Roxana Robinson: Should Writers Have to Sing for Their Supper Too?
The Wages of Writing: The Authors Guild Member Survey
Going 50-50 with the Publisher: An Author’s Tale
Agents & Authors Roundtable: What to Look for When You’re Looking for an Agent
Chris Abani, who was born in Nigeria and has lived in the U.S. since 1999, is the author of *The Secret History of Las Vegas*. In a review of *Dragonfish* by Vu Tran in *The Times Book Review*, Abani wrote, “America is a nation not of immigrants but of refugees. Trauma, displacement and fanatical hope have marked all new Americans from the occupants of the *Mayflower* through every subsequent group who came to these shores (or who were brought here by force). . . . Novels by recently arrived Americans have tried to negotiate the struggle to fit into a new home that doesn’t always want them, and the nostalgia for all that has been lost. In this way new immigrant literature mimics its antecedents.”

REVISION: Kate Bolick is the author of the nonfiction *Spinster*. In a *Time* magazine review, Bolick was quoted: “A wholesale reclamation of the word *spinster* is a tall order. My aim is more modest: to offer it up as shorthand for holding onto that in you which is independent and self-sufficient, whether you’re single or coupled.”

WRITING AUTOBIOS: Tracey Thorn is the author of *Bedsit Disco Queen* and *Naked at the Albert Hall*. She is a member of the musical group Everything but the Girl. *The Guardian* asked her why so many female musicians of a certain age, including Kim Gordon and Chrissie Hynde, were producing memoirs. Thorn said, “I think it’s partly because we’re the generation who are a bit more empowered, and it’s partly to do with our fans growing up. People who liked our records now work at publishers and can commission us.”

SPORT BOOK: Mike Petri is the author of *R Is for Rugby*. He’s also a key player on the U.S. rugby team. When he and his wife were expecting their first child, they shopped for books. Petri said, “They had kids’ alphabet books about baseball, football, basketball. But nothing about rugby.” He and his wife began playing around with rhymes. “The most basic play / Is an old-fashioned switch. / One guy will strike, / But it’s hard to tell which.”

Petri said, “I’m not saying it’s Pulitzer Prize material or anything. But we’ve sold more than a thousand copies in a few months, and I’ve heard from people whose kids love it or who even use it themselves when they’ve watched rugby.”

NO SCENES: Charles Baxter has taught writing for 30 years and is the author of *There’s Something I Want You to Do*. Alison Lurie reviewed it for *The New York Review of Books*.

She chose the following quote from Baxter’s writing: “If you were raised in the genteel tradition, as I was, you avoid scenes. . . . We create a scene when we forcibly illustrate our need to be visible to others, often in the service of a wish or a demand. . . . Genteel people fear scenes.

“We . . . were not supposed to be dramatic. Drama was for others, or for the purposes of entertainment. Along with being told not to create scenes, I was told not to tattle on people, which was worded as, ‘Charlie, don’t tell tales.’”

ABOUT BIOS: George Bernard Shaw said: “When you read a biography, remember that the truth is never fit for publication.”

A MIGRATION: Robert Darnton’s latest book is *Censors at Work: How States Shaped Literature*. In an essay in *The New York Review of Books*, he wrote: “One of the most famous first lines among modern novels—“The past is a foreign country: they do things differently there” (L. P. Hartley, *The Go-Between*, 1953)—has migrated from literature to history and now serves as an article of faith among professional historians. It means: avoid anachronism.”

TOUGH JOB: Thomas Mann believed: “A writer is someone for whom writing is more difficult than it is for other people.”


The critic wrote: “Rereading Beerbohm one gets caught up in the intricate singularity of his mind, all of a piece yet full of surprises. . . . That his drawings and parodies should survive is no cause for wonder. One look at them, or into them, and his old reputation is immediately re-established: that whim of iron, that cleverness amounting to genius. What is odd is that his stories and essays should turn out to be equally durable.”

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**SHORT TAKES**

**E-book vs. Print**

The *New York Times* headline said it all: “The Plot Twist: E-Book Sales Slip, and Print Is Far from Dead.”

It turns out that the last five years of handwringing and “the-end-is-coming angst” within the publishing industry over e-books and the future of print were for nothing. Recent sales figures from the Association of American Publishers (AAP) found that e-book sales were down 10 percent in the first five months of 2015 and that e-book sales continue to represent only about 20 percent of the market, a figure unchanged in years.

The article also quotes a number of independent booksellers whose businesses are thriving, including Steve Bercu, co-owner of Texas’s BookPeople, who expects 2015 to be the store’s most successful year since it opened in 1970.

Just why e-book sales have cooled is a matter of opinion. The article’s author, Alexandra Alter, and the several hundred readers who weighed in on the subject online offered a wide range of possible explanations: e-book prices have risen; e-reading devices have yet to be perfected; print books are preferable for gifts; children’s books and picture books remain almost entirely on paper; e-books cannot be resold or given away; readers may be shifting to cheap or free self-published titles (the AAP’s figures do not include self-published book sales).

One reader summed up the mystery this way: “So the Chicken Littles were wrong. It’s not this or that. It’s this AND that. Who cares, as long as people read?”

**Publisher E-book Giveaways**

Publishers are getting into the hospitality business. Travelers who reserve stays of two or more nights through the booking website Hotels.com will now be given a free Simon & Schuster e-book, from a selection of seven rotating titles. Simon & Schuster’s chief marketing officer, Liz Perl, promoted the program by noting that “Business and pleasure travelers spend a great deal of time reading on the road and are an ideal audience with whom to share great new books.” The program follows the company’s earlier travel-related giveaway of copies of David McCullough’s *The Wright Brothers* to readers passing through fifty airports.

Simon & Schuster joins Penguin Random House, which has a program with Amtrak, and HarperCollins, which is collaborating with JetBlue. These programs are generally popular, although some question what these giveaways do for authors’ royalties.

**Amazon Book Review Policy**

Amazon has begun blocking users from reviewing books written by friends and family—with those relationships determined by the bookseller, based on social media activity. If you follow an author on Twitter, for example, Amazon will consider the author to be your friend or family, and send you this message if you try to post a review of the author’s book on its website: “We removed your Customer Reviews because you know the author personally. Due to the proprietary nature of our business, we do not provide detailed information on how we determine that accounts are related.”

Imy Santiago, an indie author and book blogger whose post on the issue helped spread the word about this practice, wrote in July, “It is a disservice to readers, and a backhanded slap in the face of all authors across the board.” She and others have pointed out that authors build their careers around networking, both online and off, and that under Amazon’s definition virtually all of an author’s fans on social media will be considered friends of the author.

Another frustrated writer, Jas Ward, has set up a petition at Change.org asking Amazon to change its policy. At press time, the petition had garnered more than 16,000 signatures toward its goal of 25,000 (the initial goal of 15,000 signatures was achieved in August). Ward also tried to contact Amazon CEO Jeff Bezos directly, but so far no one from the company has responded. The policy applies to Amazon.com as well as Amazon.co.uk and has been criticized by readers and authors in both countries.

**Pew Study on Library Use**

A new study on public library use from the Pew Research Center found that overall use is down compared to 2012 and 2013, even as appreciation for libraries remains strong. As *Publishers Weekly* summarized, “46 percent of respondents reported a visit to a physical library, or bookmobile, down from 53 percent in 2012; and 22 percent reported using a library website in the past year, down from 30 percent in 2013. Mobile access, meanwhile, is surging.”

Respondents expressed an interest in libraries providing services beyond book lending, including an expectation that libraries “support local education; serve special constitu-ents such as veterans, active-duty military personnel and immigrants; help local businesses, job seekers and those upgrading their work skills.” The findings showed an expectation that libraries keep up with new technologies as well, with around “30 percent of [respondents] 16 and older” stating that “libraries should ‘definitely’ move some print books out of libraries to make room for tech centers, reading rooms, meeting rooms and cultural events.”

The American Library Association responded to the survey’s
results with a statement from the organization’s president, Sari Feldman, who said that the survey “shows that public libraries are far from being just ‘nice to have,’ but serve as a lifeline for their users, as the survey shows more than 65 percent of those surveyed felt that closing their local public library would have a major impact on their community.”

Book Bans

The Immortal Life of Henrietta Lacks, by Rebecca Skloot, is the critically acclaimed and bestselling 2010 book about unauthorized—but ultimately medically groundbreaking—research on a black woman’s cancer cells following her death in 1951. The book resurfaced in the news at the start of this school year when Skloot announced on her Facebook page that a parent in Tennessee was attempting to have the book banned from Knoxville high schools. The parent, Skloot wrote, “confused gynecology with pornography” in her objection to a passage describing Lacks’s self-examination in which she discovered a tumor on her cervix. Lacks was suffering from a sexually transmitted disease contracted from her unfaithful husband; the objecting parent found the entire section problematic for teenaged readers.

Skloot has received support from many parties, including the vice principal of the school attended by the concerned mother’s son. He praised the book as well as teachers who include it in their curriculums, adding: “The next book that the sophomores are reading? Fahrenheit 451 . . . Oh, sweet, sweet, irony.”

A similar complaint spurred a New Zealand book ban initiated not by a parent but by the country itself. The Guardian reports that Into the River, a young adult novel by Ted Dawe, “has become the first book in more than 20 years to be banned in New Zealand after an outcry from a Christian group” objecting to “sexually explicit content, drug use and the use of a slang term for female genitalia.”

New Zealand’s Film and Literature Board of Review applied an “interim restriction” and ordered the book pulled from libraries, schools and bookstores, with fines imposed on those who do not comply. (It is not illegal for individuals to own the book, and readers in New Zealand can still buy it from online bookstores outside of the country.) Dawe, a longtime teacher, said that he is dismayed in large part because he knows the challenges teachers face trying to find books that will interest boys. His fellow authors chimed in on Twitter with supportive comments, both serious and humorous. Emily Perkins pointed out that the ban will probably make teenagers want to read the book more, and Raybon Kan tweeted, “Wait til the NZ censorship board finds out about 50 Shades of Grey. Bookshops will be EMPTY.”

Big Five Return to Agency E-Book Pricing

The Big Five publishers can once more claim a degree of control over e-book prices. In June, Penguin Random House became the last of the five to sign a new distribution deal with Amazon, and it’s become clear that PRH—like the other four—is selling e-books under a version of the “agency” sales model, which allows the publisher, not the retailer, to set prices. For now, PRH is pricing most hardcover new releases a few dollars higher than the $9.99 Amazon often favors.

This is just the latest development in an e-book pricing struggle that came to a head with the government’s 2012 price-fixing suit against Apple and the five biggest book publishers, U.S. v. Apple. The publishers and Apple argued that their cooperation was necessary to pry loose Amazon’s grip on the e-book market. All five eventually settled with the Department of Justice, signing agreements requiring them, for a period of time, to use the “wholesale” pricing model, under which the publishers would sell books to retailers at list price, and retailers could set consumer prices as low as they wanted. Each publisher was free to return to agency pricing with Amazon after the expiration of its consent agreement. It remains to be seen how the new pricing structures will affect publishers’ net profits, and, ultimately, authors’ e-royalties.

Lost Blume Book

This summer a Brooklyn man posted fliers in his neighborhood with the following plea for help finding an autographed 1970 edition of Judy Blume’s classic novel, Are You There God? It’s Me, Margaret:

“I accidentally gave this book away on Saturday July 25th in a box on the corner of Green & Franklin. This book is extremely important to my wife. It was a keepsake from her mother and is irreplaceable. On the inside cover is a note that reads ‘Christmas 1991.’ If you happened to pick up this book can you please get in touch with me.”

Photos of the flier reached Instagram and Twitter and, eventually, the author herself, who swooped in to help. “We’ll see if we still have that cover anywhere,” she told The Daily News. “It will never be the same. It will never say ‘Christmas 1991’ or ‘from Mom,’ but I can do my best. She may have to settle for a newer book, but I will sign it to her and write her a letter. I love interacting with my readers, and I really hope this story has a happy ending.”

The man who posted the flier, Leonard Lasek, thanked Blume profusely on Twitter, saying, “Thank you from the bottom of my heart . . . marriage saved!!!”
From the President
Should Writers Be Performers?

By Roxana Robinson

Recently I read an interview with a lively publishing maven who suggested that writers put on promotional performances in order to support their writing habit, rather like the rock bands who now make all their money on tours rather than record sales. He suggested that actual books had become like concert T-shirts—cultural objects of minor value whose main value was fan validation—proof that you had been there.

He thought writers should think up new ways to engage with their public—by making a deal with a local restaurant, for example, in which 10 people pay $150 each to have dinner with the writer. If the writer is shy, and doesn’t want to have dinner with 10 strangers, he suggested other possibilities, like writing postcards and sending them to people for a fee.

This is a bit like telling writers to become skydivers. Telling writers that they must engage with the world by standing up onstage in front of strangers, or by sitting down at the table with strangers, or by asking strangers on Kickstarter for an advance for the new book, is like asking them to become completely different people.

Writing is private. That’s the whole point. You do it alone. It’s you and the paper. You and the idea. You and the word. Standing up onstage and giving talks is a different thing.

Smiling and answering questions at a cocktail party is a different thing. Going to a local restaurant and asking them to find 10 people who are willing to pay $150 to watch you eat is a really different thing. It’s hard enough for a new writer to ask a local bookstore to stock her book.

