AG v GOOGLE
Why We’re Still at It After All These Years
T.J. Stiles: “This case is about the future of the book itself.”
The Issues at Stake: Q&A
Indie Publishing: A Primer
The Writer in Old Age
In 1860, Charles Dickens set fire to many of the letters he had written over the course of two decades. He used them to cook, and he commemorated the incident in—what else?—a letter to a friend.

“Dickensian scholars would have sold their souls for that barbecue fuel,” John Sutherland, professor emeritus at University College London, told the Times Book Review’s John Williams. “There survive, of course, about 15,000 Dickens letters. But whole tracts of the private Dickens will be forever lost.”

The exchange was prompted by Sutherland’s review of Living on Paper: Letters from Iris Murdoch 1934–1995 in the same issue. Murdoch wrote 26 published novels, philosophical treatises and “an ocean of letters.” She spent four hours at her desk every afternoon replying to letters. At 17, she was asked what she planned to do with her life, and she replied: “Write.”

“I can live in letters” she told a friend. “I have in fact only once corresponded with anyone (now departed from my life) who was as good at writing letters as I am.”

Murdoch, wrote Sutherland, belonged to “a generation and class for whom the handwritten letter was as necessary as breathing. The habit was instilled at her boarding school, where letters home were an obligatory chore. Throughout her life, her personal messages retained an endearing jolly-hockey-sticks flavor.”

“The traditional use of letters for the ‘life and letters’ biography is going to be tricky in the future,” Sutherland said. “Or perhaps, if some way of getting to all that correspondence in the cloud is found (the delete key never deletes, one is told) it may be enriched and enhanced. We shall see.”

SEA CHANGE: Novelist Herman Wouk, author of The Caine Mutiny, is one hundred years old. His new book is a memoir, Sailor and Fiddler. Time magazine devoted a page to him.

Wouk said that he had kept a journal since 1937 and that it was about a hundred volumes. He didn’t consult it for his new book because “I was writing from memory. If I started looking in my dairies, I might have said, ‘Oh, yes, let’s put in that.’”

Asked what his favorite decade was, he said, “I’ve got ten to choose from. I’d have to say the 1940s, when the big change in my life was going from writing comedy to going to sea as a naval officer. . . . I was out at sea with very different company from what I’d grown up with. It gave me a point of view, which I carry with me today. I’m a sailor.”

LITERARY VINES: “There are only two or three human stories,” Willa Cather wrote, “and they go on repeating themselves as fiercely as if they had never happened before.” That was the beginning of Dwight Garner’s Times review of What Belongs to You by Garth Greenwell. The story is about an affair between two men.

Garner said: “Mr. Greenwell writes long sentences, pinned at the joints by semicolons, that push forward like confidently searching vines. There’s suppleness and mastery in his voice. He seems to have an inborn ability to cast a spell.” The review ended with, “Mr. Greenwell has written a book about the faces we present to the world, and he has nothing consoling to say about anything at all.”

OLD STUFF: It turns out that Rumpelstiltskin is even older than we thought. British anthropologist Jamie Tehrani and Spanish folklorist Sara Graça da Silva collaborated on a study tracing the roots of popular fairy tales in much the same way biologists trace DNA. And just as Wilhelm Grimm suspected in the 19th century, The Guardian reported, the scholars’ work showed that many of the most familiar tales date back thousands of years.

The team studied the links among 275 Indo-European fairy tales, “mapping the stories through common languages and geographic proximity.” Jack and the Beanstalk seems to have sprouted from a genre of stories known as “The Boy Who Stole Ogre’s Treasure,” about the time “eastern and western Indo-European languages split—more than 5,000 years ago.” The origins of Beauty and the Beast and Rumpelstiltskin date back 2,500 to 6,000 years.

“We find it pretty remarkable these stories have survived without being written,” Tehrani told the Guardian. “They have been told since before even English, French and Italian existed.”

Da Silva credits the stories’ endurance to “the power of storytelling and magic from time immemorial.”

VILLAIN INCLUDED: A Beatrix Potter story, The Tale of Kitty-in-Boots, includes an older Peter Rabbit. It will be published in September, one hundred years after it was written and forgotten. Potter died in 1943.
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ABOUT THE COVER ARTIST

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Short Takes

Gone Missing

In October 2015, the two owners of the Hong Kong publisher, Mighty Current Media, and two employees of the company’s bookstore, Causeway Bay Books, went missing. Only one of the four individuals, Gui Minhai, has been heard from since. Gui—a naturalized Swedish citizen deemed “a publisher who riled China’s elite” by The Guardian—was in Thailand at the time of his disappearance. He remained “in on-off contact with his wife, daughter and the building manager from the luxury Thai condominium” he owns, according to The Guardian, but his location was unknown.

A new chapter of the story began on January 1, with a missing person report filed by the wife of a fifth person connected to the company, editor Lee Bo, a British citizen. A few days later, Lee’s wife retracted her report, stirring further concern. On a television news show, she said she had heard from Lee by phone, from an unknown number apparently originating in Shenzhen. She said he told her “he was assisting in an investigation” and that “everything was alright.” According to the Financial Times, Lee also faxed a handwritten letter to a colleague in which he stated “that he had gone to the mainland urgently and of his own volition to ‘co-operate with a relevant investigation.’”

Mighty Current and Causeway Bay Books have published “titles highly critical of the ruling Chinese Communist Party,” according to Radio Free Asia, including books about the sex lives of government officials. The disappearances may be related to Chinese president Xi Jinping’s highly controversial Operation Fox Hunt initiative, which seeks out expatriate critics and brings them to China for detention. This possibility has caused alarm for residents of Hong Kong, as well as the Hong Kong Journalists Association, who fear that their officials may be colluding with the Chinese government.

On January 11, the American Booksellers Association, the Association of American Publishers, the Authors Guild, the European and International Booksellers Federation, and PEN American Center issued a statement expressing their “extreme concern” about the disappearances and calling for the release of all five, if they are in fact being detained.

On January 17, Gui Minhai appeared on Chinese television confessing to violating probation in a fatal 2003 drunk driving accident and stating that he had returned to China voluntarily. He also urged the Swedish authorities not to pursue his case.

