defying Amazon, insisting on agency terms as his peers sent him virtual high fives—comes last on the schedule.

Private e-mails don’t always stay that way.

You already knew that one? Apparently, people forget. ♦
Book Publishing’s Big Gamble

BY BORIS KACHKA

"It’s official," Alfred A. Knopf Sr. tweeted last week. “We’re now PenguinRandomHouse.”

Mr. Knopf—or rather his ghostly avatar, the actual publisher having sold his namesake firm to Random House in 1960, died in 1984 and rolled over many times since—was celebrating the largest book-publishing merger in history.

The merger, announced last October and completed on July 1 after regulatory approval, shrinks the Big Six, which publish about two-thirds of books in the United States, down to the Big Five. HarperCollins has reportedly been flirting with Simon & Schuster, which would take it down to four. (The others are Hachette and Macmillan.)

The creation of Penguin Random House ("the world’s first truly global trade book publishing company") is partly a response to unprecedented pressures on these "legacy" publishers—especially from Amazon, which came out on the winning end of an antitrust lawsuit over the setting of e-book prices. It is also a way to gain leverage and capital in an industry that has been turned upside down. This endgame may be inevitable, but its consequences can’t be ignored.

Consolidation carries costs you won’t find on a price sticker. Dozens of formerly independent firms have been folded into this conglomerate: not just Anchor, Doubleday, Dutton, Knopf, Pantheon, G. P. Putnam’s Sons and Viking, which still wield significant resources, but also storied names like Jonathan Cape, Fawcett, Grosset & Dunlap, and Jeremy P. Tarcher. Many of these have been reduced to mere imprints, brands stamped on a book’s title page, though every good imprint bears the faint mark of a bygone firm with its own mission and sensibility.

Decades of consolidation have cost writers and consumers alike. There is, for one, the persistent gripe of writers and agents: companies either forbid (as at Penguin) or restrict (at Random House) their constituent imprints from bidding against one another for a manuscript. That means not only lower advances, but also fewer options for writers to get the kind of painstaking attention—from editors, marketers and publicists—that it takes to turn their manuscripts into something valuable.

Among the imprints that survive, the tendency is to homogenize and focus on a few general fields like ambitious nonfiction, accessible literary fiction or thrillers. "Legacy" publishing does best in the first category: it commands the advances needed for research, the editing talent to shape the writing and the marketing muscle to distribute those doorstop biographies on Father’s Day.

In the more commercial genres—romance, horror, "Fifty Shades"—writers are beginning to find success in self-publishing. That’s a bit of a misnomer, because often it involves an agent who packages a book with any number of freelance editors and marketers, many of them refugees from the ever-shrinking houses. (Amazon’s publishing platform, which runs on more of a packaging model, has made inroads into these genres.)

As for literary fiction, more and more of the interesting and strange variety—the labors of love on which famous editors like Robert Giroux, Maxwell Perkins and Barney Rosset once placed their bets—

The Big Five have been so busy reducing old companies to brands that they’ve neglected the notion of what a brand should mean. Can any reader tell a Pantheon from a Riverhead novel?

may migrate to smaller presses. Graywolf, Milkweed and McSweeney’s (none of them in New York) may not have the resources of their spiritual predecessors, but they have what new owners often lack: personal-
ity, mission and focus.
So many books are published—almost certainly, more than ever—that predicting a blanket decline in quality would be ridiculous. But whether literary cul-

ture is best served by the ceaseless centralization of publishing is a question worth asking.

The Big Five have been so busy reducing old companies to brands that they’ve neglected the notion of what a brand should mean. Can any reader tell a Pantheon from a Riverhead novel? The logo doesn’t do the trick. The value of a publishing house—and now an imprint—has been its function as that dreaded straw man of the self-publishing gurus: a gatekeeper. In the hoary Model T days, gatekeepers weren’t a ca-
bal but a cacophony, competing tooth and nail.
Maybe it’s time for publishers to revive the value of their brands by making them more distinctive and connecting them more closely to consumers. They can start by checking out the website of the codgers at the prestigious Farrar, Straus & Giroux, independent until it was bought in 1994 by Holtzbrinck (which later bought Macmillan and grouped its American holdings under that name). Its e-newsletter features author in-
terviews, long editors’ notes and subscriber give-
aways. One of its developers, Ryan Chapman (now at Atavist, a multimedia storytelling site), told me his model was independent record labels.
We could use more gatekeepers—the kind that trumpet their history and quality unapologetically. “A

new imprint on a book gathers character through the years,” declared the first sentence of the first catalog printed by Farrar, Straus in 1946. But an old imprint, once merged, tends to lose it. Even Penguin and Random House aren’t immune. Their temporary new logo—a giant penguin looking away from a house—is an awkward amalgam, a glyphic non sequitur. It’s a necessary visual compromise, a show of mutual re-

spect for two distinctive histories. But maybe Random Penguin, as a few wags have suggested, would have been a more apt name.

We could use more gatekeepers—the kind that trumpet their history and quality unapologetically. “A

Elmore Leonard

Elmore Leonard, who died August 20 at 87, was a Guild member for 40 years, having joined sometime between the 1972 publication of Forty Lashes Less One, and 1974’s 52 Pick-Up. He was an ad-
mired but not yet celebrated journeyman novelist back then, his first Edgar, for his 24th novel, La Brava, still a decade away.

When literary eminence finally arrived, it seemed to roll on forever, as one new admirer after another weighed in.

“On the heels of his recent discovery by critics and the press,” the Times’s Janet Maslin wrote in 1983, when Leonard was pushing 60, “Avon books recently paid $363,000 with the possibility of an additional $110,000 in bonuses for paperback rights to Mr. Leonard’s novel “LaBrava,” recently published by Arbor House. That is nine times what Avon paid Arbor House last March to acquire Mr. Leonard’s “Stick.”

Few obituary writers failed to mention Leon-
rules “picked up along the way to help me remain invisible when writing a book.” All 10 are worth reading* but the best is #11, “which sums up the 10”: “If it sounds like writing, I rewrite it.”

Will Anyone Crack the Used E-book Market?

BY JESSICA R. FRIEDMAN

On March 30, 2013, the district court for the Southern District of New York granted Capitol Records’ motion for partial summary judgment against ReDigi, Inc., thereby holding that sales of “used” musical sound recordings on ReDigi’s website infringed the copyright in those sound recordings and that those sales were not excused under the fair use or first sale provisions of the Copyright Act. “Because this is a court of law and not a congressional subcommittee or technology blog,” the court noted, “the issues are narrow, technical, and purely legal.” Since ReDigi has announced its intention to start a market in “used” e-books, and since Amazon and Apple both have sought patents on systems for selling used digital items, it is important for authors to understand not only those narrow, technical legal issues, but the limitations and broader implications of the ReDigi decision.

ReDigi holds itself out as the “World’s First Pre-Owned Digital Marketplace,” where you can “download the ReDigi App to unlock your digital wealth.” To join this marketplace, you download ReDigi’s “Media Manager” application. Media Manager creates a list of “eligible files,” music files on your hard drive that you purchased from iTunes or from other ReDigi users. As the court’s opinion describes it, you can upload any “eligible file” to the ReDigi server in Arizona, which is called the “Cloud Locker.” When you do that:

- ReDigi analyzes that file again to make sure that it is “eligible” for sale on ReDigi. If it is, ReDigi stores the file in the “Cloud Locker.” From there, you can stream it for your personal use and/or offer it for sale. If you sell a digital music file, ReDigi terminates your access to that file and transfers access to the new owner.
- Media Manager erases any copies of that file from your computer and any connected devices.

1. It is important to note that this was a decision on motions for summary judgment, not after a full trial. A motion for summary judgment (in whole or in part) asserts that there is no dispute as to certain facts, and that based on those facts, the law requires a decision in favor of the party seeking summary judgment.

You can buy recordings on ReDigi with “credits” that you buy from ReDigi or acquire through sales you make on the ReDigi site. Each time you buy a sound recording using those credits, ReDigi allocates 20 percent of the sale price to the seller, puts 20 percent into an “escrow” fund for the artist, and keeps the remaining 60 percent.

The court held that this process infringes Capitol’s exclusive rights of reproduction and distribution. As for the reproduction right, although ReDigi described its process as merely “transferring” a sound recording file from the user’s computer to the computer that serves as the Cloud Locker, what actually happens, as with any digital “file transfer,” is that ReDigi creates a new copy of that sound recording—or, to use the language of the Copyright Act, a new “phonorecord”—in the Cloud Locker and then deletes the original file from the user’s hard drive.

ReDigi argued that the Copyright Act does not really distinguish between the contents of a sound recording and the material object in which it is fixed, and that, therefore, as long as there is only one phonorecord of the sound recording left at the end of the day, no infringement of the reproduction right has occurred. But the court agreed with Capitol that this

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creation of a new phonorecord in and of itself constitutes an unauthorized reproduction of the sound recording. Second, the court held that the sale of those new phonorecords infringes Capitol’s exclusive right to distribute copies of those recordings.²

ReDigi asserted that its reproduction and distribution of the sound recordings qualify as “fair use,” but the court found that each of the four fair-use factors favored Capitol. ReDigi also claimed that it was entitled to distribute the phonorecords stored in the Cloud Locker under the “first sale” doctrine, which is covered by Section 109(a) of the Copyright Act. Again, the court disagreed. For starters, the Copyright Act literally limits the first sale doctrine to copies and phonorecords “lawfully made under this title,” but since, as discussed above, the phonorecords created by ReDigi when it “transfers” files to the Cloud Locker are infringing copies, they do not meet that threshold test. Furthermore, Section 109(a) permits distribution only by “the owner of a particular copy or phonorecord . . . of that copy or phonorecord.” A user of ReDigi 1.0 might own the phonorecord that is created when she “buys” a song on iTunes and downloads it to her hard drive, but the phonorecord that ultimately is uploaded to the Cloud Locker is a brand-new phonorecord created just for that purpose. So the copy she is selling is not the same copy that she originally downloaded from iTunes.

ReDigi argued that in interpreting the first sale doctrine this way, the court was disregarding the policy inherent in the Constitution’s characterization of copyright as a “limited monopoly” by giving Capitol “an ability to forever control the further sales of copies of works it already secured a fair return on.” The court refused to “amend the statute to achieve ReDigi’s broader policy goals—goals that happen to advance ReDigi’s economic interests,” for three reasons: it disagreed with ReDigi’s interpretation of the first sale doctrine, only Congress has the power to amend legislation, and the potential impact of a market for digital “used” copies on copyright owners is far greater than the impact of the secondary sale of tangible copies that Section 109(a) permits.

Having found that the ReDigi system infringed Capitol’s copyrights and was not subject to any of the claimed defenses, the court held that ReDigi was both directly and indirectly liable for that infringement.

Although the ReDigi system was automated, “[t]he fact that ReDigi’s founders programmed their software to choose [only] copyrighted content [i.e., sound recordings from iTunes] satisfies the volitional requirement [for direct liability] and renders ReDigi’s case indistinguishable from those where human review of content gave rise to direct liability.” As for secondary infringement, the court had no trouble “concluding that ReDigi knew or should have known that its service would encourage infringement,” which made it liable for contributory infringement.” The court also

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2. There was also discussion of whether ReDigi’s streaming of 30-second clips and displaying album cover art infringed Capitol’s rights of public performance and public display, but the court denied ReDigi’s motion for summary judgment on those issues because the facts surrounding those claims were disputed.

*ReDigi claimed that it was entitled to distribute the phonorecords stored in the Cloud Locker under the “first sale” doctrine... The court disagreed.*

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found that ReDigi “exercised complete control over its website’s content, user access and sales” and “financially benefitted from every sale when it collected 60 percent of each transaction fee,” which made ReDigi vicariously liable for the infringement as well.

At first blush, this decision might appear to have been the end of ReDigi. But even before the parties had completed discovery in the litigation, ReDigi had already introduced ReDigi 2.0. The new version enables a user to download sound recordings that a user buys on iTunes directly to the user’s account in the Cloud Locker, which eliminates the need to create a new phonorecord to store in the Cloud Locker. Since the phonorecord is the same stored phonorecord that the user “bought” from iTunes, it is a copy “lawfully made” under the Copyright Act, and the user may dispose of “that phonorecord” as he or she chooses. So it looks like ReDigi has already figured out how to get around the court’s holding that ReDigi’s “transfer” of a digital music file results in the creation of a new, infringing phonorecord, which was the predicate for the court’s holding that the first sale doctrine did not apply. Even this new system may not get ReDigi off the infringement hook, but given ReDigi’s intention to expand into sales of used e-books, this development does not bode well for authors.

ReDigi is not the only player in this new market. As noted earlier, both Amazon and Apple have filed patents for systems that would allow users to transfer digital content to other users in exchange for money or
other consideration, which suggests that each of them is looking to set up an exchange of e-books and other digital products. Amazon’s patent, which issued in January of this year, covers “an electronic marketplace for used digital objects” in which each user has his or her own “personalized data store.” A user moves the item to another user’s “personalized data store” and the item then is deleted from the first user’s “personalized data store.” Apple seeks to patent “techniques . . . for managing access to a digital content item (such as an ebook . . . ) to be transferred from one user to another.” Under Apple’s system, the content item stays put, so to speak, but access to it is transferred from user to user, without a central marketplace.

Both Amazon’s patent and Apple’s patent application contemplate imposing restrictions on the transfer of each item of digital content. Amazon’s patent posits an “object move threshold,” which would “limit how many times a used digital object may be passibly moved to another personalized data store,” and an “object download threshold,” which would “limit how many downloads (if any) may occur before transfer is restricted, etc.” One could impose these limits for “a specific digital object, a digital object type (such as a particular title of a book), a digital object category (such as all movies), etc.” Apple’s patent application goes further in contemplating restrictions on when, how often, to whom, and how much of a digital content item may be transferred, and even restrictions on where it may be used, e.g., on a college campus. As an example, Apple posits a software publisher prohibiting the transfer of access to a software application for a year, or a movie distributor requiring that each of its movies be sold for a minimum of $10 until six months after its purchase date, after which it may be sold for $5.

What kinds of royalties would the author receive under each of these systems? ReDigi puts 20 percent of the sale price of each sound recording into an “escrow” fund for the copyright owner, and it seems reasonable to assume that ReDigi would do the same with e-books. Apple’s patent application states, “A portion of the proceeds of the ‘resale’ may be paid to the creator or publisher of the digital content item and/or the entity that originally sold the digital content item to the original owner.” Although “may be paid” is not the same thing as “will be paid,” at least Apple recognizes that the author “may” be entitled to some compensation. The Amazon patent mentions that “an entity may levy a fee for the transfer of a digital object” instead of, or in addition to, compensation for the transfer, and that “that entity may be the owner of the digital object receiving a royalty.” (Emphasis added.) Since the term “digital objects” is defined in the background section of the patent as “content” generally, and since the patent refers separately to “used digital objects,” one could interpret the phrase “owner of the digital object” to be the author, and the sentence as a whole to refer to the author’s receiving a royalty on all secondary sales of the author’s content. But even if that interpretation of the patent language is accurate, at best, the patent is just suggesting that such a fee “might” be levied by the parties to the transfer. It does not require or establish compensation to authors as a feature of the Amazon marketplace. In any event, the price of a “used” e-book in any of these marketplaces will be far lower than the price of a new e-book. So, at best, the authors will get pennies; at worst, they will get nothing.