But, really, the main issue here is one of responsibility. Whose job is it to promote your book, yours or your publisher’s? Which of you has qualified professionals who are skilled and experienced in doing just this? Which of you is a complete amateur, with fundamental professional reasons for not doing this job? It’s mystifying that publishers should have shifted this responsibility onto writers, who are by definition experts in something else entirely.

This is not the first mystifying move made by the publishing industry. When the big houses cut their advertising budgets, in so doing they slashed the revenues to book review sections across the country. Many of those book sections closed down, eliminating the reviews and the lively literary discourse that they promoted. It was a strange way for the publishing industry to treat its own most vital marketplace.

Now publishing houses are pouring their resources into seven-figure advances for a very small number of possible blockbusters. These books get the lion’s share of the advertising budget, the promotional energy and the attention. The majority of books—the mid-listers, riskier books that get modest advances—get relatively little promotion or attention. It’s another mystifying response to the suppliers on whom publishers depend.

Why publish a book without supporting it? Why risk so much money on a blockbuster that may fail colossally? Why publish a book without promoting it? Because the fact is that promotion is not the writer’s job. Promotion is the opposite of writing. It’s depleting. And this kind of “creative” promotion, is an act of desperation.

You can’t be a writer while you are onstage, answering questions. The only place you can be a writer is alone with your mind, answering the questions that come from yourself, the ones you can reconsider, shift and re-phrase, until you find yourself heading out alone into the ranges you want to explore. Most writers are not performance artists. When we’re in public, we’re not writing. When we’re writing, we’re not in public. Which of these is a better use of our time?

Moreover, if you’re not well-known, none of these strategies of self-promotion is useful. No one will pay money to see an unknown writer. No one cares about your postcards. Whatever you can do, as a little-known author, is small compared to what your publisher, a large organization with full-time professionals, could do. And if a publisher wants your work, why isn’t he willing to support it? Why not write a commitment to promotion and publicity right into the contract?

It might be better if the publishing houses let writers do what they’re good at, which is writing, and if they did what they’re good at, which is editing and producing and promoting, the books they have bought, believe in and support.

That’s called division of labor, and in the world of economics it’s quite highly thought of.
Dear Authors Guild Members,

First, I’d like to extend a warm welcome to all of our new members, many of whom joined at the behest of existing members, or through our outreach effort with the American Literary Translators Association. It’s essential that we continue to grow and it’s especially important that we continue to reach out to emerging, younger writers, when they are at a particularly vulnerable point in their careers and likely need our services the most. Each generation of authors faces its own distinct challenges, but today’s new writers could face a particularly hard road in trying to make ends meet through their writing. Bearing that in mind, if you know a young writer who might stand to benefit from the Guild’s advocacy or services, please invite her or him to join us.

We have much to look forward to. This fall we’re hosting a new series of phone-in seminars and panel discussions, and we’ll be attending a number of book festivals around the country in the coming year. We just returned from the Novelists, Inc. conference in sunny Florida, and, looking forward, we plan to have a big presence at the Association of Writers and Writing Programs Conference in Los Angeles March 31–April 2, 2016, so consider joining us there. In New York, under the stalwart leadership of Authors Guild council member Rachel Vail we are relaunching the children’s book author group. The group’s monthly meetings, seminars, workshops and purely social events around New York City will be listed on the Authors Guild Events Page.

We continue to work on facilitating author events outside of New York. Let us know if you are willing to host or organize an event in your town. It can be as simple as a gathering in a bar or as formal as a panel discussion, interview or reading.

We have now reviewed the results of our 2015 member survey, and in mid-September we published a synopsis of our income study (“The Wages of Writing”) on our website. (See page 9.) Overall, the survey showed that author incomes are down, hybrid authorship is up, and authors are spending more time marketing than ever before. Rachel Deahl wrote a strong piece for Publishers Weekly featuring the survey results, which have already proven helpful in various advocacy initiatives.

The survey also showed us that the vast majority of you love the Bulletin and, somewhat surprising in the digital era (though not really), want to keep receiving it in hard copy. We listened, and we’ll continue to print and mail out the Bulletin. But, to save some printing costs, we will send the Bulletin by e-mail instead of print to those who prefer to read it electronically. (We will be in touch by e-mail to find out whether you are in that pool.) After a year of many transitions, we will get back to a regular publishing schedule next year, but plan to publish only three times a year due to necessary budget cuts.

We have been particularly busy on the advocacy front. We continue our lobbying efforts in D.C. to ensure that authors’ voices are heard loud and clear during the ongoing copyright review in the House Judiciary Committee.

Some of our advocacy efforts have drawn press attention to the work we’re doing on behalf of our members and the nation’s authors generally. There’s no doubt that some of the nation’s largest technology companies are profiting healthily from delivering pirated content from their platforms. Our July letter to Congress, asking for help combating online book piracy, was widely reported. What we’re asking is simply that these rich corporations be held accountable. When an Internet service provider receives notice that it’s hosting infringing material, it should be required to take it down and keep it down. That’s not asking too much.

You also may have seen the Guild in the news for our leadership in an authors’ movement to persuade the Department of Justice to investigate Amazon for anti-
trust violations in the book markets. Council Member Douglas Preston, in cooperation with the Guild, co-authored a letter to the DOJ, warning that Amazon’s dominance of the book ecosystem threatens the free flow of information and free expression in a manner that is not healthy to our literary culture. Thanks to all of you who signed onto the letter, which was also endorsed by the American Booksellers Association and the Association of Authors’ Representatives.

We’ve also been at work promoting a licensing solution to the mass digitization of copyrighted books. The U.S. Copyright Office, in the wake of its Report on Orphan Works and Mass Digitization, collected comments from the copyright community on the administration of a collective licensing “pilot” for the mass digitization of literary works. Our comments, submitted on October 9, recommend a collective license for out-of-commerce books for research use, so that out-of-print books, the mainstay of most libraries, might be accessible to students and researchers online and not wither away on library shelves unread. Authors who own the rights to their works would be paid a license fee and would be able to opt out of the license on a wholesale basis or for individual books. (See page 12.)

Speaking of our advocacy, it is important to remind ourselves that we are the only organization in the U.S. out there every day fighting for authors’ rights: we actively lobby and litigate day in and day out to ensure that authors receive fair treatment and compensation and that writing remains a viable profession. But it is expensive. We hope and trust that authors will join their fellow writers to support our advocacy endeavors by joining, even if they do not need our services. And members can support our advocacy by spreading the word through social media or blogs, or even good-old word of mouth.

Although we raised our fees last year, we still kept them relatively low, refusing to raise them to align with cost of living increases. We want to make sure that membership is affordable for all authors. But membership dues cover only one-third of our basic operating expenses, and so we find ourselves facing the need to go into the fundraising business, and we need to do it without detracting from our important work. Needless to say, we cannot do it without you. You’ll see a bright green “donate” tab at the the top of our newly updated home page [authors guild.org] which will take you to the Authors Guild Foundation and Foundation Legal Defense Fund page. The Legal Defense Fund will be used to help finance the advocacy and litigation that we undertake for the benefit of authors generally. While we realize many of you have little to spare right now, perhaps you have friends and family who you think would like to contribute to the cause, and we hope financially successful authors will want to contribute as well.

More importantly, we want your thoughts on our advocacy positions. As a membership organization, we exist to serve you and fight for your rights. Understanding that inevitably there will be disagreement on a number of issues, we will actively seek your opinions on various issues this year through surveys or simple e-mail requests, and we welcome your thoughts on our advocacy efforts and initiatives at any time. Are there issues you feel we are not currently focusing on or could do more to address? Do you agree or disagree with positions we have taken? What are your biggest concerns in today’s publishing world? What aspects of your writing life do you need the most help with? Let us know, with an e-mail to staff@authors guild.org or a message in the comments section of one of our blog posts.

As you no doubt already know, on October 16 as we were about to go to print, we learned that the United States Court of Appeals for the Second Circuit held that Google’s wholesale copying of millions of copyright-protected works is a fair use (see page 11). We received the news with disappointment, but we’re resolved to keep up the fight in the hope that the Supreme Court will see fit to remedy a decision that interferes with authors’ rights in their work and their ability to profit from it.

Onwards,
Mary Rasenberger
Executive Director
The Wages of Writing

This spring, we conducted our first major member survey since 2009.1 We used 2009 as the starting point in order to gauge how the digital transformation has affected writers’ livelihoods. In 2009, the e-book hadn’t yet gained a foothold in the marketplace. A Codex Group survey that year showed that less than 5 percent of book buyers had purchased an e-book the previous month. By 2010, the industry understood that sweeping digital change was underway: increasingly sophisticated new devices had begun to ignite unprecedented demand for and growth of digital media. The potential scope and intensity of that growth were already feared by many. After massive expansion, there were signs that, by 2015, the digital market had started to stabilize. In a recent analysis, Codex found that nearly 50 percent of readers had purchased an e-book in the last month, a tenfold increase from 2009.

The main finding from the survey is that respondents’ mean income is down significantly over this period. This is the result of a confluence of factors. The tech sector and free-content advocates have pushed fair use to the breaking point. Royalties for uses like course packs, excerpts and even full-text digitization, as well as library replacements, have dried up, thanks to the new “free” economy (where authors bear the costs while others freeride). The ubiquity of e-books means that online book piracy is a greater threat than it was in 2009. We’ve seen major consolidation within the traditional publishing industry, which means less diversity among publishers, and with most major publishers now owned by multinational corporations, there’s a tighter focus on the bottom line. These phenomena—along with Amazon’s strong-arming publishers and authors on price and other terms on its way to becoming an industry behemoth, leaving thousands of brick and mortar bookstores shuttered in its wake—have combined to make the business of authorship less profitable than it was six years ago.

Authors’ income is down across all categories

The writing-related income of full-time book authors has dropped 30 percent since the 2009 survey, from

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1 The 2015 survey was commissioned by the Authors Guild and conducted by the Codex Group, a leading publishing industry research firm.
$25,000 to $17,500. Part-time authors saw an even steeper decline, as their writing income over the same period dropped 38 percent, from $7,250 to $4,500.

Most authors can’t survive on writing alone
Only 39 percent of authors supported themselves exclusively through writing-related work. The necessity of working supporting jobs cuts into the time authors would ideally spend on writing projects.

Authors increasingly take a “hybrid” approach to publishing their books
Of the authors surveyed, 33 percent have self-published a book. This suggests that authors increasingly feel they have a choice of going with a traditional publishing house or taking the indie route on a per-project basis. And, we suspect, authors are starting to see self-publishing as an outlet for projects that have not found a home with traditional publishing houses.

Authors spend more time on marketing, less on writing books
Authors’ time spent marketing and communicating with readers skyrocketed 59 percent since 2009. Traditional publishers’ promotional budgets have all but dried up, and many publishing contracts now require authors to maintain a web and social media presence. Many authors, both traditionally and self-published, have proven adept at using new technologies to connect with readers.

Full-time authors with 15+ years of experience saw the greatest income declines
The survey shows that, for full-time authors, writing-related income generally increases with experience. But when the market contracts, these same authors have the biggest losses. In the new economy, it appears that experience isn’t translating into rising income.

The picture’s not pretty, but there are silver linings. The rise of hybrid authorship is an exciting development: authors now have more freedom in choosing a method of publication and promotion that suits the needs of the specific book they’re trying to market. And the opportunities for author-reader engagement are unsurpassed in the history of book publishing—even if this engagement competes with an author’s writing time.

Nonetheless, when it comes to income, the results are not good. Authors need to be cut in more equitably on the profits their publishers see. And copyright law and policy need to be tailored to put authors’ concerns at the forefront. With these survey results in hand, the Authors Guild has a clearer picture of the economic realities of authorship today, one that we can use to more effectively advocate for working authors. ✪
U.S. Appeals Court Ruling Leaves Authors High and Dry

On Friday, October 16, the U.S. Second Circuit Court of Appeals released its long-awaited decision in *Authors Guild v. Google*, finding that “Google’s copying is fair use . . . and is therefore not infringing.” Holding that Google’s digital copying was “transformative” and offered the public no “meaningful substitute” for the copyrighted works, the court found that the project “passed the test for fair use.”

Executive Director Mary Rasenberger responded immediately, making clear the Guild’s intention to pursue the case to the Supreme Court. An edited version of the release follows:

NEW YORK, Oct. 16, 2015 – The Authors Guild, America’s oldest and largest professional organization for writers, questioned today’s decision by the United States Court of Appeals for the Second Circuit in *Authors Guild v. Google* allowing Google to digitally scan authors’ published work without first seeking permission.

“The Authors Guild is disappointed that the Court has failed to reverse the District Court’s faulty interpretation of the fair use doctrine,” said Mary Rasenberger, Executive Director of the Authors Guild in New York.

“America owes its thriving literary culture to copyright protection,” added Rasenberger. “It’s unfortunate that a Court as well-respected as the Second Circuit does not see the damaging effect that uses such as Google’s can have on authors’ potential income. Most full-time authors live on the perilous edge of sustainability; as our recent income survey showed, even relatively small losses in income can make writing for a living unsustainable.”

The Authors Guild will pursue an audience with the Supreme Court, Rasenberger said, adding, “We will not give up our fight. Authors need to be protected against the unauthorized, wholesale copying of their books for commercial purposes.”

In 2013, Judge Denny Chin, then sitting on the bench of the U.S. District Court for the Second District of New York, found that Google’s copying of books was fair use. The Authors Guild and others appealed that decision, arguing that Google effectively asked the Court to rewrite copyright law when it should have obtained licenses from the rights holders before scanning their works.