As we went to press, the Hong Kong government had just announced that the other three individuals who disappeared in October were being held in police custody in mainland China, “suspected of involvement in a case relating to Gui,” according to Voice of America. And on February 29, The New York Times reported that Gui Minhai had appeared on television confessing to having violated China’s customs rules by shipping “politically sensitive books” to the mainland.

Threatened Poet

The death sentence of a Middle Eastern poet accused of renouncing Islam has been overturned; he will serve eight years in prison and suffer eight hundred lashes instead.

Last November, Ashraf Fayadh, a Palestinian poet and longtime resident of Saudi Arabia, was sentenced to death by beheading in Saudi Arabia. The 32-year-old was arrested in January 2014 and accused of a number of blasphemy charges. His arrest has been protested by poets, artists and intellectuals in the Arab world. After the death sentence was announced, the International Literature Festival Berlin drew attention to his case by organizing a day of worldwide readings on January 14, 2016. Organizations, bookstores, individuals and numerous chapters of PEN hosted poetry readings to raise awareness about Fayadh’s situation and express their solidarity with him. According to the festival’s website, at least 124 events were held in more than 40 countries.

Following those protests, early in February, a panel of Saudi judges overturned the death sentence and imposed the new punishment in its place. The original finding of apostasy stands, however, and Fayadh must publicly renounce his poetry on state-run media. His lawyer affirmed his client’s innocence and said he would appeal the ruling and seek bail.

Life After Amazon

Publishers Weekly reports that Educational Development Corporation (EDC), a children’s book publisher and distributor, has seen “tremendous growth” since cutting ties with Amazon and several big-box stores in 2012. Sales had already increased by 2014, when the company saw its growth continue.
highest net revenues ever, and by the first six months of 2015 “net income soared by over 300 percent” compared to the prior year.

In 2014 Randall White, EDC’s chairman, president and CEO, told Business Insider that selling books through Amazon, Sam’s Club, Costco and Target, all of which heavily discount books, had been hurting his business, with “a dip of some 40 percent in one division alone.”

The decision to abandon those stores, particularly Amazon, was initially worrisome to shareholders, but independent stores applauded the change. One toy store on New York’s Upper East Side shifted from placing orders with EDC every two months to ordering every three weeks, according to Business Insider.

EDC is an unusual case. Not only does it sell to booksellers, toy stores and museums, it runs a “home division,” Usborne Books & More, which works with independent sales representatives who sell books in the style of a Tupperware party, as well as through book fairs, the Internet and other venues. Usborne Books & More has grown significantly since 2012. In December, White told PW that he had “more than $3 million in inventory with reps in the field.”

Graphic Artist Named Ambassador for Young People’s Literature

Gene Luen Yang has been named National Ambassador for Young People’s Literature by the Library of Congress, the first graphic novelist to hold the position. He will receive a stipend of $15,000, funded by the Center for the Book, the Children’s Book Council, and Every Child a Reader, and he will spend his term reaching out to young readers. Yang’s debut solo book, American Born Chinese, was the first graphic novel to be nominated for a National Book Award; his next, the two-volume Boxers & Saints, was the second.

In an interview with NPR following the announcement of his appointment, Yang spoke about the new phenomenon of “hybrid books” that employ both prose and the imagery of graphic novels. He argued that “the historical divide between comics and prose novels in American culture has largely been artificial” and is on its way out.


Flying Books

In November, the New York Public Library (NYPL) and Washington State’s King County Library System (KCLS) engaged in their fifth annual book-sorting competition. The friendly contest is a battle of both human and mechanical skill. Reports NBC News: “Five years ago . . . [KCLS] developed and installed a state-of-the-art mechanized book sorter that greatly increased its daily production. Not to be outdone . . . New York then installed what they said was a superior machine and, consequently, a rivalry ensued.”

Book sorters are employed by high-traffic library systems to increase efficiency. The NYPL system, for example, uses a computerized crane that can move three bins—or 120 pounds—of books at once. The competition is based on the number of books each system sends to its proper destination in a single hour. In 2014 New York came out on top. This year Washington’s sorters were victorious, sorting 201 more books than New York in one hour. For the record, KCLS sorted 12,572 books; New York sorted 12,371.

While slightly different models, the machines used by the two rivals are made by the same company, Lyngsoe Systems, though KCLS’s cost $3 million to build and install versus $2.3 million for New York City’s. Both systems use crates moved on conveyor belts to identify and sort books, DVDs, CDs and other library items requested by patrons at various library branches. Before Lyngsoe, New York librarians would physically sort books on a 30-foot table in Manhattan. In Seattle, KCLS books moved slowly along a single belt past library pages who sorted each one by letter code. “They called it the ‘Lucy’ line,” said KCLS site manager Tony Miranda.

The Seattle Times noted, “Though, there are fewer patrons served by King County’s library system, KCLS patrons on average check out eight to 10 items a year” One employee, Steve Albert, jokingly referred to that figure as a “lifetime’s worth for an NYPL patron,” reported the paper. In an ongoing exchange of rival barbs, Dan Landsman, an employee at the New York sorting facility, offered a hypothesis for KCLS’s 2014 loss: “Maybe over in KCLS land, the recreational marijuana has led to their inability to keep up with the pace.” For now, KCLS holds the title of “the world’s fastest library-sorting system”—along with the golden trophy that is passed back and forth between coasts.

Bill Gates, Book Reviewer

Gates Notes, a book review blog written by Bill Gates, has caught the attention of the publishing industry. The New York Times reported on January 2 that the popular website is driving book sales—what the Times calls “the Bill Gates bump.” Drawing comparisons to Oprah’s Book Club, the article points out that publicists are unlikely to influence the titles Mr. Gates chooses to review. One publicist who made contact with Mr. Gates’s “team” was told: “We don’t have any say over what Bill chooses. We just leave it on his desk and he reads what he wants to read.” ♦
Two Worlds

BY ROXANA ROBINSON

While you’re working on a book, you’re living in two worlds. There is the world that you inhabit with everyone you know—your husband, your children, your friends, your colleagues. This is the tangible world, and you inhabit it easily. You don’t have to try. You can e-mail people, or call them or talk to them at dinner. The things you share with them are immediate. But your presence there becomes increasingly insubstantial: you realize that it doesn’t really matter if you’re there or not. This world will go on without you.