Given this alarming possibility, the key question for authors is, how likely is it that any of these companies will actually get a used e-book exchange system up and running? To the extent that the Amazon and Apple systems rely on the “transfer” of digital objects from one location to another, the ReDigi decision that any file “transfer” infringes the exclusive right to reproduce the contents of that file would appear to pose a problem.

Obviously, a single district court decision is not a binding precedent (and if ReDigi ultimately appeals at the conclusion of the litigation, the decision may be overturned). But if the ReDigi holding does become the “law of the land,” to get around it, it would seem that Amazon and Apple—and even ReDigi itself—would have to set up a system for e-books like ReDigi 2.0, in which the copy of each e-book that a user buys from any one of the hundreds of booksellers on the Internet would go directly to the user’s ReDigi, Amazon or Apple account, without the user ever downloading a copy to his or her own computer. That would seem to pose a considerable challenge. Another challenge would be dealing with the DRM (digital rights management) that is attached to many e-books—including, at least for ReDigi and Apple, Amazon’s own Kindle® DRM.

But if there is one thing that all three of these companies share, it’s ingenuity. They may well figure out how to overcome these obstacles.
Annual Meeting

The Authors Guild held its annual meeting on March 20, 2013 at the Scandinavia House in New York City. Guild President Scott Turow called the meeting to order, and asked for and received approval of the minutes of the 2012 annual meeting. He then announced that Director of Legal Services Anita Fore and Staff Attorney Michael Gross would serve as tellers and inspectors for the balloting for the election of new Guild Council Members.

Mr. Turow delivered opening remarks, noting that the Guild is now in its 101st year, and that authors seem to face more challenges than ever before in the organization’s history. While some perils, such as book piracy, are obvious, others are subtler. The current trend of paying a 25 percent e-book royalty, for example, has resulted in lower revenues for authors, and writers with little market power are seeing an outright reduction in their incomes.

Other challenges have grown from the reproduction of authors’ works by companies such as Google, which sell advertising space alongside samples of books, all in the name of fair use. Google, of course, is hardly alone in thinking it does not have to compensate authors for using their works: last year the University of Michigan, part of the HathiTrust consortium, was poised to put more than a hundred copyrighted books online for the use of its students, claiming the works were “orphans” and that it could not locate the copyright owners or representatives.

Mr. Turow also discussed the challenges posed by Amazon. The Guild has publicly lamented the fact that the Department of Justice chose to sue five major publishers for collusion in adopting the agency model for e-book pricing, given Amazon’s predatory practices in capturing control of the e-book market.

Mr. Turow noted that it would be unfair to say that the DOJ does not understand the Guild’s concerns. The DOJ’s view is that, regardless of the provocation, what the publishers did was a violation of the law. It must be said, he added, that the publishers acted out of fear, a fear that has become widespread in the book industry as Amazon continues to demonstrate that its goal is to be the only entity standing between authors and readers.

Executive Director Paul Aiken delivered a report on Guild developments and activities of the last year. He discussed Register of Copyright Maria Pallante’s recent call for updates to the U.S. Copyright Law, which would be the first broad review of copyright since the 1976 Copyright Act, itself a result of a review that began in 1959. Even at that time, Congress recognized the threat that photocopying, originally intended as a convenience, posed to authors’ rights and the integrity of the book itself, as well as how important it was to preserve authors’ rights to contractual control over what was allowed to be “put into the machine.”

The scope of a new review would include orphan works, library copying rights, the Digital Millennium Copyright Act, and a small claims court for copyright infringement, among other issues.

Mr. Aiken also spoke briefly about ICANN’s plans to sell top-level domain names for generic words (for example, .book, .author) to private companies. The Guild has spoken publicly against the sell-off and hopes that there will be sufficient public resistance to it, and that ICANN will focus on selling only branded names, and not broad generic ones.

Jan Constantine, General Counsel, reported on a range of legal matters, beginning with the HathiTrust lawsuit, which the Guild first filed in September 2011.

Congress [early on] recognized the threat that photocopying, originally intended as a convenience, posed to authors’ rights and the integrity of the book itself, as well as how important it was to preserve authors’ rights to contractual control over what was allowed to be “put into the machine.”

She noted that although the University of Michigan suspended the program after the Guild filed suit, the university has yet to commit to ending the program permanently. In October 2012, Judge Harold Baer determined that the mass digitization of these books and the resulting usage were fair use and transformative. The Guild has appealed the ruling.

Ms. Constantine provided an update on the Google Books suit, filed in 2005. The case was certified as a class action lawsuit by Judge Denny Chin in May 2012, but Google has appealed that decision. She also spoke about a case involving Georgia State University in which a court ruled that making reading assignments available to students electronically constituted fair use. The Guild has joined with the Text and Academic Authors Association to file a friend-of-the-court brief in support of the publisher’s position.
Ms. Constantine then reported on the freelancer electronic database case. In 2000, writers brought a class action suit against a number of major newspaper and magazine publishers for making use of their articles in digital form without permission. The case is currently on remand in the district court, where settlement negotiations continue.

Ms. Constantine concluded her report by mentioning several lawsuits that the Guild is keeping an eye on, including a class action suit against Harlequin brought by several of the publisher’s authors regarding its method of calculating royalties; HarperCollins vs. Open Road Integrated Media, in which HarperCollins is challenging two clauses in a 1971 book contract concerning storage and retrieval licensing rights; and an antitrust case filed by three independent bookstores against the six major publishers and Amazon that argued that encryption locks on e-books prevent readers from accessing e-books on devices other than the Kindle.

The floor was opened for questions, and a lively discussion about e-books, piracy, and self-publishing ensued.

Peter Petre, the Guild’s Treasurer, gave his report. He explained that the Guild had higher expenses than usual in the previous year because of the cost of multiple lawsuits, but that overall the organization’s finances are strong, especially considering that litigation costs should be lower in the near future.

Sidney Offit, President of the Authors Guild Foundation, gave a brief report, announcing that the Authors Guild Dinner was approaching, on May 29. The event would be emceed by Andy Borowitz, who would provide entertainment for the evening with Calvin Trillin.

Anita Fore, Director of Legal Services, reported that the Guild’s legal department handled more than 1,100 member inquiries in 2012.

Mr. Aiken touched briefly upon additional issues, including a new antipiracy effort, the Copyright Alert System, which alerts an offender’s Internet Service Provider (ISP) about illegal activities. The ISP then verifies that the activity is illegal and sends a series of warnings to the offender, which might lead to the ISP limiting the offender’s Internet connection. He also spoke about Google’s effort to change their search algorithm so that websites hosting free, pirated media would drop in the search rankings. Current data suggest that these efforts do not appear to be working on a consistent basis.

Mr. Aiken discussed the first-sale doctrine, which historically has allowed owners to dispose of their physical books as they choose, including lending, reselling, and donating the books. Whether the doctrine properly applies to digital media—that is, whether the owner of an mp3 can resell that mp3 to a friend—is now the subject of a lawsuit. Capitol Records has sued ReDigi, an online business, for reselling “used” digital music files. The Guild has kept a close watch on this case, as it has far-reaching implications for music, books and software. [See article page 13.]

Mr. Aiken turned to the related matter of library e-book lending, asking, “Is e-book library lending a sale or a license?” The answer will have significant effect on authors’ incomes. If e-book library lending is a license, the author is entitled to 50 percent of the proceeds; if a sale, the author is entitled to 25 percent under most contracts. Publishers have been treating e-book library lending as a sale, but the Guild believes that it is, without question, a license.

Mr. Aiken also reviewed the Guild’s current projects, including Booktalk Nation, which organizes phone-in events for authors and readers, a telephonic version of a bookstore event. The project also includes an e-commerce component, allowing readers to order signed books from the author’s designated local bookstore.

The voting results were collected from the tellers and inspectors. With 1,079 votes cast, four new Council members were elected: Sherman Alexie, Matt de la Peña, Louise Erdrich and Daniel Okrent.

Mr. Alexie is the author of The Absolutely True Diary of a Part-Time Indian (2007) and Reservation Blues (1995), among others. He has won the PEN/Faulkner Award, the National Book Award for Young People’s Literature, and the PEN/Malamud Award for Excellence in the Short Story.

Mr. de la Peña is the author of five books, including Mexican WhiteBoy (2008), and has published short fiction in multiple journals. Each of his novels has been named an ALA-YALSA Best Book for Young Adults. He lives in Brooklyn, NY and teaches creative writing at Vermont College.

Ms. Erdrich is the author of 14 novels as well as poetry, short stories, children’s books and a memoir. She has won numerous awards, including the National Book Critics Circle Award, the Anisfield-Wolf Book Award, and most recently, the National Book Award for The Round House. Ms. Erdrich lives in Minnesota and is the owner of Birchbark Books.

Mr. Okrent is the author of five books, including Great Fortune: The Epic of Rockefeller Center (2003), which was a finalist for the 2004 Pulitzer Prize in History, and Last Call. He is the cowriter and coproducer of the off-Broadway show Old Jews Telling Jokes. He has been an editor at Knopf, Viking and Harcourt.

After asking if there was any new business, Mr. Turow adjourned the meeting. ✭
LEGAL WATCH

Bad Day at the Dentist's
Robert Allen Lee v. Stacey Makhnevich and Aster Dental
U.S. District Court, Southern District, New York

In October 2010, Robert Allen Lee had a toothache. He made an appointment at Aster Dental, which was listed on Lee's dental insurance plan as a preferred provider. Lee was told up-front that he would have to pay the full cost of the procedures administered and that Aster Dental, located in midtown Manhattan, would then submit his insurance paperwork for reimbursement on his behalf.

As a precondition to being treated, Lee was also required to sign a confidentiality agreement entitled “Mutual Agreement to Maintain Privacy.” This agreement assigned copyright ownership to Aster Dental over any future published comments created or made by its patients that discussed the practice and its dentists. In return, Aster Dental promised not to exploit loopholes in HIPPA (Health Insurance Portability and Accountability Act) that allowed them to pass along Lee's patient information to third-party marketers, which was really no concession considering that Aster Dental was already bound not to pass out patient information by law.

Lee was billed almost $4,800 for his tooth work, which was performed by Dr. Stacy Makhnevich, but despite his repeated requests, Aster Dental never forwarded the paperwork to his insurer for reimbursement. When Lee requested a copy of his dental records so he could submit the claim himself, Aster Dental refused to provide them and referred him to a third party, which demanded $200 to forward the information to him.

On August 24, 2011, Lee wrote about his experience with Aster Dental on several social ratings websites, including yelp.com. His review criticized Makhnevich and Aster Dental for overcharging him, for refusing to submit his claim, and for refusing to furnish his dental records. In response, Aster Dental and Stacy Makhnevich threatened to sue him for breach of contract, defamation and copyright infringement. Lee was sent a draft complaint in which Aster Dental and Makhnevich sought over $100,000 in damages. On September 12 and October 5, Aster Dental sent Lee invoices charging him $100 per day for copyright infringement. On October 24, Lee received another letter from the defendants' attorney threatening litigation.

On the basis of these threats, Lee sought a declaration from the U.S. District Court, Southern District of New York, that the confidentiality agreement he had been compelled to sign in order to receive treatment was void for lack of consideration as well as being unconscionable under New York common law. He also alleged that his being compelled to sign the release against Aster Dental and Makhnevich constituted a deceptive business practice in violation of Section 349 (a) of the New York General Business Law. In the alternative, Lee sought a declaration that patient comments constituted a protected fair use under Section107 of the Copyright Act, and that the entire potential class of Aster Dental patients should be entitled to this equitable defense. To cover his bases in case a class was not later certified, Lee also sought a declaration from the court that his comments were not defamatory because they were truthful and that his postings constituted

Legal Services Scorecard

From March 21, 2012 through August 31, the Authors Guild Legal Service Department handled 596 legal inquiries. Included were:
- 73 book contract reviews
- 18 agency contract reviews
- 38 reversion of rights inquiries
- 57 inquiries on copyright law, including infringement, registration, duration and fair use
- 17 inquiries regarding securing permissions and privacy releases
- 33 electronic rights inquiries
- 10 First Amendment inquiries
- 350 other inquiries, including literary estates, contract disputes, periodical and multimedia contracts, movie and television options, Internet piracy, liability insurance, finding an agent, and attorney referrals

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The court next looked to determine whether there was an "actual controversy" as required by Article III of the Constitution and the Declaratory Judgment Act. The court noted that the Declaratory Judgment Act provides that "in a case of actual controversy, a federal court may declare the rights of any interested party seeking such declaration." In making this determination, the court found that in an intellectual property case such as this, it was required to apply a totality of circumstances test to determine whether there is a justiciable controversy. Under the test, the court was required to consider "whether the adversity of legal interests that exists between the parties is real and substantial and admits of specific relief through a decree of conclusive character, as distinguished from an opinion advising what the law would be on a hypothetical state of facts." Essentially, the court would have to decide whether the facts alleged by Lee showed that there existed, between him and Astor Dental, a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

In this instance, the court rejected the defendants' argument that no controversy existed since it was the defendants who had repeatedly attempted to enforce the agreement Lee was required to sign prior to treatment. Using the totality of circumstances approach, the court pointed to the facts that the defendants twice threatened Lee with a lawsuit by sending him a draft version of the formal complaint they were going to file, as well as two invoices that threatened referral to a collection agency. Moreover, the court noted that the defendants had not released Lee from the liability threatened in the draft complaint in which they sought damages of more than $100,000. Ultimately, the court found that the defendants' conduct objectively supported the threat of future injury to Lee; therefore, no reasonable person could view their constant barrage of threats as anything other than a "real controversy."

The court held that in light of these threats, Lee was not required to await the defendants' initiation of a lawsuit to settle this actual controversy and could preemptively seek a declaratory judgment from the court.

Finally, in regard to the remaining state law claims, the court found that they were related to the federal copyright claims, having arisen from the same events that spurred those claims, and that therefore the court had supplemental jurisdiction over them as well. Moreover, the court had independent diversity jurisdiction over those state law claims due first to the fact that the amount in dispute was above the $75,000 threshold, second, to the fact that the parties were from different states. As such, the court rejected the defendants' motion to dismiss and agreed to move forward to issue a declaratory judgment on Lee's claims.

—Michael Gross
Staff Attorney

**Stormy Weather**

*Events Media Network, Inc. v. The Weather Channel Interactive, Inc.*

*U.S. District Court for the District of New Jersey, Camden Vicinage*

On May 1, 2008, Event Media Network, Inc. ("EMN") entered into a licensing agreement with The Weather Channel Interactive, Inc., the Weather Channel Interactive, LLC and the Weather Channel, Inc. (collectively the "Weather Channel") to provide access to a continually updated database of aggregated, publicly available information that includes schedules and other information about various leisure events and attractions taking place throughout the United States.