“Google Books does offer some benefits to researchers; many of our members use Google Books for research. But Google should pay authors for the use of their books, like any other service,” said Rasenberger, who took over the top position at the Guild last year. “We are disheartened that the court was unable to comprehend the grave impact that this decision, if left standing, could have on copyright incentives and, ultimately, our literary heritage. We trust that the Supreme Court will see fit to correct the Second Circuit’s reductive understanding of fair use, and to recognize Google’s seizure of property as a serious threat to writers and their livelihoods, one which will affect the depth, resilience and vitality of our intellectual culture.”

—we trust that the Supreme Court will see fit to correct the Second Circuit’s reductive understanding of fair use, and to recognize Google’s seizure of property as a serious threat to writers and their livelihoods, one which will affect the depth, resilience and vitality of our intellectual culture.

—Mary Rasenberger

What’s New?

For regular updates on the publishing industry, copyright and other issues, check out Industry & Advocacy News at www.authorsguild.org

—Mary Rasenberger

have obtained licenses from the rights holders before scanning their works.

“Google Books does offer some benefits to researchers; many of our members use Google Books for research. But Google should pay authors for the use of their books, like any other service,” said Rasenberger, who took over the top position at the Guild last year. “We are disheartened that the court was unable to comprehend the grave impact that this decision, if left standing, could have on copyright incentives and, ultimately, our literary heritage. We trust that the Supreme Court will see fit to correct the Second Circuit’s reductive understanding of fair use, and to recognize Google’s seizure of property as a serious threat to writers and their livelihoods, one which will affect the depth, resilience and vitality of our intellectual culture.”

A link to the full ruling can be found at www.authorsguild.org.
Extended Collective License Would Offer “Unprecedented Access to Millions of Books”

It’s never been done in this country, but extended collective licensing, a staple of mass digitization projects in northern Europe, is a step closer to making its way to the U.S. The licensing regime, also known by its acronym ECL, enables the use of large categories of works without requiring the user to negotiate individually with every rightsholder. Such an arrangement is especially useful in the mass digitization context, where the cost of negotiating individual licenses for the many works involved is often prohibitive. The U.S. Copyright Office, in the wake of its Report on Orphan Works and Mass Digitization, has been collecting comments from the copyright community on the administration of an ECL “pilot program” covering literary works, among other things.

In comments submitted by the Authors Guild, we stipulate that digital copies of books already digitized by Google and used in Google Book Search should be eligible for the pilot program. Also, we advocate that the class of books at issue should be limited to out-of-commerce books for research use. It’s important that the license be limited to out-of-commerce works so as not to interfere with existing digital markets. And importantly, authors and other rightsholders must be able to opt out of the license on a wholesale basis or at the level of the individual book.

Research is increasingly moving online, and we owe it to our past and our future to make sure the best of our culture is available there. We think an ECL solution to mass digitization is the best way to make that happen, because it’s a win for everyone who has a stake in the outcome. The public would get online access to the entirety of immensely valuable works of science and imagination—not just the snippets offered by Google. Authors would get access to a much-needed revenue stream in an era where fair pay is harder to come by than ever. And libraries and other institutions would reap the benefits of digitizing their collections and more effectively fulfilling their missions in the digital era.

At this point, many details remain to be ironed out, but we’ll be at the table to make sure that authors’ interests are accounted for. In the meantime, we’re encouraged by the Copyright Office’s affirmation that “despite the complexity of the issues surrounding creation of an ECL regime in the United States, they are by no means insurmountable.”

You can read the Authors Guild’s extended comments on the Guild website, in the Industry & Advocacy News section.
The Authors Guild Fair Contract Initiative

An Update

I

n the last issue of the Bulletin, we previewed our latest advocacy project, the Authors Guild Fair Contract Initiative. We hoped, among other things, to start a conversation within the industry about antiquated and unfair clauses in the “standard” contracts that publishers slip under the noses of unwitting writers—especially the young and unagented among us.

We are happy to say that we succeeded in starting the conversation. The support we have received from authors’ organizations around the globe has been overwhelming. Publishing industry observers from all corners have been voicing opinions on the individual Fair Contract installments, which, as of press time, have dealt in depth with four individual contract clauses. The pieces have stirred up disparate views and plenty of controversy and that is all part of the plan—to get people talking about these obsolete or draconian clauses. Overall, the sentiment from writers, agents and commentators alike has been, “It’s about time the Guild pointed this out. Now let’s see some change.” That is exactly what we intend to do—start inciting change through dialogue with publishers and agents, with our members’ help.

You can find the full text of all our entries to date at authorsguild.org. If you’ve been hibernating, here are some key excerpts from the series:

Half of Net Proceeds Is the Fair Royalty Rate for E-Books
Traditionally, the author-publisher partnership was an equal one. Authors earned around 50 percent of their books’ profits. But today’s standard contracts give authors just 25 percent of the publisher’s “net receipts” (more or less what the publisher collects from a book sale) for e-book royalties . . .

That doesn’t look like a partnership to us.

We maintain that a 50-50 split in e-book profits is fair because the traditional author-publisher relationship is essentially a joint venture. The author writes the book, and by any fair measure the author’s efforts represent most of the labor invested and most of the resulting value. The publisher, like a venture capitalist, invests in the author’s work by paying an advance so the author can make ends meet while the book gets finished.

A Publishing Contract Should Not Be Forever
Diamonds may be forever, but book contracts should not be. There’s no good reason why a book should be held hostage by a publisher for the lifetime of the copyright, the life of the author plus seventy years—essentially forever. Yet that’s precisely what happens today.

Authors victimized by this status quo know that it’s long past time for publishers to offer a fair deal. We believe three basic changes are urgently needed: (1) time-limited contracts, (2) a clause that provides for reversion of unexploited rights, and (3) a specific new unchallengeable definition to replace historic “out of print” clauses that are not remotely relevant in the electronic age.

Authors, Keep Your Copyrights. You Earned Them.
Most trade publishers do not ask for an outright assignment of all exclusive rights under copyright; their contracts usually call for copyright to be in the

The sentiment from writers, agents and commentators alike [in response to the Fair Contract Initiative] has been, “It’s about time the Guild pointed this out. Now let’s see some change.”

A publishing contract should not be forever.
alty accounting, and as usual, those terms are mired in the practices of a bygone age. For openers, most publishers pay royalties twice a year on income that they may have received as long as nine months before. In an era when financial records were kept by hand in ink, that might have made some sense; today, when computers account for money and it can be transferred electronically to authors’ accounts, it makes none. We understand that publishers themselves often have to wait months for payment from wholesalers and retailers, but in a world where Amazon manages to pay its Kindle Direct authors monthly, there’s no reason why traditional publishers can’t tighten up the turn-around time and pay their authors more quickly. We believe that fair book contracts should specify quarterly payments of income received by the publisher no more than three months in the past.

Up next, we’ll take on dwindling advance payments, reserves against returns, authors’ approval rights and more. Stay tuned, and help us keep the conversation going. ✦

Y. That’s what non-compete clauses were designed to prevent, and when that’s all they actually do, we’re fine with them—although other provisions in publishing agreements accomplish the same thing. Unfortunately, many standard publishing agreements contain sweeping non-compete terms that can be used to restrict what else an author publishes and when. That’s an unacceptable restriction on authors’ livelihoods in an era when many writers are struggling just to make ends meet.

**Option Clauses Shouldn’t Hold Authors Hostage**

A few authors are lucky enough to sign multi-book deals worth six or seven figures. But many more writers, without really thinking about it, tie themselves to unprofitable multi-book deals in the form of one-sided options or “next book” clauses—and they do it for free.

Option clauses in publishing agreements vary, but generally they give the publisher first dibs on the author’s next book. Some options are relatively benign, granting the publisher rights of first look or first negotiation (i.e., the right to see the next book first and negotiate for a limited period of time after reviewing it). Others are never fair, in our view, such as clauses that grant the publisher a right of last refusal (i.e., even if the publisher turns it down at first, it can come back and match any other publisher’s offer) or the ability to wait until after the first book is published, or the second book completed, to make up its mind. Clauses that do so unfairly impede an author’s ability to write and publish.

**Publishers’ Payment and Accounting Practices Need to Keep Up with the Times**

Publishing agreements, as our Fair Contract Initiative keeps demonstrating, are among the most one-sided documents most authors ever see. But they enable another set of documents that can be at least as baffling and unjust: royalty statements. (See page 19.)

The publishing contract dictates the terms of royalty accounting, and as usual, those terms are mired in the practices of a bygone age. For openers, most publishers pay royalties twice a year on income that they may have received as long as nine months before. In an era when financial records were kept by hand in ink, that might have made some sense; today, when computers account for money and it can be transferred electronically to authors’ accounts, it makes none. We understand that publishers themselves often have to wait months for payment from wholesalers and retailers, but in a world where Amazon manages to pay its Kindle Direct authors monthly, there’s no reason why traditional publishers can’t tighten up the turn-around time and pay their authors more quickly. We believe that fair book contracts should specify quarterly payments of income received by the publisher no more than three months in the past.

Up next, we’ll take on dwindling advance payments, reserves against returns, authors’ approval rights and more. Stay tuned, and help us keep the conversation going. ✦

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**The Authors Guild Foundation Legal Defense Fund**

Over the past ten years, the Authors Guild has fought on a number of fronts to protect authors’ rights on behalf of the entire creative community. We’ve fought in the courtroom when necessary, but we’ve also stood up against Amazon’s industry dominance and publishers’ unfair contracts in the press, in the corridors of government, and in publishers’ boardrooms. The benefits of our efforts extend to creators everywhere.

In order to continue our advocacy efforts without sacrificing member support and daily operations, we have established the Authors Guild Foundation Legal Defense Fund, created through the Authors Guild Foundation to support the Authors Guild’s key advocacy initiatives. With the help of your **tax-deductible contribution**, we will continue the fight to ensure a competitive publishing industry for decades to come, and to ensure that strong copyright protection and creators’ rights continue to have an advocate in our legal system.

If you prefer to give to other campaigns, your donation to the Authors Guild Foundation will support educational programs for authors and help protect the livelihood of writing. Donate at www.authorsguild.org/donate/.
Q. I find a lot of typos in the e-books that I read. Is there anything I can add to my book contracts to prevent this from happening to my work?

A. The problems tend to occur more frequently with older books than new ones. This is likely because the digital files for those books are often based on OCR (optical character recognition) scans of a printed book rather than, as now, from the word processing files submitted by an author. Those scans require a lot of cleanup and careful proofreading to eliminate the errors inherent in the procedure. Most publishers do a good job of correcting the digital text, but it behooves an author to get an advance digital copy to proofread also.

If you’re signing a new contract for an old book or amending an existing contract to grant e-book rights, specify that you must receive a digital copy of the e-book to proofread in sufficient time for your corrections, if any, to be made before it is published. If your publisher plans to issue one of your existing books as an e-book and already has the rights, I suggest you handle the matter informally and request a digital copy from your editor to proofread.

Q. In my next contract, I plan to ask that my book be considered out of print if royalty checks for any two consecutive six-month periods total less than $350. Is there anything else I should ask for in this section?

A. Consider these:

1. Specify that the $350 must derive only from royalties on sales of the publisher’s English-language print edition in the United States (and Canada, if it has those rights) and from royalties on sales of the publisher’s English-language e-book edition anywhere. Money from subsidiary rights licenses should not be included.

2. Include a cost-of-living escalation clause to minimize the effect of inflation if your book stays in print for a long time. Inflation causes the price of almost everything, including books, to go up. If the price of your book goes up, so does the amount of the royalty you get on each copy sold. So while $350 could represent royalties on two hundred copies today, it could represent only one hundred copies should the book’s price double over time.

Since there are several different Consumer Price Indexes published by the Bureau of Labor Statistics, it is important to specify which one will be used (e.g., CPI-U, “All Urban Consumers”). Also, specify the base year to be used for the computation—your accountant or lawyer will tell you the proper one to use—and how often the adjustment should be made (perhaps every five or ten years). For more information about these clauses, see 1.usa.gov/1ihftF9.

3. Add that the book will also be considered out of print if the total number of copies sold during the period is less than a specified number (e.g., 250).

4. Consider having separate out-of-print provisions for the print and digital editions. This is likely to be more important for the print edition and would let you try to get another hardcover or trade paperback publisher if your publisher’s edition is out of print and it hasn’t licensed those rights.

5. Require that the out-of-print provisions in any license for U.S. English-language book rights, especially if to a company affiliated with the publisher, be at least as strict as those in your contract.

Q. I know that it’s been fairly standard to list, early in a contract, the rights an author is granting to a publisher and then conclude that list with the phrase “and to license such rights to others” or similar language. Is this appropriate in the e-book era too?

A. The seemingly benign and historically standard right for a publisher to “license such rights to others” should not apply to publication of an English-language e-book edition for sale in the United States. Given the current state of technology, there is no valid reason for the publisher with whom the author signed the contract to not also publish that edition.

The situation is not comparable to hardcover pub-
lishers licensing paperback rights to a mass market publisher. The publishing and marketing of mass market paperbacks require separate skills and resources (cover art, distribution channels and marketing). Treating the licensing of U.S. English-language e-book editions for the general reading public as a subsidiary right and allowing the original publisher to license those editions would halve an author’s royalties from those e-book sales without any compensating benefit to the author.