The other world you’re living in, the world of the book, is just as vivid. You’re living with people you’ve never seen, though you know them as well as you know everyone else in your life. But it’s not always easy to connect with them. Sometimes it seems as though a translucent scrim separates you, and whenever you’re not writing, you’re worried that you won’t be able to get past the scrim.

In the novel Time and Again, the protagonist is asked to live in circumstances that exactly mimic those of a century earlier, in hopes that he’ll be able to slip through a portal into another era. He does, of course. I think about this when I’m trying to move into the world of my novel. I’m never quite sure if I’ll be able to get there. “This novel” is the place that I inhabit while I’m working. In this world, I’m necessary. It won’t go on without me.

When I began writing fiction, the rule for young writers was, “Write what you know.” It’s a good rule, meant to avoid the inauthentic use of places, people and feelings. The idea was that the writer should know herself first, examine her own world before she begins to examine others. It’s still a good rule for young writers. But it needn’t hold true throughout a whole career. It is beginning to seem that contemporary novelists have used up what they know. The present seems over-explored, so why not write about the past and the future?

Futuristic and historical novels are becoming all the rage. There are lots of distinguished ones: Frankenstein, The Handmaid’s Tale, Never Let Me Go and The Marriages Between Zones Three, Four, and Five. And of course Wolf Hall, Mary Reilly and The Blue Flower. (I know, I know, I’m naming mostly works by women, and I’m sorry. It’s just that there are so many more good books by women than there are by men! If I could think of more by men, I’d name them, of course.)

When you are writing a contemporary novel, you’re already living a covert life. You talk to your family as though you’re all occupying the same place—the kitchen. And you are in the kitchen, but you’re also in that other place, the place where the novel lives, with its great rolling landscape of emotions and conversations and characters on their way to the unknown destination at the end of the narrative. Those people in that other place are all around, constantly swimming through your consciousness.

But when you’re writing about another time, you are in even more trouble: you’re doubly removed from the tangible world. The words and sentiments from the people of that other time become more and more real. You’re fascinated by them. You’re bemused by people who talk in today’s language, the one you’ve stopped speaking. You’re deep in another era. You can hardly believe that your husband wants to discuss this year’s politics, when he could be talking about those of that other year, which are so much more vivid, those candidates so much more astonishing, in their declarations, their dastardliness, their ambitions, their facial hair.

And all the time you feel as though that other world, the one where you’re writing, is elusive. It is slipping through your hands like water. You can’t quite close your fingers on it, yet that’s the place you’re living. You can’t quite close your fingers on it, yet you’re swimming through it. It’s become your medium. It’s all around you, but you can’t quite breathe.

One afternoon, when I was writing my biography of Georgia O’Keeffe, I was driving down the street in the small town where I then lived. A man was driving toward me, and I recognized him. He was handsome, with a square face, a dark, serious gaze, metal-rimmed glasses and a mustache. I knew I knew him, but couldn’t think of who he was in time to wave. After he’d driven past, I realized it was Alfred Stieglitz. The funny thing was that Stieglitz never learned to drive.

Once you’ve finished the book, you stop living in that world. It’s lost to you. People ask me afterwards if I’m thinking of writing a sequel. Don’t I want to know what happens next, they ask? But I can no longer find the portal. Sometimes I’ll hear from a reader, years later, reminding me of that place, telling me how it felt while she was reading it.

Then I remember what it was like when I lived there.
From the Home Office

Dear Authors Guild Members,

There’s been a blizzard of activity already this year at the Guild. On December 31, we cast our sights on 2016 by filing a petition with the Supreme Court, asking it to write the defining chapter in our decade-long copyright infringement case, Authors Guild v. Google.

Why persist? It’s simple. What future is there for books if basic copyright law isn’t respected—if entire books can be copied for profit-making purposes without permission or compensation of any kind?

We are fighting for the right of authors to get paid and to control the use of their work. Copyright law allows authors to decide who can copy, publish and sell their work, and on what terms. Copyright is in the Constitution because the Founders saw how important it was to have a class of authors who could write freely, without being tied to or paid by any institution—“freelance” authors, if you will. With each slice taken out of copyright, income to authors diminishes and the system that allows authors to write as a profession is weakened. The Second Circuit’s ruling that Google’s mass copying is fair use takes a huge bite out of copyright.

But lots of uses of books—in fact most, if not all—have a public benefit. If we allow big tech to copy books without payment or permission so that it can make more money, just because its use of those books has some social benefit, we risk losing income that can make the difference between being able or not being able to write. The Second Circuit found that Google Books was not harming authors much because it failed to account for licensing revenue as a real market for books and source of income for authors. Worse, the court failed to look at what happens if the use becomes “widespread and unrestricted,” as the Supreme Court specifically instructs. If the Supreme Court does not take this case, then any search engine, or anyone for that matter, may make digital copies of books and distribute portions of the books for free, without any control by or payment to the rights owners. The result is that the market will eventually become so crippled that copyright will cease to function as the “engine of free expression” that it has served in the U.S. over the last two hundred plus years. This is why it is critical, for authors and readers alike, that the Supreme Court agrees to hear the case.

To be clear, the Authors Guild is not asking to have Google Books taken down. Our attorney was quite clear in the oral argument the Second Circuit that we are not asking for injunctive relief. We are simply asking that authors be reasonably compensated for the use. Judge Pierre Leval and others are incorrect in stating that a win by the Authors Guild would mean the end of Google Books. As is the case with every other service that copies and distributes books, Google would simply have to pay for the right to do so. Google is first and foremost a modern-day advertising company that exchanges our personal information for ad revenue, and it is using our books to sell advertising. With its $75 billion in cash, Google can certainly afford to pay authors for the privilege of using their books to create further value for itself.

Since our filing, we’ve been running at full throttle as we work to position our case in the press (the

Copyright is in the Constitution because the Founders saw how important it was to have a class of authors who could write freely, without being tied to or paid by any institution. . . . The Second Circuit’s ruling that Google’s mass copying is fair use takes a huge bite out of copyright.

Court itself likely won’t let us know whether it will hear the case until late spring)—and we’ve made some headway with the media. The Washington Post and Publishers Weekly both delivered in-depth coverage of our filing, as did many other media outlets. I did an interview with NPR’s Lynn Neary. Council members Richard Russo and T. J. Stiles, as well as President Roxana Robinson, published searing op-ed pieces. [See p. 13 for more on the Google fight.]