The content license agreement granted the Weather Channel broad rights to use and publicly display on its website the information contained in EMN's database. However, the agreement also stipulated that EMN retained proprietary rights to the information on its database and imposed confidentiality requirements on the Weather Channel's use of the information. Al-

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This year’s World Creators Summit, sponsored by the International Confederation of Societies of Authors and Composers and held June 4–5 in Washington, D.C., included back-to-back sessions that focused on the U.S. perspective on copyright in the digital age: a keynote address by U.S. Register of Copyrights Maria Pallante, who has been publicly urging Congress to “think big” on the issue of copyright, followed by a panel discussion among representatives of four organizations whose primary concern is the protection of intellectual property: Rick Carnes, a songwriter, performer and president of the Songwriters Guild of America (USA); Marjorie David, a screenwriter, producer and board member of the Writers Guild of America West; Vincent Misiano, a television director and sixth vice president of the Directors Guild of America; and Scott Turow, author and president of the Authors Guild. The discussion was moderated by John Simson, Business and Entertainment Program Director at the Kogod School of Business, American University.

JOHN SIMSON: My name is John Simson. For those of you who don’t know me, I opened for Jethro Tull on the Aqualung Tour in 1971, and became so successful that I went to law school. So . . .

We have a very distinguished group of creators on stage with us today, representatives from the Authors Guild, the Directors Guild, the Writers Guild of America, and the Songwriters Guild of America. I will ask them to tell you a little bit about their organization, what their goals are, what they see as the biggest challenges for their members in the current copyright climate and what they would hope they would see in a new regime. We’ll start with Scott Turow, president of the Authors Guild.

SCOTT TUROW: Thanks, John. The Authors Guild is this country’s largest membership organization of professional authors. For most of its one hundred years, one of its primary concerns has been the protection of copyright, principally in the context of the perpetual skirmishing between authors and their publishers.

The digital era, of course, has unleashed a free-for-all, where almost every participant in the literary ecology believes that they ought to enhance their position, at the expense of authors. So we are fighting with our publishers about what the royalty ought to be on e-books. They’ve effectively reduced it, no matter whose arithmetic you look to. We have issues with mass digitization. Orphan works is a concern. Piracy is a gigantic concern, and probably first on our list of concerns is the failure to enforce existing rights. It’s pointless to have rights if everybody around the world can simply go to a search engine and find out how to pirate your work. That’s what’s going on right now.

I have to say that I approach the prospect of the copyright laws being rewritten with both anticipation and apprehension. In a political system like ours, which I have railed against often in terms of campaign financing and an interpretation of the First Amendment that says that spending money is an unrestricted right of free speech, the result is that people with money become unduly influential. That means that the richest companies in the world are now on the other side, at least for authors. That means that they’re going to have great influence in this process, and that’s the part that scares me.

SIMSON: Vincent?

VINCENT MISIANO: First, I’d like to thank everyone here who defends copyright. My mother thanks you. She never thought that I would make a living as an artist. My wife and daughter thank you.

The discussion was transcribed and edited by the Authors Guild and is printed with the permission of CISAC and all participants.
The Directors Guild is part of the reason that I’m able to make a living doing what I do. The Directors Guild has over 15,000 members, and the film business is the most unionized industry in the United States, something not largely understood by the public. We depend on copyright for our livelihoods.

I have a quibble with some of the things I’ve heard here this morning, including what you just said, Scott, in terms of the word “piracy.” In my life, pirates were always associated with people swinging from yardarms wearing charming clothes and getting beautiful girls—not teenage slackers sitting on a couch with a soda can in one hand and I won’t tell you what’s in the other. So I am concerned about the use of “pirate.”

In terms of owning the vocabulary of these things, I went online this morning, and because I kept hearing it over and over again here, I looked up the word “consumer.” I found two definitions. The first was “a buyer of goods and services.” Well, there’s no money being exchanged in a lot of these instances, so I don’t think that word is appropriate. The other definition was an “organism that feeds on others.” That may be more appropriate usage.

Finally, though I’m not a lawyer myself, just direct them, I decided to read a little about copyright, and I found an interesting quote that all of you here probably know, but was a revelation to me. It’s from the British Statute of Anne, from 1710, where copyright was largely established. The statute begins: “Whereas printers, booksellers, and other persons have, of late, frequently taken the liberty of printing books and other writings without the consent of the authors to their very great detriment, and too often to the ruin of them and their families . . .”

Now that sounds familiar to me, and it could have been written by any of us right now, which leads me to the final point I’d like to make. Everybody talks about the Internet as if it’s this great transformation in our culture and society. I actually think we’re overrating it. It seemed like that at the beginning, as a lot of personal relationships I’ve had did, but it turns out to be disappointing when you look at it too closely. In fact, all it is is another extraordinary method of distribution. That’s all it is. The fundamental thing has not changed, only the way people are accessing the work that many of us in this room do. If we are not paid for that work—and particularly in film and television where, as Orson Welles once said, we use the most expensive box of paints—there won’t be any more. So this is essentially an existential crisis, for my discipline and yours.

SIMSON: Thank you, Marjorie?
MARJORIE DAVID: I represent the Writers Guild of America, and in Hollywood we basically represent everyone who writes for screen and television. If you don’t belong to the Writers Guild, then you probably can’t work for the major companies. So we’re very important in terms of setting minimum basic agreements, we provide health and pension benefits, and we uphold professional standards.

The one thing that separates us from everybody else on this stage is that in order to get the benefits that we have, we allow the companies to buy our copyrights. So we’re compensated for copyright right away, but we are no longer the owners of it, unless the film or television show does not get made and it is handed back to us. That said, we do receive residuals as part of the deal—every time something we wrote or created is used, rerun or replayed. That compensation is constantly being renegotiated: broadcast network rates are set but the other rates are always up in the air. If people start stealing our stuff, we don’t get any residuals, and we don’t get paid. You can’t live and write and create without getting paid for your copyright, so in that way I think we stand with you.

If we are not paid for [our] work—and particularly in film and television where, as Orson Welles once said, we use the most expensive box of paints—there won’t be any more.

—Vincent Misiano, Directors Guild of America

I have a problem with defining what it means to steal, and why people steal, and I think it has something to do with the money issue that Scott brought up. There’s been tremendous consolidation in media in the time that we’ve been around, and because of that there’s been a concentration of control over the means of delivery of the things that we create. Unlike people in the music industry, we don’t get paid for the song, we don’t get paid for the writing; we get paid by the company that buys it to make it. Somehow that’s different. And you out there pay for the delivery system in order to see what it is that we’re making.

If those delivery systems get concentrated into too few hands, then it becomes very expensive to receive the material. Media consolidation is a gigantic problem in terms of copyright, and is basically an incentive to steal. If it costs you too much to get works into your house and into your living room, then you, as a twenty-year-old, might turn to BitTorrent and start downloading stuff for free.

—Marjorie David, Writers Guild of America West

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—Marjorie David, Writers Guild of America West

RICK CARNES: The Songwriters Guild is an 82-year-old organization. We were born on Broadway, then spread to Los Angeles, then Nashville, and now we’re a nationwide organization. We have a two-word mission statement. It’s really simply: “Protect songwriters.” We do legal and legislative advocacy; we also do educational work for songwriters. If I had to choose three concerns that I have right now about copyright and creators in general, and songwriters specifically, I would have to say, first of all, I agree with Scott about enforcement being our number one problem. According to the Bureau of Labor Statistics, we’ve lost 45 percent of the musicians and the people who make their livelihood from music from 2002 to 2012. If any industry lost 45 percent of the people who work in it, we would pretty much consider it doomed—and I don’t want to think music is doomed. I want to think that somehow we’re going to pull this thing out.

Transparency is a big issue for us. A lot of times
you’re really talking about media consolidation. The bigger the company gets, the more copyrights it handles and the more often money just goes into a black box. It does or doesn’t come out on the other side. It’s very difficult for an individual songwriter to find out

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where the money went when they’re facing a gigantic global company collecting money for them.

The last thing I’d like to say is that when we have no representation at the table, when policy decisions are being made that affect our rights, then so often we come out with a law that was well intended, but does not hit its target. Right now, effectively the length of copyright for a song is actually from the time I write it to the time that it’s first uploaded. After that, there is no copyright. I have a right without a remedy. I cannot enforce my copyright. Until we solve that problem, we shouldn’t really be worrying about the edges of copyright. We should be worrying about the core problem of copyright, which is not only to incentivize creators but to make sure that there will be a next generation of creators.

So I think that we need to be represented in Washington, where the saying is, “You must be present to win.” If we look at Congressman Goodlatte’s recent hearing [the House Judiciary Committee hearings on copyright held in April 2013] we had a situation where the “Copyright Project’s Principles,” drawn up by the committee’s non-creator witnesses at the hearing, formed the basis of the discussion. As well intended as those principles may have been, not a single creator, of any stripe, was involved in writing them. So I would respectfully suggest that we start over again. We bring the creators in, and we ask them, what are the principles of copyright that really matter?

The core principles for us are basically enforcement and transparency, so that we actually have a future. Thank you.

SIMSON: Thank you, Rick. So if the well-being of authors is one of the goals, how badly are we failing?

TUROW: I don’t have statistics as dramatic as Rick’s. But in the book business, we’re at an odd moment where, in fact, some things about the Internet have lowered the barriers to entry for writers, and personally, I think that’s a good thing. Self-publishing is no longer the shameful refuge of your maiden aunt. It’s become economically viable for a lot of people. So that’s good. The problem, though, is that writing as a livelihood is suffering for most writers. Bestselling authors have been enormous beneficiaries of all of the changes in the publishing industry, and frankly, bestselling authors will do just fine if publishing is destroyed and everybody becomes self-published, because they’ll be the people whose names are known. The concern of the Authors Guild isn’t for bestselling authors. We’re going to be fine. The concern is for new authors and so-called midlist authors, meaning people who are scrapping to make a living. When your publisher starts reducing the royalty rate on an e-book, and the industry is transitioning toward that now, authors’ incomes will be reduced, and that means fewer people will persist in that profession. Rick’s example of what’s happened to songwriters goes to prove that point completely.

SIMSON: Scott, you wrote an op-ed in The New York Times back in April. I think it might be interesting to share what happened when you Googled “Scott Turow free books.”

TUROW: I put into the three leading search engines “Scott Turow free e-books” and what came up were, Vince’s point notwithstanding, what I would call pirate sites. Six of the first ten responses on Google, and eight of the first ten on Bing and Yahoo. The search engines are literally directing people to these pirate sites and they refuse to behave responsibly. They don’t want to curb the search results for any reason, and as I pointed out in that op-ed, if there were somebody standing on a street corner answering the question, “Where do I buy illegal drugs?” and—like the search engines who sell advertising on every one of those pages—making money for providing an answer to the question, the person on the street corner would be in prison. And we have search engines that exist under the motto of “Don’t be evil”? Please.

SIMSON: Let’s touch on something else. I think I have the tenor of the panel here on piracy and whether en-
forcement is working. Maybe there is enforcement but no cops on the beat anymore? I could be wrong. On orphan works, I think we have a different kind of issue for the different groups, because I would think between DGA and WGA, you have records of who was the author and who was the director, right?

MISIANO: We are in agreement on that subject. In the case of film and television, we know who the author and the director were. There are no orphan works as far as we’re concerned. Although the copyright holder may not be interested in enforcing that right, we certainly are. We believe we have contractual rights, ancillary rights to the work, that we have a financial interest in it, and we think we have a moral interest in it, and an ethical interest in it.

SIMSON: A moral interest? So unlike Europe . . .

MISIANO: I know. We don’t talk about moral rights.

SIMSON: We don’t talk about moral rights, no, but we can talk about the moral rights that have kind of seeped into your contractual agreements, can’t we a little bit?

MISIANO: This gets to be very difficult. There are things one says directly and there are things one says with a wink and a nudge, and these are understood by the two parties in a very different way. As you said, Marjorie, the author of a work sells the copyright, but the word “residual” has a kind of interesting meaning in this regard. To us, it means we get a payment, but it also implies, at least in my mind, a residual interest in the work, in the creation of the work, in the content of the work. I think that’s the argument I would make.

SIMSON: And Rick, what about you with orphan works?

CARNES: First of all, I’d like to clarify the difference between us here. Songwriters never actually sell their copyrights. They assign their copyrights. So the only copyright owner, where a song is concerned, is the songwriter him- or herself. In the United States, I assign my copyright for thirty-five years; then it comes back to me. There’s the difference.

As far as orphan works are concerned, I understand that when people are trying to license in mass or bulk, they might be afraid that there are one or two things left in that are not attributable, which is why we’re going to great pains to build a global repertoire database, the GRD. We’re trying to make sure that everything will be accounted for. This is on our dime, so we’re going way out of our way to do this. I know that ASCAP is involved in that and Music Creators North America, and all our various groups are actually supporting this effort, so we’re doing everything we can.

SIMSON: So what do you think about a registration requirement?

CARNES: That’s a whole different thing. I’m not a lawyer, but if you require somebody to register again after they’ve already registered once, I believe that violates the Berne Convention. If we as a nation are going to require that, we’re going to get sued in the International Court of Justice in The Hague and we’re going to lose, and then the U.S. taxpayers are going to pay the fines. So taxpayers out there, don’t let them do that to you.

SIMSON: Okay. Scott, do you feel any differently about the registration requirement? Are authors pretty much covered?

TUROW: Generally speaking, yes, our publishers register the works when they are published. I have to say, though, about the piece that was just in The New York Times, I’m not clear that my copyright is registered. I asked my agent, and the basic answer I seem to be getting is, “No, not really.” I have some sympathy for what Maria [Pallante] is saying [re a new registration requirement?] but it cannot be an expensive or arduous procedure.

Registration is really an issue at two different points. One is when the work is first created; the second is the notion that to prolong copyright, there should be some proactive effort by the creator. I can see it both ways. The problem is you’ve got someone who’s writing a novel in his basement and on the morning commuter train, as I did with my first novel, and it’s enough to write the book without having to worry about copyright registration. You know, “Holy smokes, do I have to hire a lawyer in Washington to do this?” If it’s a simple procedure that people can comply with without great expense, that’s one thing. If it’s a complex web, as I think the current copyright system is perceived to be by non-lawyers, that’s different.

MISIANO: Maybe because I know less about this than anybody else, I’m required to oversimplify. It seems to me that I don’t know anybody more interested in technology than directors and filmmakers. There should be a natural affinity between these two things, so I don’t want to say that we’re enemies in any way. I don’t want to be confrontational. On the other hand, it seems to me that right now, people in the tech business, the Internet business, the ISPs, are a subsidized industry. And they’re partly being subsidized by our work. They make available your work (nods to Scott...
Turow), which goes directly to their profit while you see no benefit.