Any exceptions that the author and publisher consider appropriate (e.g., licenses for book club editions and licenses to non-publishing companies that wish to use the e-book as a premium) can be described specifically and included in the subsidiary rights section of the contract. Most likely that will be unnecessary, however—at least for book club and premium editions—since the subsidiary rights sections for such licenses generally do not limit those provisions to print editions only.

Q. What is “quartering”?

A. Quartering describes a nefarious practice of certain (primarily textbook) publishers that results in authors receiving less in royalties than they properly anticipated when signing their contracts. It occurs when publishers who pay royalties based on net—the amount a publisher receives from the book’s purchaser—sell large quantities of a book to an affiliated company at a price lower than it would have charged distributors, booksellers or customers.

The author’s royalties are based on this lower price notwithstanding that the affiliate then sells those books to distributors, booksellers and other customers at the higher prices the publisher would have charged had it sold them directly to those customers itself. Presumably because of naiveté or poor advice, some contracts signed by authors even specifically authorize this practice!

While language specifically permitting this could appear anywhere in a contract, it is most likely to be in the subsidiary rights or royalties section. Here is the offending language from one contract, contained under a heading titled “Other Royalties”:

“Publisher shall pay Author a royalty of 10 percent of Publisher’s net receipts from each copy of the domestic print or electronic edition of the Work sold by the Publisher for use outside the United States to an international subsidiary, branch, affiliate or division of the Publisher or to a third party.”

This topic is discussed in more detail in my column in the Spring 2011 issue of the Bulletin (see bit.ly/1K0rFIU).

E-mail questions to QandAColumn@authorsguild.org. Questions are often edited for readability or to make them more broadly applicable.

The answers in this column are general in nature only and may not include exceptions to a general rule or take into account related facts that may result in a different answer. You should consult a lawyer for information about a particular situation. No question submitted, or answer provided, creates an attorney-client relationship with the column’s author.

A Fair Deal
The Perspective of a Midlist Author

By Jon Turk

Back in 1972, after my first book sold reasonably well, my editor marched me up to the president’s office. In a fatherly, friendly, but austere voice, the white-haired man told me: “There are two kinds of authors in this world. Those who make money for the company. And those who don’t make money for the company.”

It’s now 2015, 45 years since I handed in my first typewritten manuscript. In that time, I’ve published 28 books. Every manuscript has paid off its advance; every book has made money for the company. But I’ve never made a lot of money for anyone, myself included. As they say in the lingo: I’m a midlist author.

So jump to 2012. I pass security in the venerable, historic Flatiron Building in New York City and take the elevator up to meet with my current editor at St. Martin’s Press. The mood here is more like being in the principal’s office in fourth grade than in my father’s library. He is lecturing me about my shortcomings.

“But didn’t The Raven’s Gift make money for the company?” I protest meekly.

“Yes.”

“Yes.”

“No. We’re going to pass on this one.”

I started off as a textbook writer. It’s formula work. If you play by the rules, have a good team behind you, and are a nano-smidgen more creative than the competition, you can prosper. But ultimately I wanted to be a trade book writer. So I penned Cold Oceans, got a contract with Harper-Collins and took a 90 percent cut in pay. And made money for the company. But not a lot of money.

The low point in my trade book career was the day I was driving across the country on a book tour, minus an expense account, sleeping in roadside ditches and eating peanut butter sandwiches. I veered off the freeway to travel north on blue highways, into the Upper Peninsula of Michigan, to give a reading. I spent $50 on gas, had an audience of eight and sold two books. No big deal. I’d been there before. But when the matronly bookstore owner charged me $0.99 for the bottle of water she handed me before the event, I felt that I had hit rock bottom. I quietly handed her a dollar, made sure to pocket my change and got back in my battered pickup to find a place to spread out my sleeping bag for the night.

Over the next few months, I decided that to survive, I could no longer be a writer who told stories. I must become a storyteller who used writing as one tool in a quiver of tricks. I studied acting and stage presence, stopped reading in front of audiences and tried to emulate the ancient bards of Greece and the jugglers and court jesters of medieval kings. People started paying me to give readings. And with the honorariums, I got much bigger audiences. Then, I joined a modern dance troupe to create a dance performance of The Raven’s Gift and told the story through music, visuals and ecstatic motion.

Over the years, I performed as a storyteller at Lincoln Center and danced in Boston and San Francisco. But despite the fact that I was standing in front of audiences, selling books and slowly building “brand recognition”—that critical “platform” to promote my new book, I still walked out of the seven-minute interview at St. Martin’s with a rejection of my newest proposal that stung.
Get real. You’ve never made a lot of money for anyone, have you, Jon?

When my agent retired a few months ago, I faced a decision: Retire and abandon my new manuscript, self-publish or plunge back into the system and find a new agent. No, no and no. Instead I fired off an e-mail to a friend of mine, Randal Macnair, who owns Oolichan Books, a small, but well-established and well-respected Canadian publishing company. An hour after hitting the “Send” button, after a quick flurry of e-mails, we had agreed, in principle, to work together. But what kind of contract should we write?

“The Authors Guild Fair Contract Initiative,” the lead article in the Spring/Summer 2015 Bulletin, reminds us that, “The traditional publishing enterprise was conceived as a joint venture, with authors and publishers working as partners...” So why not toss out all the complications, all the legal mumbo jumbo, and create a true partnership? The contract Randal and I wrote was simple, short and radical. Instead of asking Oolichan for an advance, I would split the cost of production, printing, and so on, 50-50 with them. Expenses for promotion, subject to agreement to incur them for travel, etc., were also to be shared 50-50. Finally, we would split the income, from whatever source, also 50-50. Publishers, and authors, sell books at many different prices and discounts, in my case from full retail on my website or at my performances, to less, less and even more less through a variety of distributors and retailers and in electronic formats. No need to fight over a zillion separate clauses; we share everything, together, 50-50.

To quote again from the “Fair Contract Initiative” article: “One agented contract we’ve seen includes at least 96 changes from the original...” Ninety-six changes? We have barely 96 sentences.

I turned in my manuscript last week, Crocodiles and Ice: A Journey into Deep Wild. No one knows how this

E. L. Doctorow, 1931–2015

Author E. L. Doctorow, a longtime supporter of the Guild, died on Tuesday, July 21, in New York City. He was 84 years old.

Doctorow had been a board member of the Authors League Fund since 1980, and a member of the Authors Guild since 1975. His books—among them World’s Fair, Ragtime, The Book of Daniel, and Billy Bathgate—captured the popular imagination while winning critical acclaim. The author of twelve novels, three books of short stories, and a play, Doctorow was best known as a writer of historical fiction.

His many honors include the PEN/Saul Bellow Award for Achievement in American Fiction, the National Book Foundation’s Medal for Distinguished Contribution to American Letters, and the Library of Congress Prize for American Fiction.

Doctorow approached the profession of writing with wisdom, humor, and humility. When asked, in an interview with the National Book Foundation, how he hoped his books would affect history, he answered with characteristic insight.

We know, any of us who work as writers, the history of our profession and the perversity of it. How good people write bad books and bad people write good books. How good books disappear and bad books don’t disappear. And how for every champion of the very idea of what it is to be a writer, like Emerson, you have some genius working in obscurity, like Melville, who after a brief early success dies and only happens to be rediscovered forty years after his death. So the unpredictability of the value of any work is the essential message that you get when you think about these things.

Doctorow is survived by his wife, Helen Seltzer; a son; two daughters; and four grandchildren. The Authors Guild is honored by his many years of support and friendship.

Continued on page 34
Deciphering a royalty statement to determine whether your royalties are being accurately reported can be frustrating for both first time and veteran authors.

Royalty calculations should be relatively straightforward. That is, the contractually agreed-upon royalty rate for the Work, multiplied by the earnings received by the publisher. However, add in escalation clauses, varying rates for different sales categories or channels, coauthorship, packaged products, e-books, custom editions, high discount sales, best-seller bonuses, agreed-upon deductions, returns for reserves, specific definitions of earnings, etc., and the calculation of royalties becomes much more complex.

Deconstructing a royalty statement
Royalty statements can range from one to hundreds of pages per reporting period. Many publishers provide a summary in addition to the detailed figures. The simplified example below illustrates a royalty statement for one ISBN during one reporting period—

i.e., the contractually agreed-upon time frame for the accumulation and payment of royalties.

Reporting periods can range from a month to a year, but are typically six months or a year. Publisher’s payment terms also vary, but three months after the end of the reporting period is typical. Thus, an author who receives royalties on an annual basis, with a royalty check issued three months after the end of the reporting period, will receive a royalty statement for sales from three to 15 months earlier. It is important to keep these time frames in mind when reviewing statements.

Royalty statements contain a number of different areas. First, the Category of each sale should be noted. This should provide information about where a book was sold. Category descriptions might also denote certain types of sales, such as hardcover or trade paperback versions of the work. Ideally, there should be separate categories reported for any type of sale that has a specific royalty rate attached to it. But categories on royalty statements can be confusing to authors. The named categories on a particular publisher’s royalty reports reflect that publisher’s internal reporting structures and systems, so these categories will differ by publisher. For example, one publisher may not distinguish Canadian sales from export sales. Another will report Canadian sales as a separate and distinct category.

The next area of focus is Net Units, which represent the total number of units sold less any copies returned during the reporting period. Some publishers will also report gross units and returned units. Net Units gen-

<table>
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<th>Category</th>
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<th>Net Revenue</th>
<th>Royalty Rate</th>
<th>Total Royalty</th>
<th>Author's Share</th>
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</thead>
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<td>$42,737</td>
<td></td>
<td>$4,314</td>
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</tr>
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</table>

Balance Forward: $(400)
Deductions: $(780)
Amount Payable this Statement: $2,056
Generally represent royalty-bearing units that have been sold, and to which a royalty should be applied.

Royalty statements often contain a cumulative or Life-to-Date amount for Net Units of a particular ISBN. This represents the total number of copies of a book sold since publication. Adding the Net Units on the current royalty statement to the Life to Date figure contained on the immediately preceding royalty statement should equal Life to Date units on the current royalty statement.

**Net Revenue** represents the dollars received for sales of Net Units by the publisher. Most royalty agreements apply the royalty rate to Net Revenue; however, this is not always the case as there could be royalties due under the contract based upon gross revenue (sales dollars before returns) or some amount per unit. Similar to unit reporting, some publishers will provide information related to gross sales dollars and related returns in dollars. It is also important to know the price on which the royalties are based, as it can vary by the type of book (textbooks, fiction or nonfiction). Publishers may pay royalties based upon list price, invoice price or actual net receipts collected by the publisher.

The **Royalty Rate** is the contractual rate agreed to by the author and the publisher for various types of sales of books and other materials. When reviewing a royalty statement, it is important to check the underlying publishing agreement to ensure that these rates are correct. Errors can easily occur if the correct royalty rates are not applied within the publisher’s accounting systems. For example, a book may have an escalation clause, but if there is a lack of a reliable mechanism within the accounting system to trigger a higher rate after a certain sales volume of books has been reached, the assigned royalty rate and resulting payments to the author will be incorrect.

The **Author’s Share** is the amount of royalty attributable to the author when a coauthorship agreement exists. This figure should be straightforward, but again, should be checked, as coauthorship agreements often change and mistakes can occur with respect to updates within the publisher’s system.

The **Royalty Earned in the Current Period** can be computed as: Net Revenue multiplied by Royalty Rate multiplied by Author’s Share.

Yet the Royalty earned in the Current Period may not match the amount of the royalty payment. To understand that, one must consider the **Balance Forward and Deductions**.

The Balance Forward is the amount due or owed from the previous reporting period. There are myriad reasons for a Balance Forward, reflecting a remainder of an advance that has not been fully earned, a recalculation of royalties earned during a previous reporting period or a balance due because a payment was not sent to the author in the previous period. To understand what the Balance Forward amount is comprised of, the previous reporting period’s royalty statement must be reviewed.

Deductions reduce the amount payable on royalty statements. These deductions are contractually driven and may include charges for items like permissions fees, indexing or research. Some publishers do not include descriptions of these charges on their royalty statements, which can make it difficult for authors to evaluate the appropriateness of particular deductions.

Aside from the mechanics of royalty statements, the question for many authors remains—“Are the royalty statements accurate?”

The difficulty in addressing this question is that royalty statements do not include all of the information needed to determine the accuracy of royalty payments. In order to test the veracity of royalty statements, authors need more detailed information than can possibly be contained on a royalty statement. Specifically:

- Inventory information related to the printing and ultimate sale or disposal of books;
- Information related to the sale and distribution of e-books or other electronic content;
- Underlying sales and return records;
- Publisher’s list of all ISBNs associated with an author and indication as to whether each is royalty vs. non-royalty bearing, and
- Sub-rights agreements and records of monies received for these contracts.

Requests to publishers for a brief walk-through of their specific royalty statement format can provide authors with the knowledge needed to better understand their statements. If authors have specific questions related to a royalty statement, they can and should seek additional documentation from their publishers.

Juli Saitz is a Senior Managing Director at Ankura Consulting Group, where she leads the firm’s royalty compliance practice and works with authors and corporate clients in asserting their rights to audit licensed copyrights, trademarks and patents. She is currently focused on the shift in the publishing industry to electronic content delivery methods and adaptive learning platforms in education.
A Question of Viewing Privacy

Mollett v. Netflix, Inc.: U.S. Court of Appeals for the Ninth Circuit

Meghan Mollett and Tracy Hellwig, two Netflix subscribers, brought suit against the subscription video service in Mollett v. Netflix. They alleged that the company’s display of its subscribers’ viewing histories and rental queues violated the Video Privacy Protection Act (“VPPA”), a federal law prohibiting video vendors from disclosing information about their customers. (It violated a similar California statute as well.) As the Court of Appeals noted, the VPPA was enacted in 1988 in response to the Washington City Paper’s publication of Supreme Court nominee Robert Bork’s video rental history.