We’ve begun to move the needle forward in the
public debate surrounding this case, and you can help us gain momentum. Tell your friends and readers why this is an important case for authors and for the future of copyright. And please help us correct the misinformation spread by Google supporters that we are trying to take Google Books down. The message is simple: We just want to get paid. We want to ensure that copyright continues to function as an “engine of free expression” in the digital economy and that “freelance” book authors can participate fully in that economy.

That’s not all that’s keeping us busy. On January 5, we published an open letter to U.S. publishers announcing that in the coming months we would be seeking individual meetings to explore how we can work together to make the publishing industry fairer and more profitable for authors. These meetings, which have already begun, continue the work we started with our Fair Contract Initiative, a series of articles that demonstrate clause by clause how antiquated and/or unfair certain terms in many publishers’ standard book agreements have become. Already, we are finding in our meetings with individual publishers that they are willing to move on some of the issues we have raised.

Our main request of publishers is that they start thinking outside the box—that they not always revert to the default in their standard agreements. It is particularly irritating when a publisher simply refuses to even discuss changing onerous terms, such as overreaching warranties and indemnities. Everything should be negotiable. And where a provision does not materially affect the publisher’s bottom line but could significantly help the author out, why not agree to it? For instance, the publisher may not be the right one for your next book if that book is in a different genre, so why must the publisher insist on a right of first refusal? Why should the publisher make the author wait to sell the next book until it has taken its sweet time deciding whether or not it wants the book? And why do all contracts need to be for the life of copyright?

Our main request of publishers is that they start thinking outside the box—that they not always revert to the default in their standard agreements. . . . Why should the publisher make the author wait to sell the next book until it has taken its sweet time deciding whether or not it wants the book? And why do all contracts need to be for the life of copyright?

Continued on page 41
Indie Publishing

A Primer

By Angela Bole

What is an independent publisher and what makes indie publishing different in ways that writers care about? It’s a simple question with a multifaceted answer. My favorite kind.

Let’s start at the top. At a high level, an independent publisher is a person or company publishing content free from outside control. It is a privately owned operation, as opposed to a publicly limited company owned by investment shares traded on the stock market. Think of what is being published by the Big Five houses in New York City. Now think of all the other publishing that is going on. Independent publishing is, for the most part, “all the other publishing,” or about half of the market share of the entire U.S. book publishing industry. There are myriad independent publishing business models. Here’s how the top three—self-publishing, traditional publishing and hybrid publishing—work.

Self-Publishing

Self-publishing is a fast-growing segment of independent publishing. Bowker reports 458,564 self-published titles in 2013, up 17 percent over 2012 and 437 percent over 2008. There are two kinds of self-publishing: assisted self-publishing and DIY self-publishing. Considering the complexities of the publishing business, there are almost no circumstances in which I’d recommend a fully DIY self-publishing approach. No one is an expert at everything. The best self-publishers know this and contract freelance professionals to oversee editing, design, production and distribution. This costs money, of course—generally anywhere from $5,000 to $15,000 per book—but it’s worth it. Sixty-five percent of the Independent Book Publishers Association’s 3,100 members identify as self-published authors. All of them indicate they use professional services to help bring their books to market.

“Independent publishing is more than a fallback option for authors who can’t score a deal with one of the Big Five.”

—Angela Bole, CEO and executive director of the Independent Book Publishers Association

Traditional Publishing

Although arguably the fastest growing, self-publishing isn’t the only segment of independent publishing on the rise. Many independent publishers that employ a traditional business model—where the company contracts the rights to publish an author’s work for the duration of an agreed-upon term while the author retains the copyright—are also experiencing growth. According to Publishers Weekly’s most recent list of fast-growing independent publishers, Verso Books, for example, experienced 31 percent growth in 2014 over 2012. This was attributable, PW said, to the launch of a direct-to-consumer channel in April 2014. This new channel brought in an additional $840,000 globally in 2014, or 16 percent of the company’s total sales. Other fast-growing independent publishers working a traditional publishing model include Fox Chapel Publishing, Morgan James Publishing, No Starch Press and BenBella Books.

Hybrid Publishing

Hybrid publishing might be the least understood segment of the independent publishing landscape, and the most controversial. It occupies a middle ground between self-publishing and traditional publishing and almost always involves the author paying for some, or all, services. The best hybrids are not vanity presses. On the contrary, reputable hybrid publishers employ professional editors to curate lists through a strict submission process. They also control their own cover designs and editorial processes, making decisions based on what’s best for the market rather than simply what the author wants. The benefit to an author...
who chooses a hybrid publishing arrangement is that, in exchange for financing some or all of the book’s production, she retains all publishing rights and is paid a higher royalty rate on the back end. There are several interesting independents working the hybrid model, including She Writes Press, Inkshares, Booktrope, BQB Publishing and Turning Stone Press.

More Than a Fallback Option

Whether self, traditional or hybrid, independent publishing is more than a fallback option for authors who can’t score a deal with one of the Big Five. This is illustrated in the Authors Guild’s 2015 member survey, where respondents indicated they are increasingly taking a dual approach to publishing their books. Of the Authors Guild members surveyed, 33 percent said

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Considering the complexities of the publishing business, there are almost no circumstances in which I’d recommend a fully DIY self-publishing approach.

No one is an expert at everything.

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they have self-published a book, which suggests that authors are making case-by-case decisions regarding the best publishing model for a particular piece of work.

CJ Lyons, bestselling author of more than twenty novels and a member of the Authors Guild Council, put her finger on it in a Q & A published in the Summer 2014 issue of this bulletin. She said: “But here’s the thing no one talks about—and this is what really has publishing scared: the power’s not just shifting to the author, but to the readers with the author. My readers can’t tell the difference between my indie books and my New York City books.”

That bears repeating: CJ Lyons said that her readers can’t tell the difference between her indie books and her “New York City books.”

And why should they?

Thanks to an abundance of professional editing and design services, along with advances in print-on-demand technology and universal access to online distribution channels, how authors decide to publish their work does not necessarily alter the quality of the finished product or its availability, in print or digital formats.