Now this can go on for a while, but ultimately, in our work, given that an episode of a TV series can cost four million dollars to make . . . You can argue whether it’s money well spent, but that’s what it costs. If they can’t make that money back, then the work will cease to be available. There won’t be any more TV shows. There won’t be any more movies. This may sound hyperbolic, but I’m not sure I understand the future in the way that Google and the other ISPs see it.

You said something interesting earlier. What was the percentage of profit increase for Google?

CARNES: In the last ten years, Google’s profit has gone up 58,000 percent.

MISIANO: Okay, a 58,000 percent increase in profit. Now this may be a silly anecdote, but a friend of mine who was a musician—we were musicians together forty years ago—is now playing around in clubs in this area. He hadn’t played for the thirty years intervening and he told me that he made less in a year playing every weekend here than he made in 1976 playing at a topless bar in Bay Ridge, Brooklyn.

SIMSON: Those dollar bills add up.

MISIANO: You understand the point I’m trying to make. If you have forty percent fewer musicians and Google is making 58,000 percent greater profit, maybe I’m a conspiracy theorist, but I believe there’s a connection.

DAVID: I don’t know whether there’s a connection, and the reason I’m so inarticulate about this subject is because I think it’s really difficult to enforce something when the distribution is so diffuse. You don’t know what means of reproduction of materials are going to be coming down the pipe. It’s very, very difficult to enforce, and that’s why I find it difficult to think about rewriting the copyright law. I don’t understand what it is they’re going to rewrite when they don’t understand what they’re going to be protecting.

I can say I wrote a movie in 1983 and every time it’s replayed I still get money for it, but it’s fifty cents or something. You know, it’s very nice. But somebody could download it someplace, and it could appear someplace very different and mysterious, and I don’t understand who follows that up, who enforces it. So it’s just as you say—you can get into the weeds of this stuff, and then you just become a normal consumer and you don’t quite understand that you’re supposed to enforce something that’s supposed to be reasonably, constantly policed and enforced. I don’t get it.

MISIANO: Here’s the thing. Again, this is the conspiracy theorist in me, but I think they can figure it out. I think they can figure it out in a very easy way if they choose to. I think if they can figure out what size underwear in what brand I ordered last week, then they will also be able to figure out who downloaded Scott’s work and who downloaded your work. I think that. We’re always looking for, What’s my motivation? There’s a motivation on the part of these companies not to know. I think they can absolutely find a solution.

DAVID: Yes and no. Basically, yes. But I think when you start prosecuting the individuals who are, “Oh, yeah, I downloaded this and I wasn’t supposed to,” it’s not going to solve the problem. The problem is the larger distribution networks and I don’t understand how to get to those.

CARNES: There is a way to get to those larger distribution networks—that is, to remove the profitability from those networks. The way you do that is you go to the advertisers who are advertising on those networks and tell them, “Hello, General Motors, you shouldn’t be advertising trucks on porno videos. It’s not good for your brand and it’s not good for creators. You should stop it.” I think every one of us should do something about that.

SIMSON: That was probably a bad example, Rick, because porno videos and trucks . . .

CARNES: I saw a natural connection there. I’m sorry.

DAVID: You shouldn’t be advertising on the (unintellegible) TV show network.

CARNES: I should have picked a better brand. But the concept, I think, is correct: That if we did something to impact the advertising on those sites, we could at least take the profit out of it. And make no mistake—piracy isn’t something that’s driven by thirteen-year-old kids. It’s driven by major people out there, who are mostly organized crime, and who are setting up gigantic profit-making scams, and using other people’s property to do it.

SIMSON: Say you’re now in front of Congress, at the next hearing, where they actually have creators. What do you want to tell them now that we’re going to redo the Copyright Act?

TUROW: I don’t mind a civil discussion, as the Register suggested, but I think Congress must consider the long-range incentives to creators. The Copyright and Patent Clause is not in the Constitution for any other reason than that the framers believed that an inde-
ependent class of creators was essential to the democracy. Period. That’s the vision and that’s what’s got to be maintained.

**MISIANO:** A number of years ago, a congressman described the Internet as a series of tubes, and he was widely ridiculed for saying that, so I know that this is a risky analogy. I think the Internet is a city, and in that city we have public squares where people are free to speak, and we have parks where people can recreate, and we have display windows and advertising kiosks, and we have stores.

The problem is that there are many stores that don’t have locks on them, and people walk in and take objects out and don’t pay for them. That’s not freedom. That’s anarchy. And I’m convinced that when the first caveman moved into a cave occupied by another caveman, they figured out very quickly that they needed rules, and in those rules was freedom. So what we have now on the Internet is a form of anarchy. It is not freedom. And defending anarchy is not a defense of the First Amendment or anything resembling that. As a writer, as a director, the First Amendment is what I breathe. We need that. So we’re not challenging that issue. We just want to be civilized.

*The moderator opened the discussion to questions from the audience.*

**AUDIENCE MEMBER:** I’m Mattie Taylor from Van McCoy Music Incorporated, in Camp Springs, Maryland, and I dare say there are not many people in this room who have not heard “The Hustle” or “Baby, I’m Yours” of the late, great Van McCoy, who died in 1979, and whose works, even today, are heard all over the world.

I’m one of the few people in the world who knows nothing about music. I tell folks if you took “Silent Night” and erased the title and the words and wrote “Hustle” on it, I couldn’t tell the difference. But I can count. And the severe rip-off of royalties that should be coming into this country to American composers and publishers, especially the small, independent publishers, such as we are, is absolutely scandalous.

I’ve been doing this, preserving the works of my foster brother, Van McCoy, since 1989. The rip-off has been steady and continuous. When the United States Congress dares to look at the U.S. Copyright Law, they absolutely must create some procedure for processing complaints. If we don’t create some form of administrative hearing for severe copyright infringement complaints in the United States, our Copyright Law will continue to be a joke.

**SIMSON:** I was going to ask Rick to comment on that. There have been proposals for a small claims copyright court. I know that not all the major publishers agree with that approach.

**TAYLOR:** Of course they don’t. They want to keep the money. We could document, Sir, the most severe abuses, even to a major film company using one of Van’s songs—I’m not going to call out any names—

* * *

I think if they can figure out what size underwear in what brand I ordered last week, then they will also be able to figure out who downloaded Scott’s work and who downloaded your work.

—**Vincent Misiano**

and changing the credit to another writer and another publisher, then putting it in the movie.

We didn’t know about it until one of my staff members went to see the movie, and said, “Ms. Taylor, we didn’t license that song.” I hired an attorney. I spent more money than I have, and they said, “Forget you. You should’ve done something about this.” We had no idea until it came out in the movie. They went right ahead, took it out of the country, ignored intellectual property right laws. They put the DVD out and sold it, the home video. They never acknowledged it. To this day, they roll on, and there’s no challenge.
CARNES: First of all, let me say, like we say down South, “Amen, Sister. Amen.”

Second, you’re exactly right. We do need to address the issue of copyright from a personal, small claims point of view. Our problem is, for example, if I want to bring a case, an action against somebody who’s infringing my rights on the Internet—okay, somebody who’s uploaded my file for general distribution without licensing, without my permission—I have to take him to federal court. I have to make a federal case out of it. I don’t have the money to do that. Do you? Does anybody? Raise your hand if you’ve got a quarter of a million dollars just to waste on trying to pop somebody. You don’t.

So that means I have a right without a remedy. Correct? Thank you. Okay, so now we need to move forward, to the idea of talking to Congress about the many problems involved in having a copyright small claims court. Because there are many. There are constitutional problems. There are administrative problems. There are problems in financing it. But let’s understand that the biggest problem is that creators are not going to survive under the current regime. So we must undertake a solution. Thank you.

AUDIENCE MEMBER: I’m Andrea Purgatori and I’m here to represent the audiovisual authors of Italy. It’s easy to say that we can share, by word, literally what you said. I frankly believe all the authors all around the world can share the same words. I’m just wondering how much time we wait before passing from complaining to action. Because I think that if we all agree on the fundamentals that we are talking about, we should also find the common strategy, which will be shared from the United States to Europe, and all around the world. We have to find an action, which involves all the authors of the world. And I’m asking you if you have any idea. Because Google without the contents we are offering, without our work, is zero, not 50,000 percent of profits that you were mentioning before.

MISIANO: Well, it won’t be easy, but it actually depends on the Register of Copyrights and Congress. That’s the issue, and that’s why those folks who’ve remained in the room and are part of that process, and all of us need to be a voice at the table. If the last law’s been in place twenty years, we have to be putting a law in place that will still be effective in twenty years and not be looking at the short-term interest. Unfortunately, most of our corporate existence is built on no more than a two, three, four, five-year plan. The long-term well-being of all of us, our mutual interest, is in working this out amicably.

AUDIENCE MEMBER: Hi, I’m Leah Sentroso. I’m actually an attorney from New York, but I’m also the foreign representative for the Indonesian Artists Organization. I just would like to say that coming from Indonesia, where copyright law is really pretty much not enforced, if at all, we have a very difficult time collecting royalties. I want to say that what you are doing here, and the more successful you are in your efforts to enforce what we should enforce here in the United States, will directly or indirectly impact us down there, so I really wish you all the best. So a round of applause for you. Thank you.

AUDIENCE MEMBER: My name is Jakob Frímann Magnússon and I’m the Chairman of STEF in Iceland, the equivalent of PRS or ASCAP, the collection society for authors, and also the Chairman of the Composers Guild of Iceland, songwriters. I’ve been coming to these conferences now for many years. Always waiting for the absolute solution. Hoping someone was going to actually provide it for us. I think part of the problem is we’re all waiting for someone else to bring a solution to the table. The way I see it is if we create the work, we should also create the business models and the legislation. We write the songs, we write the rules and legislation. That’s ultimately how it should be. And I think we need to get our heads together and say what we want before we expect Congress, the Googles of this world, the YouTubes, to bring a solution to us. That should be the ultimate purpose of these expensive gatherings. What we really want. How do we put our heads together, the people who are actually the creators and create a solution?

I will share with you one little idea that we have back in little Iceland, sometimes proudly referred to as the cradle of democracy, the first democratically
elected parliament in the world, in 893. We have the same problems as all of you. In 2010, the then-Cultural Minister of Iceland, Katrín Jakobsdóttir, called together a conference asking for ideas. How do we move forward? It’s a dilemma. It’s a problem. What do we do about it? We at STEF had a very clear idea of a way forward, based on a concept that was invented in the 1970s called the cassette levy. When you bought your Beatles cassette and you made two copies for your brothers and sisters, there was a little levy to kind of make up for it. The little fund was then distributed amongst the writers and performers. We still have the cassette levy. It became the CD levy, but enforcement stopped at the hard disk in most countries. We’re still debating how we move on to chips and memory chips and mobile phones and computers. But we managed to get the fair trading office of Iceland to agree that we bring all the ISPs and mobile phone companies together at one table, which they are normally not allowed to do, with competition laws, and the Performers Guild, the Record Company Guild, and the Authors Guild all got together, and we discussed one idea: the amount of an average phone call per month or the amount of, say, one little song, say seventy-five cents a month from every connection, would be put into a fund that gets distributed amongst creators. Such a small amount becomes a humongous amount if you get every connection in the country. In Iceland, which has 300,000 people, we have 500,000 Internet and mobile connections. Six million dollars.

I share this idea with you because I haven’t really been hearing any concrete ideas. We’re still working on it. The only obstacle was the record manufacturers happen to own a kind of iTunes or Spotify company and they were afraid that they would lose subscribers if they let this happen. For such a small amount, I urge you to find a way forward that we can all agree on, and lobby for, and then stop whining and complaining. Thank you.

DAVID: I think that sounds great, and also, Iceland is admirable always in the way people can get together and solve problems, but we’re talking about what do we say to Congress. This is America. And that sounds like a tax. And we have a political problem. We have four Guilds sitting on this stage, and the disrespect for any kind of organized working people in this country has grown to a point that’s almost horrifying. When you talk about places like Google, I don’t want to wail on the Internet. I think it’s a great thing. But I think that the deeply ingrained idea, which is some kind of Libertarian idea—not to organize and not to work as a group—has caused us a tremendous amount of trouble.

So in a way, all of us agree. We’re all basically saying the same thing. The details may be different, but we do believe that we should receive reasonable compensation for our work on a continuing basis. But it’s really hard for us to come forward and get that right now.

SIMSON: I know we still have a lot of discussion about this issue, and maybe we need to have another panel just on the ISP model of subscription, but we have run out of time. So please thank Scott, and Vince, Marjorie and Rick. They will be around to talk to you some more. *
Along Publishers Row

Continued from page 2

In a New York Review of Books essay on Sacks’s most recent book, Hallucinations, Michael Greenberg wrote: Sacks “prefers to look through a wide-angle lens rather than a microscope. His impulse is to amplify his observations, to look beyond the minute working of the brain to the varieties of human experience itself.”

NOTED: Nine letters, written in 1941 to a young woman in Canada, have been added to the J. D. Salinger holdings at the Morgan Library & Museum. The author was 22 years old and just beginning to be published in magazines.

Dave Itzkoff wrote in The New York Times that “the unsettled young Salinger reveals himself to be as playful, passionate and caustic as Holden Caulfield, the self-questioning adolescent who would become his most enduring creation.”

SPOONLIKE: Quote from an advertisement in the London Review of Books: “The book is like the spoon, scissors, the hammer, the wheel. Once invented, it cannot be improved.”

HARD COPIES: The publication of The Selected Letters of Willa Cather, edited by Andrew Jewel and Janis Stout, could give writers something to think about. Long before she died in 1947, Cather made it clear that she did not want her letters made public—ever. She asked recipients to burn them, but this book contains more than 500.

In today’s world we send e-mails. What is happening to the flood of e-mails exchanged with family, friends and business folk? Will those messages just be swallowed up in invisible clouds of cryptic (LOL) initials? Do you care what happens to them? How long before supersleuths, for a small fee, offer to track down every e-mail you’ve ever sent or received?

Do yourself—and Cather—a favor. Get a copy of Death Comes to the Archbishop. That is what she wanted you to read. It’s imagined American history at its most transcendent and better than any letter. Even one from Cather herself.


In a PW interview, Simic said that while writing a poem “it’s okay if my mind strays and changes the plot. I, like most people, begin with some experience I had, but in the process, I’m very happy if there is another alternative. I think that the war is probably one place where I pretty much say what I remember, but everything else is fifty percent reality and fifty percent invention, sometimes one hundred percent invention.”


He has also written 17 other books and spent some years teaching at Yale.

Zinsser is now 90 and blind from glaucoma, but writers who need help seek him out and read their works-in-progress out loud to him. He said, “People read with their ears, whether they know it or not.”

Mark Singer was a former student of Zinsser’s at Yale. As a visitor to the old professor these days, Singer told the Times that Zinsser “is remarkably inventive and creative. And he wants to be in a pedagogical role whenever he can.”