Mollett’s and Hellwig’s complaint was based on the fact that information about Netflix subscribers’ viewing habits can sometimes be seen by others. For Netflix members who subscribe to its video streaming plan, Netflix provides lists of suggested content organized by category, as well as the subscribers’ recent viewing history and streaming queue. When a streaming subscriber accesses his or her account via computer, the automatically generated lists are displayed on the user’s account “homepage.” The very same lists are also automatically displayed when a subscriber accesses his or her streaming account from a television screen or other Netflix-ready device, and the contents thus are visible to anyone present while the subscriber is accessing his or her account.

Netflix maintained that it had not violated the law because it was simply displaying the information to the users themselves, which is permissible under the law and that, to the extent that any third parties had viewed the information, Netflix had not knowingly or willfully disclosed the information to those third parties. The District Court agreed and dismissed the plaintiffs’ claims. Mollett and Hellwig appealed, but met with a similar fate in the appellate court.

The Court of Appeals noted that the statutory language was broad, prohibiting “a videotape service provider” from knowingly disclosing “personally identifiable information” about one of its customers to “any person” and providing for liquidated damages of $2,500 for any violation. The statute, however, does permit the disclosure of a consumer’s rental history to the consumer herself, or to third parties when the consumer has provided written consent.

Any VPPA claim must allege 1) that the defendant is a videotape service provider, 2) that the service provider disclosed “personally identifiable information concerning any customer” to “any person.” 3) the disclosure was made knowingly, and 4) the disclosure was not authorized by the VPPA. Here, because requirements 3 and 4 were not met, the court found that Netflix’s disclosure of the subscriber’s user information to the subscriber herself was permissible under the VPPA. The court held that this was “plainly a disclosure to the consumer” as permitted by the VPPA. Regardless of whether the subscriber chooses to access the account on a regular computer, entering a password every time, or chooses to access the account via

Legal Services Scorecard

From May 1 through October 1, 2015, the Authors Guild Legal Services Department handled 430 legal inquiries. Included were:

- 69 book contract reviews
- 14 agency contract reviews
- 24 reversion of rights inquiries
- 52 inquiries on copyright law, including infringement, registration, duration and fair use
- 11 inquiries regarding securing permissions and privacy releases
- 11 electronic rights inquiries
- 249 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

Beware the share: If you don’t want your friends or family members to know what you’ve been watching on Netflix, keep your password and your screening devices under lock and key.
an internet-ready device that does not require a password each time, there is no statutory burden on Netflix to block that information from view, the court found, since in both cases, the subscriber is accessing his or her own account.

Further, the court found that the fact that a subscriber has granted a third-party access to her account (by sharing a password, for example) does not affect the legality of Netflix’s disclosures, because Netflix merely transmits information automatically to whatever device a subscriber has connected to the Netflix account. The lawfulness of a disclosure, in other words, should not depend on circumstances beyond Netflix’s control. As such, the court held that Netflix had no liability to prohibit disclosures “to the consumer” merely because they can be viewed by third parties who had been granted access to the account by the subscribers themselves. After all, it’s the subscriber, not Netflix, who has control over third-party access to the account and the information contained therein. Accordingly, the Court of Appeals affirmed the District Court’s dismissal of both the federal and California law claims.

—Michael Gross
Staff Attorney

Baby Video Goes Beyond Viral

Lenz v. Universal Music Corp.
U.S. Court of Appeals for the Ninth Circuit

When copyright owners discover that their work has been infringed on the Internet, their first recourse is the Digital Millennium Copyright Act (DMCA), which lets authors and other rightsholders send “takedown notices” to the service provider hosting the infringement. Now a federal appeals court has complicated this process, requiring copyright owners to consider whether fair use is involved before sending a notice.

On September 14, 2015, the U.S. Court of Appeals for the Ninth Circuit issued its opinion in Lenz v. Universal Music Corp., a lawsuit involving a YouTube clip of a toddler dancing to Prince’s song “Let’s Go Crazy.” The court, in affirming a lower court decision, held that the DMCA “requires copyright holders to consider fair use before sending a takedown notification and that failure to do so raises a triable issue as to whether the copyright holder formed a subjective good faith belief that the use was not authorized by law.”

In February 2007, Stephanie Lenz uploaded a 29-second home video to YouTube. It shows her two young children dancing in the kitchen to “Let’s Go Crazy.” Four seconds into the video, Lenz asks her 13-month-old son, “What do you think of the music?” The toddler responds by bouncing up and down while smiling at the camera.

In June 2007, Lenz received a takedown notification from YouTube, which informed her that the video had been removed per a copyright complaint YouTube had received from Universal Music Corp., alleging unauthorized use of the song under the DMCA and stating that Universal had a “good faith belief” that the video was “not authorized by the copyright owner, its agent, or the law.” The notice did not specifically mention “fair use,” nor was there any mention of “fair use” in the internal protocols that Universal circulated among content monitors who fish out infringing media from YouTube. Lenz filed a counter-notification to YouTube, which Universal challenged by arguing that it had authorized neither Lenz nor YouTube to use the content. Lenz’s counter-notification nevertheless compelled YouTube to reinstate the video in mid-July.

In July 2007, Lenz filed a claim against Universal Music for tortious interference and requested declaratory relief, which was rejected by the federal district court. Lenz then filed her claim for misrepresentation under §512(f) of the DMCA, alleging that Universal Music had misrepresented its good faith in the takedown notice because it did not have a good faith belief that Lenz’s use of the Prince’s song was unauthorized. Both parties moved for summary judgment in the matter. The district court denied both Lenz’s and Universal’s motions, and certified the ruling for appeal to the U.S. Court of Appeals for the Ninth Circuit.

The Ninth Circuit, in its review, addressed two main issues: 1) whether the DMCA requires copyright holders “to consider whether the potentially infringing material [was] a fair use of the copyright . . . before issuing a takedown notification,” and 2) whether Universal had misrepresented its good faith in alleging that Lenz’s video was unauthorized. On the first issue, the court—considering the legislative history of the

In February 2007, Stephanie Lenz uploaded a 29-second home video to YouTube.

It shows her two young children dancing in the kitchen to “Let’s Go Crazy.”

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Agent & Author Roundtable

Agents and Authors on Finding the Right Agent

By Barbara DeMarco-Barrett

Authors Guild member Barbara DeMarco-Barrett, a California-based writer, writing teacher and host of a weekly radio program, Writers on Writing, rounded up three successful authors and two literary agents to trade advice on one of the biggest challenges in an author’s career: finding the right agent.

Literary agent Betsy Amster, a former editor at Pantheon and Vintage, is based in Portland, Oregon. Jane Dystel is president of Dystel & Goderich Literary Management in New York City. Novelist Bret Anthony Johnston is the author of *Remember Me Like This*, and is director of creative writing at Harvard University. Karen Karbo, based in Portland, Oregon, is the author of fourteen award-winning novels, memoirs and works of nonfiction. Southern California author Aline Ohanesian’s debut novel, *Orhan’s Inheritance*, was a Barnes & Noble Discover Great New Writers Selection for Summer 2015.

Barbara DeMarco-Barrett: What makes a good agent?

Betsy Amster: A good agent is bonkers about your work, helps you shape it by holding you to your own highest standards, knows which editors are likeliest to love it, too, and keeps you posted on the responses she gets. Ideally, you’ll feel he or she is your co-conspirator. The whole process needs to be transparent. If you’re lucky, it might even be fun.

Jane Dystel: A good agent is honest, hardworking, totally accessible to you, well thought of by editors and publishers and flexible. Above all else, he or she cares deeply about his or her clients and their work.

Bret Anthony Johnston: Passion for the work. I’m unconvinced that where an agent works or which writers she represents makes a lick of difference. What makes all the difference in the world is how deeply the agent identifies with the writer and the work. The agent has to be passionate about the work she represents. I would take passion over fancy letterhead or a rock star client list every time.

Karen Karbo: A good agent understands your work, your strengths and weaknesses as a writer and human being, and is willing to go to the mat for you. Also, he or she returns your phone calls within a reasonable length of time. Basically, the rules of any functional relationship apply.

Aline Ohanesian: I’m a debut novelist who’s still in the honeymoon phase with my agent. As in any relationship, there needs to be a lot of trust. What I want in an agent is someone who believes in my writing. I put everything I had into my first novel. It took me six years to write it, and after a year of researching and querying agents, I had a few offers of representation. I knew right away that Eleanor [Jackson] was the most enthusiastic about my work. She understood right away why I had written *Orhan’s Inheritance*, and I believe that was what helped her sell it at auction. It also helps to have someone who is professional, responsive and willing to go to bat for you when the time comes. Also, she would never give me advice about what to write next, and for that I’m very grateful.

DeMarco-Barrett: What’s the best way for a first-timer to get an agent?

Amster: I recommend that writers research agents on publishers marketplace.com, my favorite website. The most common mistake I see aspiring writers make is approaching agents in categories they don’t represent. That’s true for probably half the queries I get. In fact, I sometimes get the distinct sense that the only reason I’m being approached is that my last name begins with A. Publishers Marketplace allows you to sort agents by the categories they represent, which makes it possible for you to target your efforts.
**Dystel:** Go online, of course. There is a wealth of resources on the Internet about agents and their lists. Look at books like yours in the bookstore and note who the agent is. Speak to your writer friends. Check out the AAR [Association of Authors’ Representatives] for agents’ names.

**Johnston:** There are plenty of ways, but the one that has always made the most sense to me is to read the acknowledgments pages in the books of writers you love. The writer should always thank the agent, and if you’ve identified with the book, then there’s a reason for it. Maybe the reason is the same as why the agent identified with it.

**Karbo:** Scour the acknowledgments in works of contemporary fiction or nonfiction that speak to you for the name of the agent. If the book is similar to yours, even better. Write him/her a succinct e-mail in which you mention your great affection for the book and allow as how perhaps your book is in the same vein. This accomplishes several things. First, the agent gets the sense you’re not spamming eight hundred agencies. Second, it shows that you’re savvy enough to understand that publishing is often a matter of taste, and also you understand that sharing similar tastes is important. Third, it sets you apart from the other nine hundred writers who’ve zipped off an e-mail that hour.

**Ohanesian:** This question is so important. My first bit of advice is: take your time. The query is your very first impression. Standard or stock letters that you send to a gaggle of agents are never a good idea. Look at and read books that are similar to yours, and find out who’s representing them. I wrote ten query letters when I started looking for an agent. Each one was crafted specifically for the agent being queried. My first sentence would allude to other books that agent had represented. It told them that I was familiar with their work and that I’d done my homework. I was querying them specifically, not just any old agent. And it worked. I got three solid offers from those ten queries. It’s also important to state the genre and word count and to keep the query under a page long. It helps to have a few credits from literary journals. I was a finalist for the PEN/Bellwether Prize as well as a finalist for the Glimmer Train Best New Writers Award, and I made sure to put that in my final paragraph.

**DeMarco-Barrett:** I’ve noticed a new category in agent listings: “book club fiction.” I imagine it came about because of the influx of book groups, but how is “book club fiction” defined and how do you feel about it?

**Amster:** “Book club fiction” is fiction that exerts a strong pull on the emotions—the kind of book you might be tempted to start reading all over again when you’re done. (I felt that way about Emily St. John Mandel’s *Station Eleven.*) It’s the kind of book you want to press not only on your friends, but on random strangers. Remember that word of mouth is a powerful driver of sales.

**Dystel:** I would imagine this refers to “buzz” books and commercial women’s fiction, which is a category I love. I think of titles like *Gone Girl* and *Still Alice* as examples. But you also have to include bestsellers like *Fifty Shades of Grey,* which hit a major nerve for female readers.

**Johnston:** I have no idea. I do love book clubs, though, so I hope I write book club fiction.

**Karbo:** It’s the distressed denim of the book world. The genesis of book clubs was—and still should be—a group of readers making a discovery. That’s what’s exciting about being in a book group. We should be reading the lesser novels of Graham Greene and the latest genre mash-up by someone strange and difficult, not some artificially constructed narrative with built-in Moments and Lessons that can be easily processed after three glasses of chardonnay.

**Ohanesian:** From what I understand, book club fiction is a book that is literary but still accessible, something that can be read in under a month and still lend itself to a lively discussion. I think of books like *The Kite Runner* or *The Lovely Bones* as book club books. They often have supplementary material in the back of the book. My editor and I had a lot of fun coming up...
with discussion questions for Orhan’s Inheritance. I was a member of a book club for a little while, and those were some of the most sophisticated readers I’ve had the pleasure to interact with.

DeMarco-Barrett: What are the wrong things writers look for in an agent?

Amster: I find that aspiring writers don’t always do enough research into the agent’s taste and track record and instead jump at the first agent who wants to represent them.

Dystel: Sometimes writers want agents who are with big-name agencies, where the agent is way too busy to really pay attention to someone new. This is usually a big mistake. Sometimes writers want a new best friend. Though the agent-author relationship is long-term and should be a solid one, being best friends isn’t necessarily a good thing. It should be a caring but professional relationship.