One additional advantage of going indie is that so many independents are specialists—highly knowledgeable in the particular genre they’ve dedicated themselves to bringing to market. Whether publishing their own work or the work of others, independent publishers have always been good at finding, and owning, a niche. They know how their genre functions and how to reach devoted readers. What does this mean for authors? Whereas many conglomerate publishers would pass on a book projected to sell less than ten thousand—or even fifteen thousand—copies, an independent publisher with a focus on a particular book’s niche might eagerly snatch it up.

Combine everything above with the high degree of care and personal attention most independent publishers are able to provide and you begin to see that authors have a very welcoming scenario to consider among the indie publishing ranks. Diversity is good for publishing. Choices are good for writers and readers.

Angela Bole is CEO and executive director of the Independent Book Publishers Association, based in Manhattan Beach, California. She has a master’s in book publishing from New York University, and she served as deputy executive director of the Book Industry Study Group from 2009 to 2013.

See Poets&Writers Small Presses database for more info: http://www.pw.org/small_presses?perpage=*
At my present age of 92, the afflictions of aging assail me like the onslaught of an army bent on my destruction. Each week seems to bring a new, unwelcome impairment. My chest rents space to a pacemaker, and I have several stents in my arteries. I have a spinal stenosis that restricts my reach and prevents me from putting on my stockings. Add to that a peripheral neuropathy that causes burning in my toes and numbness in my fingers, making it difficult for me to button my shirt. I also have chronic digestive problems and an insidious fatigue. Not long after I rise in the morning I yearn to recline on the couch.

If I live a few years longer, I will enter the realm of Gero Panakis, who I remember as a boy to be the oldest member of my father’s parish. While no one could be sure, it was rumored the old man was near 100. I remember him after he had received the sacrament of Communion, lurching down the center aisle in church, bent double as he walked, limbs trembling, cheeks twitching, his carcass withered, worn-out, fossilized. As he passed the pew where I sat, a wrenching at my nostrils confirmed he also smelled like a goat. God spare us such length of life!

What faculties do I now retain? I can still walk (with the aid of a cane), still talk, eat, sleep (with the aid of pills), smile and (on occasion) laugh. Most thankfully, I am still able to fashion words together to make stories. I am no longer confident enough to start a book-length novel but I do manage essays and short stories.

Yet while sitting at my computer and fashioning my stories, resisting an urge to lie down, I cannot help plaintively remembering the years of my creative vigor when my body and spirit jubilantly embraced the strain and rigors of writing. A short story could be written in several days to a week. A novel took from a year to three years. Yet in the heat of creating, time seemed inconsequential, a week passing as if it were a day.

For a three-year period in the mid-1970s, while I was working on The Hour of the Bell, my historical novel on the 19th-century Greek War of Independence, I remember how I’d wake eager to work and, in the evening, regret having to stop.

My day would begin with a light breakfast of coffee and a muffin. Afterwards, I’d ascend to my study, a magnificent, high-ceilinged room set in a rainbow of sand dunes, thickly foliaged fir and pine trees and a boundless panorama of water. That lake view ranged from serene to turbulent and in color from cerulean blue to shades of light gray. I’d raise one of the blinds and permit myself a brief look at the splendor of the emerging day. Then I’d lower the blind again quickly as a precaution against the lure of daydreaming. I sat down at my desk feeling myself a cauldron of energy ready to detonate.

I was still writing on an electric typewriter then, and in the hours that followed there would be fitful starts and stops. Revisions then required a page of paper withdrawn and a new page inserted. Bond in different colors designating different drafts mounted in piles at the corner of my desk.

A book began slowly, with uncertainty. Fearing false starts and treacherous detours, I carefully felt my way. As the manuscript lengthened, the stacks of pages building, the characters becoming more fully formed, a greater confidence in the unfolding story developed. Through the months into years of writing that fol-
lowed, nurtured by a regular daily routine, a rhythm of writing took over. Sentences and paragraphs began to interweave effortlessly. A harmony between writer and writing was achieved. The writing began to emerge with such resilience and fluidity I could not help feeling myself a conduit from some wellspring of boundless power. A poet whose name I cannot recall referred to those periods of creativity as “taking God’s dictation.”

That creative force and excitement kept me at my work for 10, 12 hours at a time. When I did break briefly for lunch or dinner, I carried the resonances of writing with me. At the table with my wife and our sons I felt strangely disembodied, their voices coming to me as from a great distance.

When I finally went to bed, curled beside my wife, sleep eluded me. My mind swirled with the faces and voices of my characters, with the skeletal structuring of still unwritten scenes. After I had fallen asleep, the characters in my book invaded my slumber, playing out scenes already written or still unwritten.

For those months that I wrote, the world of my book consumed my life. The hours I spent away from the work were fretful and restless, fragmented between fantasy and reality. I had become a man with a fever, fully functioning only when I was writing. That was the way it used to be. Then there is the way it is now.

Yet I know I am not alone. As I age, so do multitudes. The musician with diminished hearing, the artist with fading sight, the athlete with faltering strength. All living things experience such loss. And each human being must find a way to cope with that decline.

In the end, despite my expiring body and my lamenting about how it was once, I must be grateful that in a world where the moment we are born we are old enough to die I have been allowed to live 92 years. I have a wife who has been lover and companion now for more than 70 years still beside me. People cannot mention the name of one of us without, in the same breath, speaking the name of the other. We have good, loving sons and grandchildren and a great-grandchild. We have battled adversity, overcome frailties, and I have written my books. Kurt Vonnegut said that, for a writer, writing one’s books and having one’s children should be enough and we should not be greedy.

Harry Mark Petrakis, a Chicago native, submitted stories to magazines for 10 years before selling his story Pericles on 31st Street to The Atlantic Monthly in 1956. He has published 25 books, including novels, short stories and essays. A memoir, Song of My Life, was published last year. He has twice been nominated for the National Book Award and has been a member of the Authors Guild since 1967. You can find him at harrymarkpetrakis.com

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.
The Case Against Google . . .

Fighting for the Digital Future

By T.J. Stiles

The world’s wealthiest corporations may take your work in its entirety for their own profit. They do not have to ask you for permission, let alone pay you. That’s essentially the ruling by the U.S. Court of Appeals for the Second Circuit in the Authors Guild’s long-running legal battle against Google over its massive book-digitization program. Remarkably, the court exacerbates the disparity of wealth and power in America by undermining property rights—even as it violates the purpose of copyright law.