ADVICE: Steven M. Cahn is a professor of philosophy, and his brother, Victor L. Cahn, is an English professor. They are the authors of a new book: Polishing Your Prose: How to Turn First Drafts Into Finished Work.

There are quotes from the book in the June issue of The Writer: “Careful writers can tinker forever, so that anyone who vows to submit only a perfect manuscript is doomed to despair.”

WHAT POETS DO: Dan Chiasson teaches at Wellesley College. His latest book of poetry is Where’s the Moon, There’s the Moon.

In The New Yorker, he wrote: “Poets work primarily in lines, and often dream of writing perfect ones; this is why every poet is an innovator of sentences, dissecting them, ranking them, scattering, by means of line and stanza breaks, little cliffhangers across their lengths.”

DING: Lauren Graham is an actress who, while working on a TV series, Parenthood, found that she had time on her hands. She decided to write a novel. The title is Someday, Someday Maybe.

Graham told Entertainment Weekly, “I was interested in writing about being an actor, about the beginning versus the reality of it now.”

The book took two years to write because “it was hard to have an actual routine. . . . I have this program, Word Counter, and I’d set it to 1,000 words and not get up or look up or do anything [but write] until it dinged.”

REAL SCIENCE: Thirty-five members of the online science writers group, SciLance, have contributed to The Science Writers’ Handbook:
Everything You Need to Know to Pitch, Publish, and Prosper in the Digital Age. Editors are Thomas Hayden and Michelle Nijhuis.

Hayden told PW, “The best science writing recognizes that science is everywhere and accessible to anyone, so long as the writing makes it so. The stories that show real people grappling with real issues of consequence are the ones I like best.”

IMAGINED SOUTH: William Faulkner’s sinister South is not like Willie Morris’s sweet South or Eudora Welty’s sly and secretive South. Advance readers of Bill Cheng’s Southern Cross the Dog expressed surprise that a Chinese American, who had never been to that part of the U.S., could create a vivid South that seemed authentic.

A fan of the blues, Cheng, 29, grew up in Queens, N.Y. He told The New York Times, “I just looked for the things that showed up a lot in the music, images and icons that are prominent in music—the flood, the Devil, the hellhouse. The story formed itself around that.”

To one who has been to the South many times, the place is fixed in time as sun scorched and overrun with rank weeds, honeysuckle and vignettes of abject misery. Every one of us—transients, great authors, and now a blues lover—creates his own South.

Cheng is currently on a book tour through the real South.

FORGET IT: John McNally is an English professor at Wake Forest University and the author of seven books. His latest is Vivid and Continuous: Essays and Exercises for Writing Fiction.

McNally is quoted in the June issue of The Writer: “I work on a lot of different things at once, so putting something aside for a couple of years isn’t a big deal. If you’re writing every day, it adds up, and obvi-ously, you’ll be discarding a lot of that stuff. Hopefully, some of it will gestate into something. But if I forget about a piece, then it probably should be forgotten about.”

HER FIRST: Loyalty is Ingrid Thoft’s first novel. It features a female private investigator for a Boston law firm.

Thoft trained and earned a certificate in private investigation because having an amateur detective as a heroine was so limiting—an amateur “can only stumble upon so many bodies.”

In a PW interview, she added, “I’m a big believer in not necessarily writing what you know but writing what you want to read about. And so I thought I’d like to read about a strong female protagonist who has a sense of humor and who often pushes the boundaries. What I like about writing Fina [her PI] is that she’s got it together in many respects, but in other ways she’s incompetent . . . she reverts to very childlike patterns when she’s with her family.”

CHINESE PROVERB: “A book is like a garden carried in the pocket.”

OLD VOICE: Frank Bascombe is a character in Richard Ford’s novels The Sports Writer, Independence Day and The Lay of the Land. Now Ford has written a Bascombe short story. The author told The New York Times Book Review: “I always think that when I’m writing Frank Bascombe I have the chance to write about the most important things I know, and that’s always been irresistible—as it probably is for most writers.”

ON HIS OWN: After two well-reviewed novels published by Random House had disappointing sales, Jon Clinch self-published his third, The Thief of Auschwitz.

The experience resulted in an e-book, Unmediated Ink: Lessons from the Self-Publishing Revolution, recently excerpted in PW. “Despite the glitches,” Clinch wrote of the difficult, demanding process, “the book [Thief] is launched; it’s selling and that’s that. . . . I’ve made some mistakes, and next time I’ll do better. Perhaps by then the system will have improved a little. I can always hope. I always do.”

TAKING NOTES: Paul Theroux’s most recent travel book is The Last Train to Zona Verde. In an essay for The Wall Street Journal, he wrote, “It seems to me that all serious writers are note-takers.” He insists that no one can remember everything. Notes are vital or the best moments may be lost forever.

He warned: “No electronics, you see. No Palm Pilot, no Memo app in an iPhone, no voice recorder, no video, no contraption, no wires—just ink and paper.”

Theroux gave samples of notes made by Charles Dickens and Vladimir Nabokov and recommended a small notebook that fits in your pocket and will not fall apart. Take two pens, he said, because you will lose one. Be as unobtrusive as possible because people “generally don’t like being quoted.”

He concluded that a notebook becomes “an indispensable artifact . . . glowing with revelation.”

DAYDREAMER: Adam Johnson’s The Orphan Master’s Son won this year’s Pulitzer for fiction. The award pushed the paperback version onto the bestseller lists.

A couple of years ago, Johnson told the Arizona State University alumni magazine that he got his love for writing while he was a student there. On Sunday, The New York Times Book Review picked up quotes from the Arizona article:

“As a young man, I was often told that I was a daydreamer, a rub-
bernecker, an exaggerator,” he said. “But in a fiction class all the things I had been criticized about came together to create something meaningful. That was a very powerful feeling for me.”

WRITER’S HOME: George Orwell spent five years in Burma (now Myanmar) as a police official. It was there that he wrote his first novel, Burmese Days. Now keepers of the Orwell flame want his shabby home in a remote area of Myanmar restored so it can be visited by his fans.

Has the café sink where Orwell washed dishes when he was down and out in Paris been turned into a shrine?

BARING IT ALL: Rachel Howard, author of The Last Night, explained in an essay in The New York Times how taking off all her clothes and posing nude for a studio full of artists improved her writing.

Howard had heard instructions shouted by the teacher to the students at their easels: “Find the gesture! What is the essence of that pose? . . . The whole pose—quick, quick! No, not the arm or the leg. . . . What is the pose about? Step back and see it—really see it—whole.”

Remembering the teacher’s instructions while at home writing, Howard said she didn’t worry about words. She thought about how her fictional characters were sitting. A more interesting point of view about what was happening came from a different character. The page she worked on became a mess. “But I had captured the movement of the scene,” she said, “not one line of dialogue connected clunkily to the next action. There was the whole. It made leaps. It had perspective. It had emphasis and connection. It had life.”

CALL ME WHAT? H. L. Mencken, my favorite crank, coined the word “bibliobibuli.” If you read too much, you are one of them. He wrote: “I know some who are constantly drunk on books, as other men are drunk on whiskey or religion. They wander through this most diverting and stimulating of worlds in a haze, seeing nothing and hearing nothing.”

Wonder why bibliobibuli didn’t make it into my dictionary?

REAL FICTION: Jeannette Walls’s novel, The Silver Star, was published in May. She is the author of the bestselling The Glass Castle, a memoir about her harsh childhood with a monster, self-absorbed mother. Four million copies are in print. Her second book, Half Broke Horses, was about the early life of one of her grandmothers. It was described as a true-life novel.

An article about Walls in The New York Times Magazine quoted her: “We all have our baggage, and I think the trick is not resisting it but accepting it, understanding that the worst experience has a valuable gift wrapped inside if you’re willing to receive it.”

Walls told PW, “The Silver Star is the first real fiction I’ve ever written. I believed I was incapable of making things up. This is the first time.” Writing fiction versus writing non-fiction, she said, is like “navigating on the open seas versus a river.” In writing fiction “everything is a choice.”

The Times’s Janet Maslin summed it up: “This is a book in which nothing is complicated, good and bad are polar opposites and life never fails to make sense, in a hokey and homespun way.”

SHIFT FOR E-BOOKS: PW had an article about several authors who have gone from publishing houses to self-publishing. One of them was Stephanie Bond, who has written for Harlequin, HarperCollins, Random House and St. Martin’s Press.

Her books blend romance, women’s fiction and mystery. She has no clear genre—and that was a problem. When it came to promotion, “Publishers didn’t know what to do with me,” she said. Bookshop staffs didn’t know on which shelf her books belonged.

In 2010 she began working with Indie Book Collective to market her e-books.

PW said, “Over 15 years of publishing 60 titles with traditional publishers, Bond books had sold four million copies. During her first year and a half of self-publishing 14 projects, she had hit the one million mark.”

When she received a six-month royalty check from Harlequin, it was less than a day’s self-published e-book income from Amazon.


Shannon’s first novel, The Bone Season, was published in August, and six more in the series are promised. The narrative is set in the year 2059 and the heroine is a clairvoyant.

Shannon has been paid a six-figure sum for the first three novels. She is in her final year at college and is working on the second book. She said, “I had to cut down on going out with my friends so I could squeeze in writing chapters. There was a lot of coffee involved.”

MORE FUN: Clive James is one of the reasons that literary criticism in Great Britain is more fun than its American equivalent. James, a critic and poet, is an Australian who makes his home in London.

“America does polite literary criticism well enough,” Clive wrote in a New York Times opinionator column, “but America can’t do the bitchery of British book reviewing
and literary commentary." In Britain, "Ripping somebody’s reputation is recognized blood sport. Shredding a new book is a kind of fox hunting that is still legal today."

A straight diet of U.S. book reviews is more like eating too much fudge.

SEX PAYS: Ellora’s Cave publishes erotic romance fiction. The Akron, Ohio firm turns out about 10 ebooks a week and sells nearly 200,000 copies per month. There is no advance, but authors are paid a 40 percent royalty on the list price of titles sold through the company’s website and a 45 percent royalty on books sold by vendors. Ellora’s Cave sends out about 800 royalty checks a month, PW reported.

The main imprint, Romantica, offers a blend of love, hot sex and happy endings. The publisher said, "We combine hardcore erotic language—no euphemisms—with romance, the soft touch and the love aspect."

One author, Laurann Dohner, will make $1 million this year, the publisher said. Her next book is entitled Lacey and Lethal, with a cover photo of a woman’s hand unbuttoning the fly of a bare-chested male. Nothing euphemistic about that. A few male authors use female pen names because they sell better.

SELLING: Rick Atkinson has been highly visible and vocal promoting The Guns at Last Light, the last volume of his trilogy about World War II.

He spent an afternoon on C-SPAN’s BookTV answering a lot of calls from readers. He also appeared on MSNBC and NPR’s Morning Edition.

Holt’s publicist told PW that Atkinson, who has won two Pulitzer Prizes, will write next about the Revolutionary War. The historian called it our Aeneid.

Atkinson has said that history is bottomless and he’s “more than willing to keep pouring [himself] into it.”

PATTERNS: “The bloodlines of genre fiction tend to be cleaner than those of the more self-consciously literary kind,” Adam Gopnik wrote in The New Yorker. “There’s always a measure of uncertainty, in the glossier precincts, about who owes what to whom; among the three big literary Johns, who can say exactly what Updike owes to Cheever, or what either owes to O’Hara?”

But the California noir-thriller line—Dashiel Hammett, James M. Cain, Raymond Chandler, Ross MacDonald and James Ellroy—said Gopnik, "like the dharma transmission passed from one Zen master to the next."

Tracing the pattern of crime writers in Florida, the point of Gopnik’s essay, is much messier. “When you have two characters together in a Florida book you really have three: a man, a woman, and the weather,” he wrote.

MONEY EXPERT: Ian Hamilton lives in Burlington, Ontario. His years spent as a diplomat and in traveling the world on business provide background for his novels about Ava Lee, a tiny Chinese forensic accountant.

Citing the fallout from the Bernie Madoff case, Hamilton said he believes that the effect of an economic theft can be “far more devastating than any physical crime.”

The fourth and latest Ava Lee novel is The Wild Beasts of Wuhan. The author told PW, “The forensic accountant’s ability to find money that has strayed is amazing. The central theme of each book is one economic crime or another, and I enjoy putting Ava onto the money trail.”

SAD TALE: “There is a fellow who wrote a fine book,” Ernest Hemingway said, “and then a stinking book about a prep school, and then he just blew himself up.” The quote is from an excerpt (in the Times Magazine) from David Margolick’s new book Dreadful: The Short Life and Gay Times of John Horne Burns. Burns was the subject of Hemingway’s “stinking book” quote.

Burns’s “fine” novel was The Gallery. It made him famous—but
then he became an obnoxious drunk whose subsequent books were universally condemned.

The article ended by describing a gesture from Hemingway about Burns that “was weary and sad... one that seemed to ask ‘How do you explain such a thing?’”

PROCESS: The late Raymond Carver was a polisher of prose. He was famous for doing 20 or 30 drafts of a story. He wrote, “It’s something I like to do, putting words in and taking words out.”

STATS: E-book sales of romance novels have been climbing as print sales have declined. In 2012, Bowker Market Research reported a three-way tie in the genre, with e-books, trade paperbacks and mass-market paperbacks each claiming 27 percent of sales.

Amazon was the largest outlet for romance titles, with 25 percent of the whole market.

MORE STATS: Who buys romance books? Women who are 30 to 44 years old are the biggest fans.

In tough economic times readers want more romance novels. Anna Mickelsen of the Springfield, Mass., public library told PW, “Romance novels do better than any other genre. Romance paperbacks circulate more than eight times, while items in other genres circulate fewer than six.” Romance titles result “in a better return overall on the library’s investment.”

DREAM GUYS: While we are on the subject, what is the No. 1 fantasy for women who love romance fiction?

Firesmen, says PW.

As in, Smokin’ Hot Firemen, a new story collection edited by Delilah Devlin that “will be heating up the libraries next,” according to one of multiple overheated promotional blurbs online. The book’s promo webpage, which sports a gold-medal male torso many degrees hotter than the actual book jacket, promises that “Devlin delivers tales of these courageous men sliding down their big poles to steal readers’ hearts!”

LETTER MAN: Jonathan Franzen wrote a letter to the editor of The New York Times. He was identified with: “The writer is the novelist.” If he were less famous, would the tag have been “The writer is a novelist”? Franzen also writes essays and letters to the editor. How about “The writer is a writer?”

STORY TELLER: Neil Gaiman is sensitive. He doesn’t want anyone to refer to his books as fantasies. They are tales in which magic things happen. Titles include Sandman and The Graveyard Book. Among his long list of awards are the Newbery and Carnegie medals, the Hugo and the Nebula. He also dabbles in screenplays for movies and TV and just about everything else. The British-born writer lives in Cambridge, Mass.

His latest bestseller is The Ocean at the End of the Lane. It’s a short novel of less than 200 pages, but it was the excuse for a major spread in Time magazine.