Johnston: Fame.

Karbo: “Where is my Lena Dunham–sized advance, please?”

DeMarco-Barrett: These days there is so much information to be found on the Internet regarding agents. What are important questions to ask an agent, and what should you especially be cognizant of—personality, chemistry, proximity to New York, houses the agent has sold to?

Amster: It’s important to get a sense of the agent’s strategy for your book. You might ask, “How do you tend to work? Do you like to submit material to every editor you think is right for a project at once, or do you submit it to an A-list, a B-list, a C-list, and so on?” I prefer the latter approach because it allows authors to take editorial feedback into account if the book doesn’t sell in the first round.

Proceeding in rounds, usually from large houses to smaller ones, also requires a certain amount of persistence, which is a useful quality in an agent. You should also ask if the agent will show you rejection letters. It’s interesting to see how editors respond to your work. And it pays to know which editors an agent is approaching. I wouldn’t take no for an answer here. I’ve been a West Coast agent as long as I’ve been an agent, and I’ve never found it to be a disadvantage for me or my clients.

Dystel: You should, of course, be aware of the agent’s personality, and you must feel comfortable communicating with your agent on everything having to do with your career. Communication is key in all aspects of our business, in fact. You should be able to ask any questions you have, even if they seem ignorant or dumb. Our job is to educate our clients in order to empower them to make good decisions. Proximity to New York is not important given the current technology. If possible, you should make sure that the agent deals with as many publishing houses as possible and is well respected throughout the industry.

Johnston: You want an agent who feels like a fellow traveler on your chosen path. You don’t want an agent who leads the way, and you don’t want one who blindly follows. You want an agent who listens to your ideas, who challenges and respects you, who values the kind of writing you want to do regardless of its commercial appeal. You want to feel comfortable disagreeing with the agent, and you want to respect her intelligence and reading experience to the degree that she can criticize your manuscript.

Karbo: I have several lovely friends who are excellent agents and who don’t live in New York. I would send students and friends to them in a heartbeat. That said, my own agents have made deals on my behalf because they ran into an editor at the Bryant Park Grill on a snowy Tuesday. My way of saying, I’m old-school. Agenting is still, for the most part, in New York, and it helps if your agent is there.

DeMarco-Barrett: You’ve all been involved in the publishing industry long enough to see and experience changes. What is the one main change you’ve seen that’s for the better? For the worse?

Amster: For the better: It’s actually easier these days to develop a platform if you put your mind to it. Social media is very democratic.
Amster: We have to coach our clients more and more on the importance of self-promotion and the uses of social media.

Dystel: We are advising in areas we didn’t previously. Many of us advise on digital publishing; we advise on marketing and publicity as publishers have continued to cut back in those areas. Many of us take on editorial roles that in the past were handled by publishers.

Johnston: Agents are doing far more editing than they ever have. So often the agent is working with the writer the way editors did previously.

Karbo: Once upon a time the editor was the chief champion and nurturer of writers (think Maxwell Perkins and Hemingway). Now the agent has assumed that role. This evolution has been in the works for some time. Maintaining a long-term relationship with an editor is a luxury afforded mega bestselling authors, since the sales department has had its boot on the neck of editorial for some time. Agents, on the other hand, are generally in it for the long haul. Or at least mine is.

For the worst: I don’t tend to dwell on what’s gotten worse. I remember an article by Thomas Whiteside in *The New Yorker* from 1980 called “The Blockbuster Complex” that bemoaned the “huge emphasis on the ‘blockbuster’ bestseller” now that “most publishers are owned by conglomerates” (I’m quoting from the abstract I found online). What a modern complaint! Yet the article was written thirty-five years ago. What I focus on is the fact that it’s still possible to launch new writers, and it’s still possible for me to ply my trade as a so-called “boutique” agent.

Dystel: The changes for the better are that publishers are more flexible in how they publish—they have adapted to digital publishing well and continue to publish in print effectively, too. The worst thing is that the industry continues to contract, with fewer companies, fewer editors, fewer places for agents and authors to go.

Johnston: One of the best things is that it really no longer matters that the agent works in NYC. With the Internet, there are great agents all over the place. One of the worst things is how so many imprints have folded or been consumed by larger houses.

Karbo: Better: rise of the small press. I live in Portland, where we have a number of excellent small presses: Tin House, Hawthorne Books, Future Tense Books, Forest Avenue Press. I know I’m forgetting some. And lo, in these modern times the Big Five trade publishers would just as soon publish parent advice from Real Housewives than an inventive, literary novel from an unknown writer. The result: small press editors are in a position to acquire often great and inventive work that in another time might have been snapped up by a larger house.

Worse: Evolution of authors from introverts willing to do some self-promotion to shameless hucksters.

DeMarco-Barrett: These days, with so many changes in publishing, how are agents’ roles changing?

DeMarco-Barrett: If you reject the first fifty pages or the entire manuscript, are you interested in seeing the work again, if the author has performed a major revision, or are you only interested if you’ve welcomed the author to resubmit?

Amster: I’m only interested if I’ve invited the author to resubmit. It tends to be difficult to revisit material.

Dystel: I am surely not interested in seeing the material again if the reason I rejected it is that the material just doesn’t work. But if it’s something that just missed the mark and could be improved with editing, then of course, I’d take a look again once it has been revised.

DeMarco-Barrett: When you’re queried or receive the first fifty pages and it’s not right for you, will you pass it on to another
Once upon a time the editor was the chief champion and nurturer of writers (think Maxwell Perkins and Hemingway). Now the agent has assumed that role.

—Karen Karbo, author

Questions for the authors

DeMarco-Barrett: When is it time for a change, and how do you go about it? Have you switched agents?

Johnston: I’ve had three agents. I fired one, one decided to leave the industry and I’m now with my third. I think you handle the change with respect and professionalism. It can feel very personal, and in many ways it is, but ultimately this is a professional relationship, so you do everything you can to check your emotions and ego at the door.

Karbo: I started answering this question in a way that didn’t make me sound like a complete idiot, but have abandoned that in favor of the plain truth. I’ve been represented by InkWell Management for twenty-plus

Dystel: A good client is respectful, totally honest and, of course, good at his/her craft. Very rarely these days do I put up with poor behavior or disloyalty, and I never put up with dishonesty.

DeMarco-Barrett: What about authors who come to you who are switching agents?

Dystel: Switching agents is a serious matter, and I always try to find out why an author has done this. I want to be as sure as I can that I can satisfy whatever needs their previous agent didn’t. That said, I’m always willing to consider someone who’s left his or her agent, as long as it’s a clean break. If you mean how do I feel if an author leaves an agent, it should always be done with respect (most of the time the agent has worked very hard for the author). Sometimes the agent will be hurt or angry, but as long as the author leaves in a businesslike manner, the “burned bridge” can be rebuilt at a future time.

Dystel: Currently, I am looking at and interested in thrillers and commercial women’s fiction, but any well-written, well-plotted fiction works for me. I am also always interested in narrative nonfiction on science, military, business, politics, history, current events, etc.

DeMarco-Barrett: Why does someone become an agent? Love of literature? Money?

Amster: It’s a great privilege to work with writers and to help them shape their material and get it into readers’ hands. I’m often asked if I’m a writer myself, and my answer is no, I’m a reader—a very, very attentive reader who loves to share her enthusiasm for good books.

Dystel: One certainly doesn’t become an agent to get rich. At least I didn’t. It is a love of new ideas and books, and it is the serendipity of the agenting experience.

DeMarco-Barrett: What makes a good client? Is it mainly the work? And if the work is good enough, what will you put up with? Have you ever fired a client?

Amster: The quality of the work is the prime attraction. Demonstrating a willingness to revise the work is also important, since the bar is very high. I particularly like clients who are curious about how publishers think.

With some few exceptions, publishers are not going to be terribly sympathetic to the idea of publishing your 200,000-word novel in two volumes just because you can’t figure out how to get it down to 100,000 words. Nor do they necessarily care if you can live off your advance for the time it’s going to take you to write your book. They make their own calculations about how much your book is worth. The more authors understand that publishing is a business, albeit a very quirky one, the better off they’re going to be.

Dystel: The author should only query one agent in our agency, and if that agent feels it isn’t right for them but is for someone else, they will always pass it on. If an author submits to more than one agent here and we find out about it, we automatically pass.

DeMarco-Barrett: Are there particular fiction genres that are especially of interest right now? Nonfiction genres? What about memoir?

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Questions for the authors

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years. My relationship with Kim Witherspoon and David Forrer has lasted longer than my marriage. We were children together, and now we are middle-aged. Then, like any twenty-plus-year marriage, I started feeling restless. I started worrying that maybe they were looking at me and my work like a housewife in stained yoga pants and greasy hair, that I would send in a manuscript and they would roll their eyes and think, “not yet another, weird, impossible-to-sell Karbo thing.”

When I published my first novel (to some acclaim, I should note) twenty-five years ago, I naïvely imagined that every book would garner a higher advance and even more acclaim. I didn’t grasp that a career in the arts was different than, say, working for a bank, where you keep scoring promotions and raises until your gold watch retirement.

I also thought that once I was published I could pretty much write whatever interested me, both novels and nonfiction, imagining that my readers would just follow along with whatever harebrained thing I cooked up.

The idea of a platform was complete anathema to me. By the time I felt my dissatisfaction with InkWell, I’d published more novels and several different types of nonfiction and frankly, it was amazing they were able to place this stuff with good publishers and editors at all. But they did. They had my back. They liked my work, handled all my deals with complete professionalism, and we liked each other.

Still, I did not have the career of my dreams. I worked hard, wrote well, worked harder, wrote better, worked even harder, wrote even better, made my deadlines, cooperated with my publicists, learned how to give good speeches, went on book tours arranged sometimes by the publishing house and sometimes by the very good outside publicist I hired. I built a good website, lost years of my life on social media, bleached my teeth. I did everything I thought I was supposed to do, and still there were no insane bidding wars for my books or front-page reviews in The New York Times Book Review (I did get a full-page review on page 10, once) and cozy chats with Terry Gross.

I thought, it must be my agent.

So I left InkWell, without voicing my concerns, or even letting them know I was unhappy. I ran off in the night, leaving a Post-It on the fridge (i.e., FedExed them a letter) and found a new agent at an equally reputable agency. She was a nice woman who didn’t seem to get me at all, didn’t have much of a sense of humor (a must) and, weirdly, said “Yes! Absolutely!” to questions in which I was soliciting her opinions. Also, kiss of death, when I was on the phone with her, I could hear the mad clicking of her keyboard keys.

Like the sad boozy adulterer who goes crawling back, I called InkWell and asked if I could come back, and with great generosity and class, they said, absolutely, they would love to have me. And now we are back together as if nothing had happened.

The point to this rather long anecdote is that there are so many variables to any writing career. Not enough credit is given to the mammoth role of luck, timing and the zeitgeist. Failing to have the career of J. K. Rowling is not necessarily a reason to find a new agent.

DeMarco-Barrett: Any more advice for writers looking for an agent?

Dystel: Take your time, be thorough in your search (and research), be tenacious and know that if you make the wrong decision, you can always change.

Johnston: Focus on your writing—first, last, always. Don’t be impatient with the process of writing or the process of finding an agent. Both take time, discipline and faith, and much of it is out of your control. What you can control is the quality of the work. Plenty of writers submit work that isn’t ready for submission, just because they get impatient. Submit only your best and most polished work, and trust that the right agent will eventually and inevitably find her way to you.

Karbo: Develop the patience of Job.

What makes a good client?
Have you ever fired a client?

—Barbara DeMarco-Barrett

Barbara DeMarco-Barrett is a fiction writer, the author of Pen on Fire: The Busy Woman’s Guide to Igniting the Writer Within, and the host of Writers on Writing on KUCI-FM. She lives in Corona del Mar, CA, and teaches writing at Gotham Writers Workshop.
Along Publishers Row
Continued from page 2

MUSICAL NOTE: Greg Iles is the author of 14 novels. The latest is The Bone Tree. Iles, 53, lives in Mississippi, the setting for many of his novels. He plays guitar in a touring musical group of literary greats called The Rock Bottom Remainders (“Over 350M books sold. Forty New York Times #1 Bestsellers. One lousy band.”)

In an interview with Jay MacDonald for BookPage, Iles said the band was a big plus in his life. “You can’t help but absorb from the people you are around. To have Scott Turow and Steve [King] in the band, guys who I had read along the way before I started writing and was so profoundly influenced by, to be able to sit on the bus or in the hotel and just talk to those guys is just unbelievable.”

TRANSLATING: Perry Link is a translator of Chinese who holds a chair in comparative literature and foreign languages at the University of California at Riverside and teaches Chinese. In an essay in The New York Review of Books, he wrote about teaching Chinese-language courses to American students “which I have done about thirty times.”

“Perhaps the most anguish-ing question I get is ‘Professor Link, what is the Chinese word for ______’? I am always tempted to say the question makes no sense. Anyone who knows two languages moderately well knows that it is rare for words to match up perfectly, and for languages as far apart as Chinese and English, in which even grammatical categories are conceived differently, strict equivalence is not possible. Book is not shu, because shu, like all Chinese nouns is conceived as an abstraction, more like ‘bookness,’ and to say ‘a book’ you have to say ‘one volume of bookness.’ Moreover shu, but not book, can mean ‘writing,’ ‘letter,’ or ‘calligraphy.’ On the other hand you can ‘book a room’ in English; you can’t shu one in Chinese.”