The Second Circuit and the decision’s defenders turn the issues completely upside down. They focus on the end result: that Google has chosen, for now, to make search results available only in snippet form. (Google defines for itself what “snippet” means, by the way.) They argue that this does not undermine the book market, since readers can’t read an entire book this way.

That might be a good argument if the Authors Guild had sued end users of Google’s service. But we didn’t. The lawsuit is not over how Google dispenses stolen goods, but the stealing itself. The corporation made complete copies of our books for its own profit. The courts have always held that such copying is a blatant violation of creators’ rights, whatever happens afterward.

Imagine a business that answered general-information questions by phone. If it amassed a reference library for the use of its agents by scanning or photocopying 1,000 entire books, without paying for them, that would be a clear violation of copyright, even if the agents didn’t read the books aloud to callers. Google did that with millions of books. The court is saying, in essence, that if a company is rich enough to steal on a massive scale, it’s beyond the reach of the law. Might makes right.

Google, itself, tells us that search and data-mining rights for books have value. It spent millions on its book-digitization project, and it is legally obligated to use its resources to make money for shareholders. And if Google can do it, so can anyone; Google’s profits from our books will invite competition. But what if Google had lost? What if the courts had held that business corporations must negotiate with authors? Then Google and any rivals would have to bid, driving up the value of our rights.

After all, that is the point of copyright: to promote the creation of art and knowledge by reserving for creators the financial rewards of their work. And those rewards are growing thinner. The book market is one of the last pieces of the economy in which the individual is a key player, yet authors find themselves powerless before the new digital gatekeepers—corporations that tower over even publishers, our traditional business partners. Those gatekeepers profit from distribution, not creation, and they are deliberately driving down the value of our creations in digital form. Critics of copyright see themselves as defenders of individual freedom, but ironically they now support the wealthiest and most powerful corporations in the world against solitary creators.

Of course, academic authors do not depend on income from their books. That’s a good thing; academic writing is essential to society. But our culture needs more than monographs. As a recent Authors Guild member survey shows, writers’ incomes are declining, not growing. We need every possible income stream to stay in business.

In the end, this case is about the future of the book itself. Therein lies the irony of Google and its defenders’ position: They are the Luddites, arguing that the book market will always be the same, that authors must be limited to their existing rights and traditional notions of the book.

The decision in favor of Google holds that com-
puter search is a “transformative” use of a book, which denies the original creator any rights. If it’s transformative merely to have a computer look through a book, that’s setting a very low bar for allowing others to use entire works without permission. One could argue that adaptations for film, television or audiobooks were far more transformative; if the Second Circuit’s doctrine had prevailed a century ago, countless authors would have been denied critical income and creative control. The Authors Guild is not opposed to the Google Books program; rather, we want authors to be included and rewarded, to be incentivized to make the most of the technological future. Already digital media are changing the way people “consume” books; authors want to help shape new models of reading their work. But the court is narrowing authors’ rewards—and opportunities—in the digital realm.

Personally, I fear that this decision will make it still harder for authors to transform their own works digitally. We have barely tapped the possibilities—overlaying traditional narrative text with images, sound, embedded digressive essays, intertextual links and interactive features, and who knows what else. That’s what I wanted for the digital edition of my most recent book, but the downward pressure on e-book prices by digital gatekeepers made it impossible, since it would have cost more than the print edition. The Second Circuit’s decision, I fear, will exacerbate the trend. Even if we could afford to transform our books, we’d be forced to compete with wealthy corporations over digital iterations of our own work. That’s a competition we can’t win.

T. J. Stiles received the Pulitzer Prize and National Book Award for The First Tycoon: The Epic Life of Cornelius Vanderbilt. His newest book is Custer’s Trials: A Life on the Frontier of a New America, a finalist for the National Book Critics Circle Award. He is on the BIO Advisory Council and the Authors Guild Council. A version of this essay appeared first in The Biographer’s Craft, the newsletter of the Biographers’ International Organization, and is reprinted here with permission.

Authors Guild v. Google Q & A: What’s at Stake

Though Authors Guild v. Google has been going on for over ten years, many authors and observers still have questions about the case and what’s at stake. To coincide with our filing a petition for Supreme Court review, we provided the following answers.

Why is the Authors Guild still pursuing this case against Google?

Google copied 20 million books to create a massive and uniquely valuable database, all without asking for copyright permission or paying the authors a cent. It mines this vast natural language storehouse for various purposes, not least among them to improve the performance of its search and translation services. The problem is that before Google created Book Search, it digitized and made many digital copies of millions of copyrighted books, which the company never paid for. It never even bought a single book. That, in itself, was an act of theft. If you did it with a single book, you’d be infringing.

I’m a writer and I like Google Book Search. I use it all the time. What’s the problem?

Google Books itself is not the problem. We’re all writers here, and we generally like Google Book Search. Some of us use it for research all the time. The problem is that Google used authors’ books for profit-making purposes without first getting permission from authors. It just went ahead and copied them many times over and extracted their value, without giving the authors any piece of it. There are lots of other great commercial uses of books; the difference is that most users abide by the law and get permission. If corporations are now free to make unauthorized copies of books for profit as long as there is some public benefit to the copying, then authors’ incomes will suffer even more than they have in recent years.

A truism of the digital age is: whoever controls the data owns the future. Google’s exclusive access to such an enormous slice of the world’s linguistic output cemented its market dominance and continues to this day to further its corporate profits.

Isn’t Google just acting like a giant library?

Not at all. Libraries are public institutions, generally nonprofit, dedicated to readers and scholars. Even so, they know they have to pay for their books. Google is in the business of books for commercial reasons only; it is more like a commercial publisher.
than a library. Like a commercial publisher, it seeks to profit from its use of books. While Google does this in a different way, by extracting value from data (from both the books’ language as data and data collected from users’ searches), it still should seek permission for these uses because it is extracting value from the authors’ expression.

But libraries lent Google the books in the first place, didn’t they? What’s wrong with that?

Borrowing the books was fine, but copying them without permission or payment was not. If you borrow a book from a library, it’s temporary. You can’t keep a copy for your own personal use. Google made a number of copies of each book—times millions. And they’re way past overdue. Just as a few years ago some banks proved too big to fail, Google has, so far, apparently been too big to punish.