Gaiman told Time that this new book is “an accidental novel. I don’t know how I did it.” Thanks to magic, impossible things happen. He said, “I love writing stuff where I get to set the rules.”

The Guardian asked Gaiman about his politics. He said, “In British terms I am somewhere in the fuzzy middle of ‘Why can’t we all be nice to each other?’ and ‘I really don’t like people exploiting other people’—yet in American terms, that puts me so far to the left of any political party that my politics out there are considered irrelevant.”

C.S.’s CURE: The following quote is from a new biography, C.S. Lewis: A Life, by Alistair McGrath. Lewis wrote in a letter to a friend: “Whenever you are fed up with life, start writing: ink is the great cure for all human ills, as I have found out long ago.” Does a computer keyboard work as well as ink?

PLAYER: The late George Plimpton’s bestselling books about boxing, football and trapeze flying were called “participatory journalism.” Plimpton took up each sport and wrote about the pains he suffered, often with humor.

Tom Bean, one of the makers of a new documentary, Plimpton!, talked about the biographical film in Vanity Fair. Bean said, “George was full of surprises. He would sort of pop up around the edges of these important moments in history. For example, he was standing next to Robert Kennedy when he was assassinated... George was almost like a Wasp Zelig or an intellectual Forest Gump—it was interesting to see him suddenly appear in history.”

A BOOK IS BORN: Pianist Jeremy Denk wrote an essay about his early years of studying music, “Every Good Boy Does Fine,” for The New Yorker. Random House has signed him to expand the piece into a book.

Denk e-mailed The New York Times: “I hope it doesn’t sound silly to say that for me there is a connection between the task of piano playing, trying to find the elusive combination of nuances that bring the phrase alive, and the search for the ‘perfect’ combination of words to express something.”

WHY YA: When bestselling Florida author Carl Hiaasen wrote his first novel for young adults, he thought there would be just one. But Hoot became a movie and sold two million copies. So he has written four more.

Bad Monkey, however, is Hiaasen’s most recent novel and it’s for adults. It was an immediate bestseller. He admitted in an interview...
for The Wall Street Journal that YA books are easier to write. They take him just half as much time as an adult novel—about six to nine months.

Hiaasen said, “Kids love it when you make fun of grown-ups, and I’ve been doing that my whole life in the newspaper business and the novels, so it wasn’t that much of a stretch.” He’s now working on his fifth YA novel.

And he continues his column for The Miami Herald. He explained why: “It keeps you on the hamster wheel. The muscle keeps getting exercised.”

CROWD SOURCED: Kelly Williams Brown, 28, an advertising copywriter in Portland, Ore., came up with a new way of producing a book. She asked Facebook friends and “wise random experts at bars” what skills they needed by the time they were 30.

The result was Adulting: How to Become a Grown-Up in 468 Easy(ish) Steps. Several bits of advice were quoted in the The New York Times Sunday Style section. Sample: “No. 163. Live your life as though everyone in the office has plastic, featureless doll crotches.”

The idea for the book has been optioned for a television series.

RECIPE FOR FUN: The New York Review of Books provides a welcome service—republishing books that never should have gone out of print.

A recent one is Junket Is Nice (1932) by the late Dorothy Kunhardt. Her famous book is Pat the Bunny, and like Margaret Wise Brown’s Goodnight Moon, is a gift for just about every newborn child. Little ones deserve Junket Is Nice too. Maybe grandmother will remember how to make the real junket.

BACK TO BASICS: Amanda Hocking made news last year when she was paid more than $2 million by St. Martin’s for rights to her previously self-published series, Watersong.

The New York Times reported that she had sold another series to St. Martin’s because, she said, “I’d rather focus on my writing instead of stressing about formatting and pricing and book covers and finding editors.”

The new series, Kanin Chronicles, will be a paranormal trilogy for young adults. The first volume is expected next summer.

WRITERS’ RITES: What do creative people need in order to create? Peace and quiet? Deadlines? A daily word count?

Most writers can’t bear noise, but James Joyce worked “with his family hollering around him,” while Mark Twain’s family kept their distance, blowing a horn in emergencies rather than knock on his door.

The tolerances, habits, and idiosyncratic prompts of the writing life are the subject of a new book, Daily Rituals. The author is Mason Currey of Brooklyn. The book began life as a now-defunct blog.

“A lot of writers,” noted the July 1 New Yorker’s “Briefly Noted” section, “worked on [self-imposed] minimums, the most famous being Trollope’s 2,500 words each morning, before going to his day job. (Yeats said that he never got more than five or six good lines in a day.)

“V. S. Pritchett said that the really great artists ‘never stop working. They never lose a minute. It is very depressing.’”

An NPR reviewer of Daily Rituals repeated an old quote from Joyce Carol Oates: “Getting the first draft finished is like pushing a very dirty peanut across the floor with your nose.” The prolific Oates made that crack many years ago. Her nose doesn’t show the damage.

PRIVATE STUFF: The British Library recently bought a W. H. Auden diary he began in 1939. The poet had just come to America. World War II was underway.

Several quotes from the diary appeared in The Guardian, including a couple Auden might have expected to remain private: “It is impossible to listen to music and get an erection at the same time.” And on a strange custom of the New World, “the American habit of washing one’s hands after pissing, as if the penis were an object, too filthy for any decent person to touch.”

The library will put the journal, which had been owned privately, on display.

ON THRILLERS: Adam LeBor is the author of The Geneva Operation and The Istanbul Exchange. He described the qualities of a good thriller in the New York Times Book Review.

Thrillers, LeBor wrote, “require obfuscation, mystery and deception [looped] though a maze of switchbacks—ideally strewn with the dead bodies of double agents, dupes, femmes fatales, sinister businessmen.”

Thriller writer Alan Furst told LeBor that it was important “not to give too much away too soon and to move the story along to keep the reader hooked.”

A whisper on page 5 should echo on page 205.

TALE OF INDIA: Amish Tripathi’s first novel, The Immortals of Meluha, was rejected by more than 20 publishers. Self-published, it became a bestseller in less than a week. One and a half million copies were sold this spring. It is the first volume of the fastest-selling book series in the history of Indian publishing.

Tripathi was quoted in The Writer: “When you are writing, you have to be completely cut off from the world and not care a damn about anyone else’s opinion. Write from the honesty of your heart. But
Oscar Hijuelos, 1951–2013

Oscar Hijuelos, 62, the author of *The Mambo Kings Play Songs of Love*, died October 12, 2013.

A native New Yorker with deep Cuban roots, Mr. Hijuelos served as a member of the Authors Guild Council from 2005 to 2012. In addition to *Mambo Kings*, for which he won the Pulitzer Prize in 1990, Mr. Hijuelos wrote six other novels. His first, *Our House in the Last World*, which followed a Cuban family from Havana to Harlem, was awarded the Rome Prize by the American Academy in Rome in 1985. His most recent work was *Thoughts Without Cigarettes: a Memoir*, in 2011. The recipient of multiple awards over the years, Mr. Hijuelos also taught writing at Duke and Hofstra.

In her review of *Mambo Kings*, the New York Times' Michiko Katu- tani wrote that his “memorable new novel is another kind of American story—an immigrant story of lost opportunity and squandered hopes. While it dwells in bawdy detail on Cesar’s sexual escapades, while it portrays the musical world of the ‘50s in bright, primary colors, the novel is essentially elegiac in tone—a Chekhovian lament for a life of missed connections and misplaced dreams.”

... once you’ve finished your book then you have to figure out: Okay, how do I sell this thing?”

The author, a banker, told the Hindustan Times: “I think I was lucky to have advisers who had nothing to do with publishing. In an industry, the people with the freshest ideas usually come from outside.”

HOW-TO: The headline in PW said: “The Author as Entrepreneur: Changes in Technology and the Law are Transforming the Way Authors Finance Their Books.”

One of PW’s examples was author Michael J. Sullivan, who went the indie-band route to raise $30,857 from 861 backers via Kickstarter for his new novel, *Hollow World*.

Another crowd-sourcing venture, PubSlush, based in New York City, was described by PW as focused “on helping new authors find their audiences. Authors post samples of the books to raise money and receive actionable marketing analytics, which helps them self-publish their books or release them through traditional publishing houses.”

BIG GAP: Books published for children are almost all about white children. That was a topic for discussion 50 years ago. Librarians and teachers are still asking, why so little diversity? NPR brought up the subject again because books about Latinos and African-Americans continue to be rare.

Nearly a fourth of all public school children in the U.S. are Latinos, but only 3 percent of children’s books are by or about Latinos. The Census Bureau was quoted: “Nearly half of today’s children under five years old are non-whites.”

Vaunda Micheaux Nelson, a librarian in Rio Rancho, N.M., has written and coauthored several books about African-Americans. She believes that if children don’t see themselves in a book, then they may lose interest in reading. Nelson said, “They don’t think there is anything in books about them or for them.”

SONNET AND ODE: Michael Gilbert was a British lawyer and the author of 30 mysteries, thrillers, police procedurals, spy novels, court-

room dramas, crime novels and nonfiction books on legal topics. He died in 2006.

He was asked once to explain the difference between a detective story (a whodunit) and a thriller. He said, “The detective story is comparable to the sonnet, being bound in its format by the strict rules that it has to observe. The thriller is the ode, which can adopt any form... Having tried my hand at both, I thought the thriller the more difficult of the two.”

FINDING A TITLE: E. L. Doctorow talked about why book titles are important in *Conversations with American Writers* by Charles Ruas.

Doctorow said, “A title is of practical use to an author. You’ll find a title and it will have a certain excitement for you, it will evoke the book, it will push you along. Eventually you will use it up and you will have to choose another title. When you find one that doesn’t get used up, that’s the title you go with.”

He told how he found one popular title. About a third of the way through the writing, he thought of Ragtime and I kept working, and Ragtime carried me to the end.”

LAST LETTERS? “Sir, more than kisses, letters mingle souls,” wrote poet John Donne. Have you mingled any souls lately or have you given up letter-writing for e-mails?

“It is difficult not to feel that when writers stopped sending old-fashioned, hand-written letters to each other, literary life lost a dimension,” wrote D. J. Taylor in *The Wall Street Journal*. Taylor’s latest novel, *The Windsor Faction*, was released in September.

He was reviewing two books that could very well turn out to be the last of the genre: letters exchanged by writers.

Frederic Raphael and Joseph Epstein had their letters to each
other published in Distant Intimacy. Paul Auster’s and J. M. Coetzee’s letters are the text of Here and Now. Taylor wrote in his review that their letters reveal that all four men have “a deep loathing of literary critics.” And this quartet also shows “a suspicion that the old high-culture certainties of [their] youths are gone.”

Gone, too, probably, are books like these. Does anyone think an exchange of a lot of e-mails deserves to be printed and bound into a book?

THE BEST TIME: Saul Bellow believed, “You never have to change anything you get up in the middle of the night to write.”

STORY POWER: “All sorrows can be borne if you put them into a story or tell a story about them,” Isak Dinesen wrote. She was quoted by Stephen Grosz in his new book, The Examined Life, reviewed by Michiko Kakutani in The New York Times.

Kakutani said that Grosz “goes on to argue that stories can help us to make sense of our lives, but that if ‘we cannot find a way of telling our story, our story tells us—we dream these stories, we develop symptoms, or we find ourselves acting in ways we don’t understand.’”

Grosz is a psychoanalyst and an admirer of that master storyteller, Sigmund Freud. Like Freud, Grosz recounted the stories of some of his most troubled, most interesting patients.

POOR AIM: Back in 1864, when Wilkie Collins’s The Moonstone was published, a reviewer wrote: “Mr. Collins is nearly as clever as anyone who has ever fried a pancake in a hat.” That critic should eat his own hat. More than a couple of hundred years later, The Moonstone is still selling. Check it out on Amazon.

Critic Kenneth Tynan said: “A critic is a man who knows the way but can’t drive the car.”

LATE: Vikram Seth was the author of the hugely successful A Suitable Boy, published 20 years ago. In 2009 he signed a $1.7 million contract with Penguin to write a sequel for publication this fall.

Seth reportedly failed to make his deadline. Talks are ongoing, and his agent, David Godwin, told The Times of India, “It would be unfair to say the deal has been called off. Vikram has been known to take his time with his books. Our aim is to set [on a new date].”

SOLD: A literary agent, Seth Fishman, acting in behalf of himself as an author, sold the rights to a YA thriller in a two-book deal. The first, The Well’s End, is due out in 2014.

PW said, “The series follows a 16-year-old girl whose town has been beset by a lethal virus that is turning the young into the very old.”

TWITTER: Joyce Carol Oates is the author of more than 50 books—the latest is The Accursed—and teaches at Princeton, not nearly enough to keep her out of trouble. With time on her hands, she has now begun to Twitter. “I compose most of my tweets with care,” she told The New York Times, “as if they were aphorisms. They are not usually dashed-off.” She has produced more than 1,100 tweets so far.

SERIAL: Neal Pollack returned to the past to write a serial novel, Downward Facing Death, for Kindle, committing himself to 10,000 words a month.

Writing in The Wall Street Journal, he described how he looked back to Dostoevsky, who wrote The Gambler in 28 days, and to Charles Dickens and Emile Zola, who wrote many of their books as serials. Tom Wolfe wrote The Bonfire of the Vanities as a serial in Rolling Stone, 6,000 words every two weeks for more than two years.

What did Pollack learn? “When it comes to pacing and plot, serial writing has been a real gift. It taught me to meet the structural challenges of creating a chunk of fiction that needed both to stand alone and to be part of a larger whole.”

Later in the essay, he said, “I found that the last half of the novel was not as difficult as the first. Crafting the first several installments was as agonizing as a trip to the dentist, but by the end of the run, at least I knew exactly where my characters and story were going. There was less exposition and more action. The book’s momentum became at last an unstoppable force.”

NO, NO: More than once, the late Maurice Sendak was asked if he would ever write a sequel to his 1963 Where the Wild Things Are. A couple of years ago, he was doing a video interview in Britain when that question popped up again. He replied, “Go to hell. I’m not a whore. I don’t do those things.”

Now The New York Times has reported that there is a book planned, with a poem by Geoffrey O. Todd and illustrations by Rich Berner. Set 30 years after Sendak’s account, is called Back to the Wild. In it, Max takes his daughter, Sophie, to see the Wild Things. The creators said they had “been very careful not to impinge on Mr. Sendak’s copyright and have taken the necessary legal advice around this whole project.”

HarperCollins, publisher of Sendak’s classic, disputed that and said, “Any such unauthorized sequel would clearly violate the estate’s right to create derivative works.”

A jury of Wild Things could settle this rumpus in a minute.

WRONG COLOR: The New Yorker remembered Herman Melville’s Moby-Dick with a cartoon by Mick Stevens. It shows a peg-legged seaman at the rail of a sailing ship sur-
veying an ocean and a great red whale. The caption said: “Another disappointment for Captain Ahab.”