UNIVERSAL: Nigerian writer Chimamanda Ngozi Adichie is the author of Purple, Half of a Yellow Sun and Americanah. She won a MacArthur grant in 2008.

In an interview in The Wall Street Journal, she said that Americans should know that African writers don’t just write about Africa’s problems.

As a writer, she said, she suffers from bouts of depression, “the crazy writer illness” that she thinks is common in her field. “I wish I could write every day,” she said. “When it goes well, I ignore things like family and hygiene, but other days, when it’s not going well, I read the books I love to remind myself of how beautiful and essential and nurturing words can be, and I hope that doing that will bring my own words back.”

ON THE OTHER HAND: William Faulkner said, “A writer is congenitally unable to tell the truth and that is why we call what he writes fiction.”

ON ILLUSTRATING: The late Maurice Sendak said: “To be an illustrator is to be a participant. Someone who has something equally important to offer as the writer of the book—occasionally something more important—but it is certainly never the writer’s echo.”

NO CASH: “There’s no money in poetry,” poet-novelist Robert Graves said, “but there is no poetry in money either.”

BIG THINGS: Jenni Desmond is author and illustrator of a children’s picture book, The Blue Whale. The first sentence is: “Once upon a time, a child took a book from a shelf and started to read.”

Meghan Cox Gurdon, who writes about children’s books for The Wall Street Journal, said: “Like dinosaurs and volcanoes, great blue whales tend to occupy an outsized place in the imaginations of young children—appropriately enough, given their vastness. These magnificent aquatic creatures can be ‘the same length as a truck, a digger, a boat, a car, a bicycle, a motorcycle, a van and a tractor—all lined up,’ as Jenni Desmond explains.” An illustration shows them all.

When I was seven years old, a gigantic whale on a trailer was hauled to west Texas. It cost a nickel to walk around a platform that ran around the stuffed creature. The terrible odor has been the stuff of dreams ever since.

WHAT COUNTS: The late novelist Norman Mailer said: “In writing, as in so many pursuits, it’s not the most gifted but the most determined who succeed. John Berryman thought talent was no more than twenty percent of a poet’s makeup. This is probably true for any type of writer. Those we hear about are more blessed with luck and persistence than ability and skill.”

WHITEWASH: Tanya Landman is the author of Buffalo Soldier, a YA novel that won the Carnegie Medal. She wrote in The Guardian: “As a child I watched a lot of westerns . . . The Virginian, The High Chaparral, Alias Smith and Jones. Any time we went to the cinema, the B-movie always seemed to be a western . . . .”

“The more research I did, the more I found out that history had been whitewashed by Hollywood.”

Landman offers tips on her website: “Like any story, you take a character, you give them a problem and either they overcome it (happy ending) or it overcomes them (a tragic one).”
SMALL TALK: Leslie Jamison is the author of The Empathy Exams. In an essay about genre labels in The New York Times Book Review, she concluded, “It seems to me that genre labels are just a way of making small talk at the picnic, which only mattered—in the end—as prelude to the more complicated years of conversation that followed.”

MEMOIRS: Noelle Howey is the author of Dress Codes: Of Three Girlhoods—My Mother’s, My Father’s, and Mine (2002). Her father liked to wear women’s clothes.

She wrote an essay, “They’ve Said Too Much,” for The New York Times Book Review about memoirs written by the young. Hers was written when she was 29. She said, “I am still stubbornly proud of my memoir. I’m still glad I wrote it when I did—and my fellow younger memoirists concur. Here’s why: Whatever early memoirs lack in perspective, they make up in urgency, the sense that here is a story that must be told.”

EXPOSÉ: Eric Schlosser is the author of Fast Food Nation: The Dark Side of the All-American Meal, an exposé of the fast-food industry. More than 2 million copies have been sold. It was adapted into a YA book, Chew on This, and made into a movie.

Now he is working on a book that investigates America’s prison system. The title will be The Great Imprisonment. It’s scheduled for publication in 2018.

The New York Times said, “Mr. Schlosser aims to land a . . . blow against American’s prison system, which he argues has expanded and become more profit-driven since the introduction of mandatory minimum sentencing.”

LATE ARRIVAL: Anton Chekhov was the author of an unpublished—until now—collection of short stories entitled The Prank. It was written more than 130 years ago and rescued by New York Review Books. Chekhov was just 22 years old when the stories were submitted to the censors, “who discerned a subversive intent and promptly forbade publication.”

The New York Times said Review Books “has made a specialty of rescuing and reviving all kinds of ignored or forgotten works in English or in translation, fiction and nonfiction, by writers renowned and obscure.”

PLENTY OF HELP: Amitav Ghosh, 59, has just published Flood of Fire, the third and last volume in a series. “Ten years in the making,” The Wall Street Journal said, “the trilogy describes the clash of cultures that occurred . . . when China tried to stop the British from bringing in opium from India.”

Ghosh, who lives in Brooklyn, did research in Singapore, Hong Kong and Guangzhou. He said, “The strange thing about China is that it’s very easy to get around but nobody tells you that.” Few people spoke English, but they were willing to help him find his way. “We get so used to thinking of New York as this enormous built environment, but when you arrive in Guangzhou, it’s about twenty New Yorks.”


She was asked by The New York Times Book Review which sorts of books she avoided reading. She said, “At the moment, I tend to avoid fiction about dysfunctional urban middle-class people written in the present tense. This makes it hard to find a new novel, sometimes.”

Asked which of her novels she would like to see adapted for TV or film, she said, “May I have an opera by Philip Glass instead, please? Whichever book he likes.”

CURIE ABANDONED: Paula McLain is the author of Circling the Sun, a new and bestselling novel. It’s about Beryl Markham, who flew across the Atlantic in 1936. McLain was quoted in The Cleveland Plain Dealer as saying that she had abandoned a novel about Marie Curie.

“I admired her so much, but nothing ever came alive.” Apparently, McLain’s editor felt the same way. “She kept saying, ‘Oh, my God, the science is so boring,”’ McLain said.

NEW CONTENT: In an article about the increasingly complex subject matter appearing in young adult books, PW quoted Sarah Davies, founder of the Greenhouse Literary Agency: “What we want in a book is to experience something strong, something we’ve not experienced before—to be gripped and compelled to turn those pages under covers.”

Authors Guild Members
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Ib J. Melchior
Barbara Park
Lila Perl
Joseph E. Persico
Louise A. Poresky
Norman David Rosenberg
Oliver Sacks
Jack J. Scarpino
NICE WORK: Jonathan Galassi is the publisher of Farrar, Straus and Giroux and the author of a novel, Muse, about the book business. He told PW, “I love what I do. At the heart of publishing are still the editor and the author, the editor falling in love with the author’s work, and doing the best he or she can to dress it up as beautifully as possible and get it to its readers. That’s still what publishing is, and I have no intention of stopping.”

LETTERS: Suzanne Marrs and Tom Nolan have edited Meanwhile There Are Letters—those exchanged by the authors, Eudora Welty and Kenneth Millar. Welty lived in Mississippi and Millar, a Canadian master of the detective novel who wrote as “Ross Macdonald,” lived on the West Coast. For many years they conducted a “slow-fire, long-distance tête-à-tête.”

The collection ends with a quote from a letter Millar wrote to Welty in 1970: “Love and friendship are surely the best things in life and may, it seems to me now, exist beyond life, as we want them to, like light from a star so immeasurably distant that it can’t be dated and questions of past and future are irrelevant.”

LIFE IN LETTERS: Lucia Berlin was 68 when she died in 2004. A collection of her short stories, A Manual for Cleaning Women, was published in August. John Williams of The New York Times said that, “by her early 30s, she had been divorced three times and had four sons. She worked as a house cleaner, a substitute teacher and a hospital clerk. She got much of her roving, rowdy life onto the page in vivid stories that garnered the respect of a modest audience and now could be on the verge of making her posthumously famous.”

The stories are described as “transparently autobiographical.”

JUST REMEMBER: Maile Meloy, 43, is the author of the middle-grade novel The After-Room. Meloy took up the question: Is it necessary to have children to write for children?

“Theodor Geisel—Dr. Seuss—didn’t even like kids. ‘You have ’em, I’ll amuse ’em,’ he’s supposed to have said. Maurice Sendak had none. Neither did Tuve Jansson, Tomie dePaola, Ezra Jack Keats or Margaret Wise Brown. The great children’s books editor Ursula Nordstrom said, ‘I am a former child, and I haven’t forgotten a thing.’ It’s not a requirement to have children in order to write for them. You just need to have been one, and remember what it’s like.”

SECRET AND STRANGERS: Margo Jefferson is a former critic at large for The New York Times, winner of the Pulitzer Prize for criticism in 1995 and a professor of writing at Columbia University. Her latest book is Negroland, a memoir of growing up in a family of color and privilege in Chicago, where her father was the head of pediatrics at the country’s oldest black hospital, children were warned not to “tell your secrets to strangers,” and the motto was “Achievement. Invulnerability. Comportment.”

Jefferson has not entirely forsaken reticence. “I think it’s too easy to recount your unhappy memories when you write about yourself,” she wrote. “You bask in your own innocence. You revere your grief.”

And yet, Times reviewer Dwight Garner noted, “she gets a lot said about her life, the insults she has weathered, her insecurities, even her suicidal impulses. There’s sinew and grace in the way she plays with memory, dodging here and burning there, like a photographer in a darkroom.”

ABOUT CRITICS: Charles McGrath, a former editor of The New York Times Book Review and a regular critic these days, addressed the question “Is Everyone Qualified to be a Critic?” in the paper’s Bookends column. “In deciding which critics are worth attending to, literary critics especially, we can at least insist on readability—on clearness of expression, some stylishness, and even a sense of humor. Criticism may be a minor art, but it’s an art all the same, and critical writing ought to be pleasing in itself and not just piggyback on whatever work it’s discussing.”

THE EAR: Joan Acocella is the author of Twenty-Eight Artists and Two Saints. In a piece about Elmore Leonard in The New York Review of Books, she wrote that “Leonard had a taste for the grotesque, for an almost magical ugliness.” She also stated: “Many people would say that Leonard’s greatest gift was his ‘ear,’ meaning, broadly, the ability to write English that, while it sounds extremely natural, is also beautiful and musical.” When critics speak of a writer’s ear, this often carries a political implication, of the democratic sort. They are talking about writers (Mark Twain, Willa Cather) whose world, by virtue of being humble, would seem to exclude beauty and music, so that when the writer manages to find in it those riches, the world in question—and, by extension, the whole world—comes to seem blessed.”

The Library of Congress has just released two collections of Leonard’s work, Four Novels of the 1970s and Four Novels of the 1980s.

There’s More

For a weekly dose of publishing industry news, gossip and sound bites, check out the “Along Publishers Row” blog on the Authors Guild site every Tuesday.
The Authors Legacy Society

The Authors Legacy Society was created to allow the Authors Guild’s most loyal supporters to make a commitment to the Guild or its Foundation that lasts beyond their lifetimes. By including the Guild or its Foundation in your estate plans, you can help ensure that its essential work will continue in the years to come. Members of the Society will receive a memento of appreciation and will be listed annually in the Authors Guild Bulletin, unless they choose to remain anonymous. For further details, including the tax benefits of making a donation, visit authorsguildfoundation.org or call 212 594 7931.

JUST A WRITER: Ron Rash is the author of a new book, Above the Waterfall, published in September. He has written six novels, six short story collections and four poetry compilations. Born in Chester, SC, he has lived in a succession of small Carolina towns, North or South, ever since.

“I’ve had some people who pretty much have implied that I must be some hillbilly who got hit by lightning and somehow learned to tell these stories,” he told The Wall Street Journal, referring to stereotypes of Southern writers as savants who come up with books simply by sitting on their front porches and spinning.

His subject is Appalachia. “Mountain people around the world have told me this—you feel two things. One, a sense of being protected. You’re also being reminded of how small and insignificant you are.”

AUCTION: A 1,500-volume collection of books put together by Robert S. Pirie, a lawyer and investment banker who died in January, is expected to bring more than $15 million at auction. It includes early editions of Shakespeare and Christopher Marlowe, the first English book about dogs and Charles I’s personal King James Bible.

Reporter Jennifer Schuessler wrote in The New York Times: “And the dog book? Of Englishe Dogges (1576), by the physician John Caius, was written in Latin before being translated into the tongue of his canine-mad compatriots.”

DEATHS

Laurie Schneider Adams, 73, died June 19 in Manhattan. An art historian and teacher, she was the author of more than 24 books, including The Methodologies of Art (1996) and A History of Western Art (2000). She was also editor-in-chief of the journal Source: Notes in the History of Art.

Hugh Ambrose, 48, died May 23 in Helena, MT. He was the researcher for historian Stephen E. Ambrose, his father, and author of The Pacific, which he completed after his father’s death.

Julian Bond, 75, died August 15 in Fort Walton Beach, FL. A founding member of the Student Nonviolent Coordinating Committee, cofounder with Morris Dees of the Southern Poverty Law Center and later chairman of the NAACP, he was the author of a collection of essays, A Time to Speak, A Time to Act (1972).


Marcia Brown, 96, died April 28 in Laguna Hills, CA. A prize-winning illustrator of children’s books, she also translated and illustrated folk and fairy tales. Her works include Cinderella, or the Little Glass Slipper (1955), Once a Mouse (1961) and Shadow (1983), each of which earned her a Caldecott Medal. Stone Soup (1947) and five other books were Caldecott Honor winners.