Does the Authors Guild want to shut down Google Books?

No. A resounding no. We did not ask the court to shut down Google Books; we simply asked it to require Google to get permission from authors and pay them for the scanning and use of their works.

Doesn’t Google say this is “fair use”? After all, it doesn’t display full copies.

That is Google’s self-serving legal argument, yes, and so far it has persuaded judges who, we believe, are not seeing the big picture. “Fair use” is the exception to copyright that lets people use portions of (and in rare cases whole) copyrighted works for “purposes such as criticism, comment, news reporting, teaching, scholarship, or research.” When deciding whether a particular use is “fair,” courts should take into account at least four separate considerations and weigh them against one another. These are: (1) the “purpose and character” of the use, including whether it is commercial; (2) the nature of work that’s being copied; (3) how much of the work was copied; and (4) whether the copying eats into the potential value of the work that was copied. All these things—and anything else that the court deems relevant—have to be considered independently, then weighed against one another to make the fair use determination.

In this case, Google’s use was commercial, the entire works were copied and the market to bring back out-of-print books is completely devalued.

But a lot of fair uses have a commercial element to them. Surely you can’t be saying that Google’s for-profit status prevents it from making fair uses?

We’re not saying that at all. Commerciality is just one of the factors to be considered. Under the first factor, where the law expressly directs the courts to look at whether the use is commercial, the court focused almost exclusively on what it viewed as the transformative nature of Google Books. The Second Circuit disregarded the commerciality because of the perceived public benefit of Google Books. First, it looked at the public-facing use (the Google Books search engine), not any of Google’s internal uses. Then, looking at the “purpose and character” of Google Books, it decided the use “transformed” the books because the use was different than the use for which the books were written. (We don’t agree that this kind of transformation should favor fair use.) Following that logic, it found that Google Books delivers a public benefit (which we don’t deny), and then weighed the whole factor in Google’s favor—despite the fact that Google Books is also blatantly commercial. (Even if we agreed the use was transformative, we think the factor should have balanced out as neutral at the very least.)

Then, the court went on to let this first-factor finding color its discussion of each of the other factors—essentially turning a multifactor test into a one-factor test. The court did not consider each factor independently, nor did it balance them against each other in light of the purposes of copyright, as required by the law.

The multifactor fair use test has evolved over more than a century and has survived the test of time—for good reason. It does an efficient job of identifying uses that are fair to make without permission. For instance, quoting from a book, criticizing it, and creating a par-
Bestselling Authors and Rights Organizations File Briefs in Support of the Guild’s Supreme Court Run

“The court of appeals subordinated the very right that lies at the heart of copyright—the right to reproduce.”

—From the Amicus brief filed by Elsevier Inc. and Hachette Book Group, Inc.

On February 1, one month after the Guild filed its petition asking the Supreme Court to review a Second Circuit court ruling in its copyright infringement case against Google, a broad coalition of supporters—bestselling authors, book publishers, rights organizations, and copyright experts from around the world—filed briefs with the U.S. Supreme Court in support.

Major publishers Elsevier and Hachette were among those who filed a separate brief, while additional briefs were submitted by the Copyright Alliance, the Copyright Clearance Center, and several associations with shared interests.

The briefs cite a broad range of facts, case law and precedent in support of their positions. The brief of the Copyright Clearance Center and others pointed out that Google (now the world’s biggest company in terms of value) played fast-and-loose while its competitors, such as Microsoft, stuck to the rulebook: “[U]ntil it abandoned the effort in May 2008, Microsoft [. . .] was pursuing a book digitization project similar to Google Books but for the fact that Microsoft did not scan or display copyrighted books without permission of the copyright owner.”

The brief submitted by a group of international authors’ and publishers’ organizations directly questioned the lower-court ruling that is at the heart of the Guild’s petition to the Supreme Court, stating that “[t]he court] “made no effort to engage in any 'case-by-case' analysis of the vast spectrum of books that Google copied cover-to-cover, nor even to categorize the different types of works involved, in order to assess the differential impact of the copying on different categories of authors and publishers.”

The brief filed by publishers posed a question fundamental to the Guild’s petition before the Court: “If Google can copy every book in our great libraries, so may others, eliminating the ‘exclusive right’ at the heart of the incentives to create afforded by the Framers and Congress.”

Joining the Copyright Clearance Center in its brief were the International Federation of Reproduction Rights Organisations, based in Brussels, and Marybeth Peters. As U.S. Register of Copyright from 1994 through 2010, Peters helped shape copyright law—and in the process educated courts, the Congress, and the American public on its role. The copyright group’s brief contends that “Google built its database by systematically copying millions of copyrighted books in their entirety.”

“We are pleased to see so many esteemed authors, publishing groups, and copyright experts supporting us,” said Guild Executive Director Mary Rasenberger. “Their level of support proves that this matter is critical to the future of fair use under copyright law—if not the future of publishing and authorship itself.”

Amicus Briefs in support of the Authors Guild were filed by the following groups:

• American Society of Journalists and Authors
• Authors Malcolm Gladwell, J. M. Coetzee, Margaret Atwood, Ursula Le Guin, Stephen Sondheim, Peter Carey, Thomas Keneally, Tony Kushner, Diane McWhorter, Taylor Branch, Tracy Chevalier, Douglas Wright, Michael Frayn, Richard Flanagan, Tracy Kidder, Marsha Norman, and Yann Martel
• The Copyright Alliance
• International Authors Forum (IAF), International Publishers Association (IPA), and International Association Of Scientific, Technical And Medical Publishers (STM)
• Text and Academic Authors Association; Western Writers of America, Inc.; The National Association of Science Writers, Inc. and The Dramatists Guild
• Copyright Clearance Center, Inc.; The International Federation of Reproduction Rights Organisations; and Marybeth Peters
• Elsevier Inc. and Hachette Book Group, Inc.
ody of it are all traditional fair uses. But by straying so far from the statute, the Second Circuit reached a decision that cannot be considered fair, especially if you consider the precedent it will set.

**If Google isn’t charging people to search for snippets in Google Books, or putting ads on the page, how can it be considered commercial?**

Google didn’t spend millions on scanning these books as a charity project. Again, it did it to have access to all the language in those books, which it used to improve its search engine, allowing it to corner the Internet search market and drive more users to its site, which is based on a model in which visitors equal revenue.