DEATHS

Barnaby Conrad, 90, died February 12 in Carpinteria, Calif. He was the author of more than 30 books, fought 40 bulls, painted portraits and was a cocktail pianist. Titles included The Innocent Villa (1948), Matador (1952) and Fun While It Lasted (1969).

Edward de Grazia, 86, died April 11 in Potomac, Md. He was the lead lawyer on several important cases that helped end the censorship of sexually explicit books. He started by challenging the banning of Aristophanes’s Lysistrata. He then took on Henry Miller’s Tropic of Cancer and William S. Burroughs’s The Naked Lunch.

Officialdom finally gave up and bans were lifted. De Grazia was also the author of Girls Lean Back Everywhere: The Law of Obscenity and the Assault on Genius.

Roger Ebert, 70, died April 4 in Chicago. The movie critic, who reviewed films for the Chicago Sun-Times for 46 years and for various television outlets for 31, managed to publish 116 books as well, including the Great Movies series, a memoir, Life Itself (2011), and I Hated, Hated, Hated This Movie (2000).

Debbie Ford, 57, died February 17 in San Diego, Calif. She was the author of The Dark Side of the Light Chasers (1998), The Best Year of Your Life (2005), and The 21-Day Consciousness Cleanse (2009).

Joseph Frank, 94, died February 26 in Palo Alto, Calif. He was the author of a five-volume life of Dostoevsky. The first volume was The Seeds of Revolt, 1821–1849 (1976) and the last was The Mantle of the Prophet, 1871–1881 (2002).

Lawrence Fuchs, 86, died March 17 in Canton, Mass. The Brandeis professor was the author of The American Kaleidoscope: Race, Ethnicity and Civic Culture (1990).

Peter Hauri, 79, died January 31 in Rochester, Minn. A psychologist at the Mayo Clinic, he was the author of No More Sleepless Nights (1992). Asked why he had spent his whole career studying sleep, he said, “My mother was a very famous insomniac. And I don’t sleep so well myself.”

Ruth Prawer Jhabvala, 85, died April 3 in Manhattan. The Oscar-winning screenwriter was the author of a dozen books. These included Amrita (1955), The Nature of Passion (1956), Heat and Dust (1975), My Nine Lives (2004), and a collection of short stories: A Lovesong for India (2012).


Thomas McEvilley, 73, died March 2 in Manhattan. The art critic and professor at Rice University was the author of Art and Discontent: Theory at the Millennium (1991), Art and Otherness: Crisis in Cultural Identity (1992) and The Shape of Ancient Thought: Comparative Studies in Greek and Indian Philosophies (2001).

John Merwin, 66, died February 20 in Lebanon, N.H. The editor of fishing magazines was the author of The New American Trout Fishing (1994), Stillwater Trout (2001) and many more books about fishing.

McCandlish Phillips, 85, died April 9 in Manhattan. The former New York Times reporter was the author of several books, including City Notebook (1974) and What Every Christian Should Know About the Supernatural (1988).

Frederik Pohl, 93, died Sept. 2 in Palatine, Ill. The master science-fiction editor and writer was co-author of The Space Merchants (1953), a novel that was translated into 25 languages and sold millions worldwide. His novel Gateway (1977) won both Hugo and Nebula awards. In all, he published more than 65 novels (many were collaborations) and 30 short story collections. He also served on the council of The Authors Guild. His obit in The New York Times quoted him: “I like to talk to people and get them to change their views when I think their views are wrong.”

He added, “Why else would anyone write a book?”

Olfrid Preussler, 89, died February 18 in Prien am Chiemsee, Germany. He was the author of 32 books, translated into 55 languages. He wrote The Little Water Sprite (1956) and The Little Witch (1957). The first Hotzenplotz book (1962) sold 7.5 million copies.


Sylvia Smith, 67, died February 23 near London. The memoirist was the author of Misadventures (2001), Appleby House (2003) and My Holidays (2004). The former secretary said she often laughed out loud while writing her books about her uneventful life.

Martin Zweig, 70, died February 18 on Fisher Island, Fla. He was the author of Winning on Wall Street (1986) and Winning with New IRAs (1987).
Legal Watch
Continued from page 20

though the licensing agreement expired on May 1, 2011, several of its provisions survived termination of the agreement, including those pertaining to proprietary rights over the information contained on the database and confidentiality provisions as to the Weather Channel’s use of the information after termination. The license agreement also stipulated that Georgia law would apply to any disputes arising out of the agreement.

After the agreement expired, EMN came to believe that the Weather Channel had misappropriated the information on its database both during and after the expiration of the license by knowingly using the database for purposes outside those stipulated in the agreement, such as manipulating the information for building maps and developing weather products.

EMN believed its database constituted a “trade secret,” and on March 27, 2012, filed a misappropriation of trade secret lawsuit against Weather Channel in the Pennsylvania Court of Common Pleas, under the Georgia Trade Secret Act. The case was removed to the Eastern District of Pennsylvania on May 1, 2012 and transferred to the District of New Jersey on November 29, 2012. On May 6, 2012, the Weather Channel filed an amended complaint. In response, EMN filed a motion to dismiss the Georgia Trade Secret Act claim, alleging that EMN’s database did not qualify as a trade secret since the information it contained was publicly available and the licensing agreement permitted the Weather Channel to display the information publicly on its websites. Weather Channel also claimed that even if the information constituted a trade secret, EMN did not take reasonable efforts as required under the Georgia Trade Secret Act to maintain its secrecy.

At the outset, the U.S. District Court for the District of New Jersey noted that when evaluating a motion to dismiss for failure to state a claim, it was required to apply a three-part analysis before reaching a conclusion. The court was required first to “take note of elements EMN must plead to state a claim.” Second, the court was required to determine whether the information contained on EMN’s database derived economic value from being unknown to others. Finally, in order to determine whether the database qualified as a trade secret under the act, the court had to determine whether reasonable efforts were maintained to protect the secrecy of its contents.

In regard to EMN pleading the proper elements to state a claim, the court found that the Georgia Trade Secrets Act affords trade secret protection for information not commonly known or available to the public. Noting that such information can take many forms, it stipulated that making the determination whether certain information constituted a trade secret was a question of fact. The court also noted that the Georgia Trade Secret Act specifically applied to compilations of information, such as the information contained in EMN’s database. In fact, EMN described its own database as a compilation, stating “it compiles information for schedules and related information for various local and national events. Such compilations are trade secrets pursuant to the Georgia Trade Secrets Act.” Accordingly, the court concluded that the information contained on EMN’s database was the type of information specifically contemplated by the Georgia Trade

Public information gleaned from an expired license or trade secrets: Where does one end and the other begin?

Secrets Act as deserving protection. Therefore, EMN satisfied the pleading requirement.

Once the pleading requirement was satisfied, the court moved to consider whether the information on EMN’s database derived economic value from being unknown to others. Under the Georgia Trade Secrets Act, a compilation of information can qualify as a trade secret even if its individual parts are publicly known and easily accessible by the public. The court noted that if a company can earn a competitive advantage from compiling publicly available information, those public domain elements may be considered to have been integrated into a finished product deserving of trade secret protection. As evidence of this competitive advantage, the court pointed to the fact that the parties negotiated the terms of a license agreement under which the Weather Channel would pay EMN to access this publicly available information in one convenient location, EMN’s database. Moreover, the license permitted the Weather Channel to post individual listings on its own website only. The court noted that the database itself was never disclosed to the public at any time, and the fact that the individual listings in the database are public knowledge does not preclude EMN from receiving trade secret protection under the Georgia Trade Secret Act. As such, the court concluded that EMN’s complaint contained sufficient
allegations to show its database may derive economic value from not being generally known to others.

Finally, the court evaluated whether EMN’s efforts to protect its compilation of publicly available information were reasonably sufficient to maintain its secrecy. The court noted that other courts have found this requirement to be satisfied where the party seeking protection has alleged that it placed limits on the dissemination of the information it has licensed to another party. In this regard, courts look for evidence such as limiting access to those who will directly use the information or requiring individuals with access to the information to sign confidentiality agreements. Company-wide nondisclosure policies also serve to strengthen the contention that adequate efforts were taken to maintain secrecy. In this case, the court found that EMN placed clear and well-defined limits on the dissemination of the database information that it licensed to the Weather Channel. Paragraph 6 of the license agreement, entitled “confidentiality,” required general confidentiality between the parties and required the Weather Channel to limit use of the database to those who required the information for the agreed upon purposes.

The agreement also required that the Weather Channel report any inadvertent or improper use or disclosure of the database to EMN so it could take appropriate remedial action. The court found that although not every individual who had access to the database had signed the nondisclosure agreement, the Weather Channel as a corporate entity agreed to keep it confidential. Accordingly, the court concluded that as a whole, the limits on disclosure and assurances of confidentiality by the Weather Channel were sufficient to meet EMN’s pleading burden that it had taken “efforts reasonable under the circumstances” to maintain the secrecy of its database. As such, the court held that EMN’s amended complaint properly stated a prima facie misappropriation of trade secrets claim under the Georgia Trade Secrets Act and denied the Weather Channel’s motion to dismiss.

—M. G.

BOO K S  B Y  M E M B E R S


Meg Cabot: Awaken; Sam Cabot: Blood of the Lamb; Jamie Cat Callan: Ooh La La!: French Women’s Secrets to Feeling Beautiful Everyday; Howard Camner: Poems from the Mud Room (Collected Works 1976–2012); Drusilla Campbell: When She Came Home; Sheri J. Caplan: Petticoats and Pinstripes: Portraits of Women in Wall Street’s History; Alyssa Satin Capucilli and Pat Schories (Illus.): Biscuit in the Garden; Philip Caputo: The Longest Road: Overland
Movie!” My Acting Debut & Other Misadventures Filming Al Pacino’s Wilde Salome; The Book of Shmoga: A Satire on Yoga; Celebrity Salad: Poems About the Famous; Catch a Fallen Star; Conversations with Ava Gardner; David E. Gumpert: Life, Liberty, and the Pursuit of Food Rights: The Escalating Battle over Who Decides What We Eat; James Gunn: Paratexts: Introduction to Science Fiction and Fantasy; Transcendental; Michael Gurian: The Wonder of Aging: A New Approach to Embracing Life After Fifty; Tracy Guzeman: The Gravity of Birds;

Michaela Haas: Dakini Power: Twelve Extraordinary Women Shaping the Transmission of Tibetan Buddhism in the West; Kristin Hannah: Fly Away; Edward Hannibal: A Trace of Red; Judith Harch: Falling Off the Family Tree; Jill Hardie: The Sparkle Box; Enid Harlow: Good to Her; Steven Harper: The Lawyer Bubble; Judith Harris: The Monster in the Closet, a Bumpy Ride Down the Genealogy Trail; Carolyn Hart: Dead, White, and Blue; Escape from Paris; Megan Hart: The Favor; Naked; Eli Hastings: Clearly Now, the Rain: A Memoir of Love & Other Trips; Betsy Haynes: The Crapezoid’s Nostril; Thomas F. Heck: Mauro Giuliani: A Life for the Guitar; Deborah Heiligman (and LeUyen Pham, Illus.): The Boy Who Loved Math: The Improbable Life of Paul Erdos; John Hennessy: Coney Island Pilgrims; David L. Herbert: The Personal Trainer: A Tale of Pain, Gain, Greed & Lust; Echo Heron: Noon at Tiffany’s; Carl Hiaasen: Bad Monkey; Laban Carrick Hill (and Theodore Taylor III, Illus.): When the Beat Was Born: DJ Kool Herc and the Creation of Hip Hop; Tami Hoag: The 9th Girl; Alice Hoffman: Survival Lessons; Metz Holly: Killing the Poormaster: A Saga of Poverty, Corruption, and Murder in the Great Depression; Stephanie Hoover: The Killing of John Sharpless; Stacy Horn: Imperfect Harmony; James Horvath: Dig, Dogs, Dig: A Construction Tail; Victoria Houston: Dead Insider; Alan Huffman: Here I Am: The Story of Tim Hetherington, War Photographer; Angela Hunt: The Offering; LaQianya Huynh: Compilations of Love;


Elizabeth Macalaster: Reckoning at Harts Pass; Elizabeth Macalaster and Pamela D. Greenwood (as Ryan Ann Hunter): In Disguise!: Undercover with Real Women Spies; Katie MacAlister: Time Thief; Skye Mackinnon: Journey; Jo Maeder: Opposites Attack: A Novel Inspired by True Events; When I Married My Mother; Alexander Maksik: A Marker to Measure Drift; Susan Mallery: Just One Kiss; Two of a Kind; Michael Mallory: Kill the Mother!; John B. Manbeck: Chronicles of Historic Brooklyn; Death on the Rise: A Crime Novel; Megan Marshall: Margaret Fuller: A New American Life; Elsa Marston: The Compassionate Warrior: Abd el-Kader of Algeria; Ann M. Martin: Better to Wish; Robert Masello: The Romanov Cross; Wendy Mass: Pi in the Sky; Greg Edward Mathieson Sr.: U.S. Naval Special Warfare/U.S. Navy SEALs; Debby Mayer: Riptides & So-
laces Unforeseen; Joyce Maynard: After Her; Emily Arnold McCully: Sam and the Big Kids; Gerald McFarland: The Brujo’s Way; Patrick F. McManus: The Tamarack Murders; Robert McNamara: Incomplete Strangers; Ib Melchior: Eagle Down: The Unproduced Screenplay; The Titan: The Unproduced Screenplay; The Micro Men: The Unproduced Screenplay; Dead Ringer: The Unproduced Screenplay; Philipp Meyer: The Son; Jenny Meyerhoff (and Jason Week, Illus.): The Barbiastic Life of Louie Burger; Jamie Michalak (and Frank Remkiewicz, Illus.): Joe and Sparky Go to School; David Milgrim: Some Monsters Are Different; Bobbi Miller: Big River’s Daughter; G. Wayne Miller: Vapors: The Essential G. Wayne Miller Fiction, Vol. 2; Claudia Mills: Zero Tolerance; Claudia Mills (and Rob Shepperdson, Illus.): Kelsey Green, Reading Queen; Laurence Minsky: The Get A Job Workshop; B. J. Mitchell: Footprints of the Soul; Rick Mofina: Into the Dark; Arthur Mokin: Meribah; John Morfaw: Fundamentals of Project Sustainability: Strategies, Processes and Plans; Charles R. Morris: Comeback: America’s New Economic Boom; Nancy Morse: Run Wild, Run Free; Lisa Moser (and Valeri Gorbachev, Illus.): Squirrel’s Fun Day; Lisa Moser (and Sebastiana Van Domin, Illus.): Cowboy Boyd and Mighty Calliope; Bette Ann Moskowitz: The Room at the End of the Hall; Robert Moskowitz: Out on Your Own: Everything You Need to Know Before, During, and After Leaving the Nest; Walter Mosley: Stepping Stone/The Love Machine; Little Green; Alan L. Moss: Insidious Deception; Marissa Moss: Home Sweet Home; Marissa Moss (and Yuko Shimizu, Illus.): Barbed Wire Baseball; Richard Muti: Essays for my Father: A legacy of passion, politics, and patriotism in small-town America; Walter Dean Myers: Darius & Twig; Oh, Snap!;