Gabrielle Burton, 76, died September 3 in Venice, CA. She was the author of Heartbreak Hotel (1986), Searching for Tamsen Donner (2009) and Impatient with Desire (2010). She completed a book, Don’t Sit Down Yet, about aging shortly before she died.


Alan Cheuse, 75, died July 31 in San Jose, CA. The noted critic—who wrote two-minute book reviews for NPR’s All Things Considered for more than 30 years, as well as hundreds of reviews at longer length for print—was the author of dozens of books, including The Bohemians (1982), The Grandmothers’ Club (1986)
Fall Out of Heaven (1987), and The Light Possessed (1990).


Jean Darling, 93, died September 5 in Rödermark, Germany. The child movie star, who joined the Our Gang comedy films at the age of four, was the author of a novel, Marinda, and two autobiographies.

John Derr, 97, died June 6 in Pinehurst, NC. His books about golf include My Place at the Table: Stories of Golf and Life (2010).

Wayne W. Dyer, 75, died August 30 in Maui, HI. He was the author of more than two dozen self-help and how-to-live books that sold millions of copies. His top-selling title was Your Erroneous Zones (1976).

Peter Gay, 91, died May 12 in Manhattan. The historian was the author of more than 25 books, including Voltaire’s Politics (1959); the two-volume The Enlightenment: An Interpretation, the first volume of which—The Rise of Modern Paganism (1966)—won the National Book Award; The Bourgeois Experience: Victoria to Freud (five volumes, 1984–1988); and Freud: A Life for Our Time (1988).

William Conrad Gibbons, 88, died July 4 in Monroe, VA. He wrote four volumes on the history of Congress and the Vietnam War. The fourth volume, which Dr. Gibbons left as a 747-page typed manuscript, ends at June 1971. The Senate committee has not yet taken up the matter of completing the work.

Helen Harrison, 68, died July 4 in Berkeley, CA. She was coauthor with Ann Kosiwsky of The Premature Baby Book: A Parents’ Guide to Coping and Caring in the First Years (1983). It has gone through a dozen printings.

John P. Hoer, 84, died June 21 in Middleboro, MA. A Guild member, he was the author of And the Wolf Finally Came: The Decline of the American Steel Industry (1988) and a novel, Monongahela Dust (2009).

Chenjerai Hove, 59, died July 12 in Stavanger, Norway. The Zimbabwian poet and novelist, who wrote in both English and Shona, was the author of Bones (1988), which has been translated into a dozen languages. His first book of poetry was Up in Arms (1982).

Howard W. Jones Jr., 104, died July 31 in Norfolk, VA. The physician was the author of War and Love: A Surgeon’s Memoir of Battlefield Medicine with Letters to and from Home (2004), Personhood Revisited: Reproductive Technology, Bioethics, Religion and the Law (2013) and In Vitro Fertilization Comes to America: Memoir of a Medical Breakthrough (2014).

Rosanne Klass, 86, died July 23 in Manhattan. She was the author of Land of the High Flags (1964), reissued in 2007 with the subtitle: Afghanistan When the Going Was Good.

Tanith Lee, 67, died May 24 in East Sussex, England. She was the author of Birthgrave (1975), which spawned a trilogy; a flood of fantasy and horror books followed, including Death’s Master (1980).

Rhoda Lerman, 79, died August 30 in Port Crane, NY. She was the author of Call Me Ishtar (1973), The Girl That He Married (1978) and God’s Ear (1989).

Paul Lioy, 68, died July 8 at Newark Liberty International Airport. His home was in Cranford, NJ. An environmental scientist, he was the author of Dust: The Inside Story of Its Role in the September 11th Aftermath (2010).

Cynthia Macdonald, 87, died August 3 in Logan, UT. The poet was author of Amputations (1972), (W)holes (1980), I Can’t Remember (1997) and many other collections of poetry.

Hilary Masters, 87, died June 14 in Pittsburgh. He was the author of Last Stands: Notes from Memory (1982). His novels began with The Common Pasture (1967) and include An American Marriage (1969).

Ann McGovern, 85, died August 7 in Manhattan. She was the author of more than 50 titles that sold millions of copies. She was a re-teller of Stone Soup (1986) and the author of Zoo, Where Are You? (1964), Too Much Noise (1967) and Little Wolf (1969).


Joshua Ozersky, 47, died May 4 in Chicago, where he was attending an awards event. His home was in Portland, OR. His first food book was Meat Me in Manhattan (2003). Other books include Archie Bunker’s America (2003), The Hamburger: A History (2008) and Colonel Sanders and the American Dream (2012).

Marguerite Patten, 99, died June 4 in Richmond, Surrey. The prolific food writer was the author of Recipes by Harrods (1947), Cookery in Colour: A Picture Encyclopedia for Every Occasion (1960), which sold 2 million copies, and more than 170 additional works on food and cook-
A Fair Deal

Continued from page 18

project will play out. Maybe the book isn’t any good after all? Maybe the contract has a zillion holes in it that Randal and I have not imagined? Lawyer friends tell me not to trust friendships. Maybe I’ve become a hopeless Pollyanna in my old age? Whatever happens, being a midlist author is not a get-rich-quick scheme, and never will be. But as long as we accept the fundamental economics, am I being too romantic to suggest that we somehow find a way to abandon the established order and play the game with a sense of humor, friendship and a deep-seated commitment to fairness?

Jon Turk received his PhD in chemistry in 1971, wrote the first environmental science textbook in North America and continued writing textbooks for 40 years. During those decades, he also engaged in extreme outdoor expeditions. His most recent trade book, The Raven’s Gift (St. Martin’s Press), chronicles physical and spiritual passages in northeastern Siberia. His current project, Crocodiles and Ice: A Journey into Deep Wild, will be released by Oolichan Books in 2016. www.jon turk.net


Frances Kroll Ring, 99, died June 18 in Los Angeles. The secretary to F. Scott Fitzgerald was the author of Against the Current: As I Remember F. Scott Fitzgerald (1985).

Amelia Boynton Robinson, 104, died August 26 in Montgomery, AL. “The matriarch of the voting rights movement” was the author of a memoir, Bridge Across Jordan (1991).

Ann Rule, 83, died July 26 in Burien, WA. She was the author of The Stranger Beside Me (1980), a bestselling book about serial killer Ted Bundy, which launched her career as a prolific author of true-crime narratives. Her 40 or more titles include The Want-Ad Killer (1983), And Never Let Her Go (2000) and Every Breath You Take (2001).

James Salter, 90, died June 19 in Sag Harbor, NY. He was the author of The Hunters (1956), A Sport and a Pastime (1967), Light Years (1975) and All That Is (2013).

Carl Schorske, 100, died September 13 in East Windsor, NJ. A cultural historian and professor emeritus at Princeton, he was the author of German Social Democracy, 1905–1917 (1955), Fin-de-Siècle Vienna: Politics and Culture (1979) and Thinking with History: Explorations in the Passage to Modernism (1998).


James Tate, 71, died July 8 in Springfield, MA. The prolific award-winning poet was the author of The Lost Pilot (1976) and The Ghost Soldiers (2008).


John A. Williams, 89, died July 3 in Paramus, NJ. He was the author of Night Song (1961), The Man Who Cried I Am (1967) and The King God Didn’t Save: Reflections on the Life and Death of Martin Luther King, Jr. (1970).

Charles Winick, 92, died July 4 in Manhattan. He was the author of 20 books, including Dictionary of Anthropology (1956) and The New People: Desexualization in American Life (1968), and he was coauthor of The Television Experience: What Children See (1979).

Robert S. Wistrich, 70, died May 19 in Rome. He was the author of 29 books, including The Jews of Vienna in the Age of Franz Joseph (1989) and Antisemitism: The Longest Hatred (1992).

Books by Members

Clint Adams: Evangeline: The Seer of Wall St.; David A. Adler (and Jeffrey Ebbeler, Illus.): Hanukkah Cookies with Sprinkles; Joseph Alexiou: Gowanus: Brooklyn’s Curious Canal; Tom Alphin: The LEGO Architect; Lisa Alther (and Francoise Gilot): About Women: Conversations Between a Writer and a Painter; Mia Alvar: In the Country; Gigi Amidon (and Abigail Marble, Illus.): Two for Joy; Stephen Amidon: The Real Justine; Rudolfo Anaya: Poems from the Rio Grande; Rudolfo Anaya (and Amy Cordova, Illus.): The Farolitos of Christmas with “Season of Renewal” and “A Child’s Christmas in New Mexico, 1944”; George Ancona: Can We Help?: Kids Volunteering to Help Their Communities; Roger Angell: This Old Man; Emily McCully Arnold: Pete Makes a Mistake; Carol Ascher: A Call from Spooner Street; Linda Ashman (and Kim Smith, Illus.): Over the River and Through the Wood: A Holiday Adventure; Jeannine Atkins: Little Woman in Blue: A Novel of May Alcott; Through the Wood: A Holiday Adventure; Liz Y. Atkins: Little Woman in Blue: A Novel of May Alcott; Avi (and Brian Floca, Illus.): Old Wolf; Judy Ayyildiz: Intervals, Appalachia to Istanbul;

Barbara Baig: Spellbinding Sentences: A Writer’s Guide to Achieving Excellence and Captivating Readers; Molly Bang: When Sophie’s Feelings Are Really, Really Hurt; Declaration Stories; Ann Beattie: The State We’re In: Maine Stories; Lisze Bechtold: Buster the Very Shy Dog Finds a Kitten; Elizabeth Benedict (Ed.): Me, My Hair, and I: Twenty-seven Women Untangle an Obsession; Kathleen Benson (and Benny Andrews, Illus.): Draw What You See: The Life and Art of Benny Andrews; Marianne Berkes (and Cathy Morrison, Illus.): Tortoise and Hare’s Amazing Race; Michael Bess: Our Grandchildren Redesigned: Life in the Bioengineered Society of the Near Future; Stewart Bird: Murder at the Yoshina: Baron R. Birtcher: Hard Latitudes; David Black: Fast Shuffle; Andrew Blauner (Ed.): The Good Book: Writers Reflect on Favorite Bible Passages; Win Blevins (and Meredith Blevins): The Darkness Rolling; Judy Blume: In the Unlikely Event; Karen Blumenthal: Tommy: The Gun That Changed America; Louise Borden (and Genevieve Godbout, Illus.): Kindergarten Luck; Frankie Bow: The Musubi Murder; Eileen Brady: Unleashed; Kiely Brendan (and Jason Reynolds): All American Boys; Larry Dane Brimmer: The Rain Wizard: The Amazing, Mysterious, True Life of Charles Mallory Hatfield; John Brockman (Ed.): What to Think About Machines That Think: Today’s Leading Thinkers on the Age of Machine Intelligence; Carl Brookins: The Case of the Yellow Diamond; Terry Brooks: The Darkling Child; Joseph Bruchac (and Bill Farnsworth, Illus.): The Hunter’s Promise; Nancy L. Bunge: The Midwestern Novel: Literary Populism from Huckleberry Finn to the Present;

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Alex Zucker (Transl., and Heda Margolius Kovaly): Innocence; or, Murder on Steep Street✦
Legal Watch

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fair use statute—emphasized that “fair use is not just excused by the law, it is wholly authorized by the law” and not, as Universal argued, an “affirmative defense that excuses ‘otherwise infringing conduct.’” Tying the fair use statute to the §512(c) provisions of the DMCA, the court noted that because the fair use statute “both ‘empowers’ and ‘formally approves’ the use of copyrighted material if the use constitutes fair use, fair use is ‘authorized by law’ within the meaning §512(c)” and, consequently, a copyright holder must determine whether the work in question is legally sanctioned fair use before issuing takedown notifications.

Next, the court considered whether Universal had a good faith belief that Lenz’s video was not fair use of the song before it issued the takedown notice. Citing §512(f) of the DMCA, the court noted that, for misrepresentation claims such as Lenz’s to be viable, the copyright holder must have actual knowledge that the targeted content falls under the category of authorized fair use. Thus, Universal would be liable only if it misrepresented that it had good faith that the video infringed on its rights. Lenz, however, failed to prove
that Universal had actual knowledge that her video was fair use and that Universal had knowingly misrepresented its good faith about the video being unauthorized (not “fair use”) in the takedown notice, because she had previously argued that Universal failed to entirely consider fair use. In coming to this conclusion, the court held that the actual knowledge standard applied individually to the copyright holder’s determination of fair use, which is required by §512(c), as well as claims for misrepresentations of good faith provided by §512(f) of the DMCA.

Further elaborating on the “knowledge” requirement of §512(f) misrepresentation claims, the court emphasized that—as an alternative to actual knowledge—the statute allows a plaintiff to bring forward the claim under a “willful blindness theory” if she can establish that 1) the defendant subjectively believed that there was a high probability of a fact’s existence; and 2) the defendant took deliberate actions to avoid learning of that fact.” The court, however, held that Lenz was correctly barred by the district court from moving forward under this theory, having failed in her original complaint to provide the threshold of required evidence “from which a juror could infer that Universal was aware of a high probability that the video constituted fair use.”

Nonetheless, the decision is a partial victory for Stephanie Lenz, who can now proceed to trial under the actual knowledge theory on her misrepresentation claim. For copyright holders, however, the decision further complicates the takedown process—already riddled with difficulty and ineffectiveness—by requiring non-lawyers to conduct legal analysis before sending takedown notices.

—Umair Kazi
Legal Intern
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