Fred Nadis: The Man from Mars: Ray Palmer’s Amazing Pulp Journey; Gloria Nagy: Remain Calm; Donna Jo Napoli: Skin; Jamil Nasir: Tunnel Out of Death; Deborah Navas: Bathsheba Spooner; Phyllis Reynolds Naylor: Always Alice; Sharon Naylor: The Bride’s Guide to Freebies; Cary Neeper: The Webs of Varok; Cindy Neuschwander (and Wayne Geehan, Illus.): Sir Cumference and the Off-the-Charts Dessert; Marlene Newman: The Old Lion; Trinka Hakes Noble (and Kelley Gerald, Illus.): The Legend of the Jersey Devil; Michael Northrop: Rotten; Barbara Novack: Something Like Life; Doris Ober: The Alzheimer’s Years: A Mother and Daughter Reunion; M. J. O’Brien: We Shall Not Be Moved: The Jackson Woolworth’s Sit-In and the Movement It Inspired; Dianne Ochiltree (and Betsy Snyder, Illus.): It’s a Firefly Night; Carol O’Connell: It Happens in the Dark; Jennifer O’Connell: The Eye of the Whale: A Rescue Story; Paul A. Offit: Do You Believe in Magic?: The Sense and Nonsense of Alternative Medicine; Peter Orner: Last Car Over the Sassa-
Seddon: Saints Alive! New Stories of Old Saints; Will Shortz: The New York Times Crossword Diet: 200 Puzzles to Feed Your Mind, Not Your Waistline; Polly Shulman: The Well Bequest; Daniel Silva: The English Girl; Pat Silver-Lasky: Scams Schemes Scumdogs; Matthew Silverman: Swinging '73: Baseball's Wildest Season; Lorena Siminovich: You Are My Baby: Safari; Seymour Simon: Seymour Simon’s Extreme Oceans; Coral Reefs; Traci L. Slatton: The Love of My (Other) Life; Fallen; Cold Light; Susan Sloate (and Ronald Doades): Realizing You; Jill Smokler: Motherhood Comes Naturally (and Other Vicious Lies); Megan Smolenyak: Hey, America, Your Roots Are Showing; Richard Smoley: Supernatural: Writings on an Unknown History; Stephanie Spinner: Alex the Parrot: No Ordinary Bird; Elizabeth Spurr (and Manelle Oliphant, Illus.): At the Beach; Divya Srinivasan: Octopus Alone; Natalie Standiford: The Boy on the Bridge; David Ezra Stein: Dinosaur Kisses; Mary Ann Stemberg: River Road Rambler: A Curious Traveler Along Louisiana’s Historic Byway; Elizabeth Stevens: The Secret Paintings of Elizabeth Stevens; Megan Stine: Who Was Sally Ride?; R. L. Stine: How I Met My Monster; Phoebe Stone: Romeo Blue; Elizabeth Straw: The Burgess Boys; Nancy Stuart: Defiant Brides: The Untold Story of Two Revolutionary Era Women and the Radical Men They Married; Patrick J. Suraci: SY’BIL in her own words: The Untold Story of Shirley Mason, Her Multiple Personalities and Paintings; Mattilda Bernstein Sycamore: The End of San Francisco; Nathan Szyjanberg: Sheba and Solomon’s Return: Ethiopian Children in Israel;

Mary L. Tabor: Who by Fire; Nancy Tafuri: The Big Storm: A Very Soggy Counting Book; Holly Thompson: The Language Inside; Tracy Thompson: The New Mind of the South; Amy Timberlake: One Came Home; Lily Tuck: The House at Belle Fontaine;

Lisa Unger: Heartbroken;

Adam Van Doren: An Artist in Venice; Nance Van Winckel: Pacific Walkers; Richard Vetere: The Writers Afterlife; Vint Virga: The Soul of All Living Creatures;

Ginger Wadsworth: Yosemite’s Songster: One Coyote’s Story; Alan Wanderer: Anaphylaxis: A Medical Thriller; Gary Alan Wassner: The Twins; The Awakening; The Shards; The Revenge of the Elves; Graham Watkins: The Cloud Serpents; Richard Watson: The Philosopher’s Enigma: God, Body and Soul; Wendy Wax: Ocean Beach; Daniel Weiss: The Magic of Middle-Aged Women: Romance, Sex, Deviance—Freedom; Fay Weldon: Long Live the King; Monica Wellington: Colors for Zena; Jess Wells: A Slender Tether; Gloria Welter: All My Noble Dreams and Then What Happens; Living Together; Martha White (Ed.): E. B. White on Dogs; Barbara Harris Whitfield: AFGEs: A Guide to Self-Awareness and Change; Timeless Troubadours: The Moody Blues; Stephanie Grace Whitson: The Message on the Quilt; Susan Wiggis: The Apple Orchard; Wallis Wilde-Menozzi: The Other Side of the Tiber: Reflections on Time in Italy; Toscanelli’s Ray;

Lauren Willig: The Ashford Affair; The Passion of the Purple Plumeria; Chris Wiltz: Shoot the Money; Brenda Wineapple: Ecstatic Nation: Confidence, Crisis, and Compromise, 1848–1877; Alan A. Winter: Savior’s Day; Ben H. Winters: Countdown City; Elizabeth Hartley Winthrop: The Why of Things; Gretchen Woelfle: The Wind at Work; Linda Wolfe: My Daughter, Myself: An Unexpected Journey; Nancy Garfield Woodbridge: More Stories from Around the World; Hilary and the Secret Skulls: A Bouquet of Fairy Tales; Poems in Exile; Stories from Around the World; Stuart Woods: Unintended Consequences; Carol Wright: Staten Island;

Allen Zadoff: Boy Nobody; Jasen Zaejian: Healing Personal Depression and Anxiety for Good; Muriel Zager: Survival: A Widow’s Journal; Bob Zeidman: Just Enough Electronics to Impress Your Friends and Colleagues; Ruth Zekowski: Ambiguous; Leni Zumas: The Listeners
On July 10, PEN American Center announced the shortlists for the 2013 PEN Literary Awards. Wiley Cash’s *A Land More Kind Than Home* was nominated for the PEN/Robert W. Bingham Prize, for an author whose debut work “represents distinguished literary achievement and suggests great promise.” Victoria Sweet’s *God’s Hotel* was nominated for the PEN/John Kenneth Galbraith Award for Nonfiction for an author of a book of general nonfiction “possessing notable literary merit and critical perspective and illuminating important contemporary issues.” David Quammen’s *Spillover* was nominated for the PEN/E. O. Wilson Literary Science Writing Award. W. K. Stratton’s *Floyd Patterson* was nominated for the PEN/ESPN Award for Literary Sports Writing. Marilyn Hacker’s translation of *Tales of a Severed Head* by Rachida Madani was nominated for the PEN Award for Poetry in Translation.


The 17th annual Books for a Better Life Awards ceremony was held on March 11 at The Times Center in New York City. Will Schwalbe won the Inspiration Memoir Award for *The End of Your Life Book Club*. Susan Terkel and Lorna Greenberg won the Child/Parenting Award for *The Circumcision Decision: An Unbiased Guide for Parents*.

The Mensa Society awarded Karl Albrecht its Lifetime Intellectual Benefit Award for contributions by a member to the understanding of human intelligence.

In 2013, Rudolfo Anaya’s classic, *Bless Me Ultima*, was adapted into a film directed by Carl Franklin. His children’s book, *How Hollyhocks Came to New Mexico*, illustrated by Nicolas Otero and translated by Nasario Garcia, was a National Federation of Press Women’s Communications Contest winner in the Children’s Fiction category.

The Fellowship of Southern Writers has named Wayne Caldwell the winner of the 2013 James Still Award for Writing about the Appalachian South. The awards ceremony was held on April 19, during the 17th biennial Celebration of Southern Literature.

Jamie Cat Callan received two international fellowships from the Virginia Center for the Creative Arts— one to write in Malta, the other to write in Auvillar, France.

Paula J. Caplan’s book *When Johnny and Jane Come Marching Home: How All of Us Can Help Veterans* won the 2012 Independent Publisher’s Silver Medal in the Psychology/Mental Health category. In September 2012, she received a Lifetime Achievement in Advocacy Award from the Institute on Violence, Abuse, and Trauma. Her dual-award winning play, *Shades*, produced by the Latino Theatre Company, had its world premiere in April 2013 at the Los Angeles Theatre Center.

Pat Carr won the 2013 Porter Fund Prize, an annual award presented to “an Arkansas writer who has accomplished a substantial and impressive body of work that merits enhanced recognition.”

We Are Here: Memories of the Lithuanian Holocaust by Ellen Cassedy won the 2013 Grub Street National Nonfiction Prize, the 2013 Towson Prize for Literature, and a Prakhin Literary Foundation Award. Her book was also a finalist in the 2012 ForeWord Reviews’ Book of the Year Award in the history category.

Barbara DeMarco-Barrett’s short story “Crazy for You” has been selected as one of the best U.S.-based stories in the Akashic noir series and will be included in an anthology *USA Noir*, compiled and edited by Johnny Temple, to be published in November.

Optimal Care in Childbirth: The Case for a Physiologic Approach by Henci Goer and Amy Romano won the American College of Nurse-Midwives Best Book of the Year Award.

Carolyn Hart received the Amelia Award at Malice Domestic 25 held in Bethesda, MD in recognition for her contributions to the traditional mystery. The award was first presented in 2012 to Elizabeth Peters (Barbara Mertz) and is named after Peters’s most famous character, Amelia Peabody.

Echo Heron’s historical novel, * Noon at Tiffany’s*, was a quarterfinalist in the General Fiction category of the Amazon Breakthrough Novel Award.
Three Green Rats, An Eco Tale by Linda Mason Hunter and illustrator Suzanne Summersgill was a finalist for the 2012 ForeWord Reviews’ Book of the Year Award in the juvenile fiction category.

Christoph Irmscher was a New York Times Book Review’s Editor’s Choice selection in February 2013 for Louis Agassiz: Creator of American Science.

Jennifer Post: Pure Space, Elegant Minimalism by Anna Kasabian was named one of the 35 Best New Design Books of 2012 by House Beautiful Magazine.

Lucine Kasbarian’s The Greedy Sparrow: An Armenian Tale won the 2013 Nautilus Silver Award in the Children’s Picture Book category.

In May 2013, Harper’s Magazine won the National Magazine Award for fiction, for Stephen King’s story “Batman and Robin Have an Altercation.”

Ric Klass’s novel Excuse Me for Living won first place for Fiction in the Los Angeles Book Festival. The novel is also a finalist for the 2012 ForeWord Reviews’ Book of the Year in the General Adult Fiction category. His narrative nonfiction book, Man Overboard: Confessions of a Novice Math Teacher in the Bronx, is a Montaigne Medal finalist, presented by the Eric Hoffer Book Awards for the most thought-provoking books.

At the Mystery Writers of America Awards Dinner on May 2, Margaret Maron was named Grand Master. The award is the pinnacle of achievement in mystery writing and was established to acknowledge important contributions to this genre, as well as a body of work that is both significant and of consistent high quality.

The Chalk Circle: Intercultural Prizewinning Essays, edited by Tara L. Masih, was awarded the silver Benjamin Franklin Award by the Independent Book Publishers Association. The collection also won silver in the 2012 ForeWord Reviews’ Best Book of the Year Awards in the Social Sciences category.

David F. McAllister and his wife Nancy, co-owners of C&M Online Media, Inc., recently sold their imprint Boson Books to Bitingduck Press of Altadena, CA. C&M was the first general, commercial e-book publisher on the Web, established in January 1994.

Eugene Mirabelli’s novel Renato, the Painter tied for first place in the Independent Publisher Awards’ Literary Fiction category.

The Webs of Varok by Cary Neeper won a 2013 Nautilus Silver Award in the Midgrade/Teen Fiction category and was a finalist for the 2012 ForeWord Reviews’ Book of the Year Award in the Adult Science Fiction category.

Katherine Neville is the first author elected to serve on the board of the Smithsonian Libraries. The Libraries consist of 20 individual libraries from the Panama Canal to the Cooper-Hewitt in New York City and contain over two million books.

Carla Norton received the Florida Writers Association’s 2012 Royal Palm Literary Award for The Edge of Normal in the Best Unpublished Mystery category. The novel will be published by Minotaur Books in the U.S. this fall.

Brendan O’Carroll’s sitcom Mrs. Brown’s Boys won several awards in 2012 for Best Sitcom, including the BAFTA, the People’s Choice Award (UK), and the National Television Award. The show also won the 2012 IFTA in the Best Entertainment category.

The Body in the Boudoir by Katherine Hall Page was a finalist in the Maine Writers & Publishers Alliance’s 2013 Maine Literary Awards.

Philip Raisor won the 2013 Palooka Press Chapbook Prize for Hoosiers: The Poems.

Betsy Robinson won Black Lawrence Press’s 2013 Big Moose Prize for her novel The Last Will & Testament of Zelda McFigg.

Russ Rymer won the Overseas Press Club’s Ed Cunningham Award for Best Magazine Reporting from Abroad. Along with photographer Lynn Johnson, he was cited for “Vanishing Languages,” which appeared in National Geographic Magazine.

Sherry Shahan’s Alaska-based novel Ice Island is on the Bank Street College of Education’s Best of Books, 2013 list for ages 9–12 in the Adventure category.

Lucia Shaw received the 10th annual Denise Levertov Award on May 16 in Seattle, presented to an artist or creative writer whose work exemplifies a sustained engagement with the Judeo-Christian tradition.

Desert Reckoning: A Town Sheriff, a Mojave Hermit, and the Biggest Manhunt in Modern California History by Deanne Stillman won the 2013 Spur Award for Best Contemporary Western Nonfiction and the Los Angeles Press Club Award for Best General Nonfiction. The book was also named a Southwest Book of the Year by the Pima County Library and was a finalist for the 2012 ForeWord Reviews’ Book of the Year in the True Crime category.

Cheryl Strayed won the 2013 Oregon Book Awards’ Readers Choice Award for her memoir, Wild.

Elizabeth Wein was a Golden Kite Honor Recipient for her young adult novel, Code Name Verity.
Akinyi Weiniger von K’Orinda-Yimbo received The Voice Magazine’s Outstanding African Writer Award for 2013.

Stephanie Grace Whitson’s The Shadow on the Quilt won the Romantic Times Magazine Reviewers Choice Award for Best Inspirational Romance of 2012.

Loving Andrew: A Fifty-Two-Year Story of Down Syndrome by Romy Wyllie won second place in the Non-fiction category of the Indie Reader Discovery Awards announced on June 1 at BookExpo America in New York City.

Bob Zeidman’s horror/comedy novel, Horror Flick, was an Honorable Mention at the 2013 San Francisco Book Festival. His political satire, Good Intentions, won the Indie Excellence Award in the Humor category and was a finalist in the Political Thriller category.
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