Search engines do not make money by charging people for use; they make money by bringing traffic to their sites, collecting data from the users and selling advertising. Google makes money in all of these ways from Google Books. The fact that it has not to date posted advertising on the results pages from searches inside the books is irrelevant.

Moreover, since the Second Circuit decision, Google has integrated its book-buying service (formerly accessed as part of Google Play) with Google Books. Google Books is now a transparently commercial service, as we have always predicted would eventually be the case.

**Why is the Authors Guild taking this to the Supreme Court after it failed to convince so many lower courts?**

See above. We believe that the Second Circuit court took a myopic view of fair use law in its ruling and that the Supreme Court needs to step in and correct this. In the final analysis, the appellate court’s reasoning turns on its head the constitutional purpose of copyright law. The Founders recognized that, for the benefit of the public, we need authors who can earn a living, independent of government, academic or other patronage. That’s the purpose of copyright: to benefit the public by enabling authors to be compensated for their work. But the Second Circuit, blinded by the public-benefit argument of Google Books supporters, overlooked the fact that it completely cuts authors out of the equation.

Moreover, if this case isn’t overturned, this case will become a rule of law; it doesn’t just apply to Google Books, in other words. The decision will be read by other entities as giving them free reign to digitize books (at least books where the author owns the rights) and create searchable excerpt-viewing services for those books. Other entities might decide to show more of the books than Google currently does, and they probably won’t have the security protections that Google does. As a result, many authors’ books could become widely digitized and available for free on the Internet.

**Still, if Google Book Search points potential book buyers to your book, shouldn’t you be thanking them?**

Why should Google have the right to decide how to market books for authors? Authors may have many other more profitable ways to make money from their out-of-print and other books, and they should have the right to make those decisions. Let’s say you put your house on the market and your neighbor decides it would be great to have a party there while you are away, without first asking you. He justifies it by telling you he invited a lot of people and, thus, helped to market your house. Not too many people would be thrilled with that, even if it did in fact end up leading to a sale. What Google did is very similar.

Google’s seizure of our work (and the courts’ blessing of it) represents a denial to authors of emerging and potential markets for our work. It revokes the promise of the digital age. If Google is allowed to swipe our entire work and profit from it, then so can others, in ways we cannot foresee now. That’s a problem because authors may want to write and create in ways we cannot foresee now. That’s a problem because authors may want to write and create in ways we cannot foresee now. That’s a problem because authors may want to write and create in ways we cannot foresee now. That’s a problem because authors may want to write and create in ways we cannot foresee now.

But we don’t need to look to the future to see the harm being done to authors. Even today writers are seeking to bring their out-of-print-works back to market as print-on-demand editions, or e-books—but Google has made a significant amount of many of these titles readily available on the Internet, and for free. The amount Google displays is already enough to harm being done to authors. Even today writers are seeking to bring their out-of-print-works back to market as print-on-demand editions, or e-books—but Google has made a significant amount of many of these titles readily available on the Internet, and for free. The amount Google displays is already enough to

**Wide availability of free books—isn’t that a good thing?**

In the short run, for researchers—maybe. But think about what happens next: people won’t buy nearly as many books. That means all but the highest-selling authors won’t be able to make a living from writing books: many authors will have to take on other work to make ends meet. The result, we hate to say, is that fewer quality books will be written—and that’s a loss to us all.

**Aren’t most of the books at issue in the case old, and the authors long dead?**

Many of them are older works, but in publishing, “older” can mean just a few years off the press. When the books are old enough to be in the public domain,
there’s no problem with Google making copies. The problem arises with the millions of books that are still in copyright. The current case involves books found in academic libraries where the copyright is owned by authors. The vast majority of these books are out-of-print, meaning the author generally had the right to reclaim the copyright. And as we mentioned above, authors are increasingly looking to republish and retool their out-of-print books and bring them back as e-books or print-on-demand editions. Google Books interferes with that market, plain and simple.

Why should readers care?
Readers should care because the Second Circuit decision waters down copyright protection, and if it stands, readers could face a culture in which authors won’t be motivated to create serious work, because it is simply too hard to sustain a writing career financially in a climate where anyone can use books without paying for them. Most serious writing, outside of academia, is done by authors who write as a profession—because, like any art, great writing requires a lot of time, learning and practice. And readers should care because written works, as we all know, contribute immeasurably to the vitality of our culture.

How complicated can it be for Google to ask an author permission to use her work?
Exactly our point: the rights are eminently clearable. The court refused to acknowledge this point or take it into consideration. For example, both our sister organization, the Authors Registry, and the Copyright Clearance Center find authors for royalties from overseas uses with little difficulty or expense. And there are innumerable collective rights organizations around the world that do this all of the time—without much difficulty, and with much less money at their disposal than Google.

Books by the Numbers

Print book sales increased by 2.8 percent in 2015, with more than 652 million books sold, according to Nielsen BookScan, which receives sales reports from 80 percent of U.S. outlets. The year also ended with a strong showing during the holiday sales period.

Adult nonfiction print sales increased by 6.6 percent overall, adult fiction by 2.1 percent and juvenile nonfiction by 11.7 percent. Only juvenile fiction decreased, by 3 percent, likely due to the lack of best-selling crossover titles. In the adult fiction category, the increase was led by Go Set a Watchman by Harper Lee, Grey by E L James, The Girl on the Train by Paula Hawkins and All the Light We Cannot See by Anthony Doerr. Publishers Weekly notes that the modest bump in adult fiction print sales is significant, as it is the first increase in that category since e-books took on a meaningful share of the market in 2010.

E-book library lending also had a banner year. OverDrive—which handles digital lending for more than 90 percent of U.S. libraries—reported that in 2015 library users borrowed a record number of e-books and digital audiobooks: more than 169 million in total, a 24 percent increase from 2014. E-book circulation was up by 19 percent, with 125 million e-books being called up by readers; digital audiobooks were up by 36 percent, at 43 million. OverDrive also reported increases in streaming video circulation and in the relatively new category of digital magazine and newspaper circulation.

Michael Cader of Publishers Marketplace, who has been analyzing the numbers, was most intrigued by the shifts that took place in 2015 in point of sale. Sales by mass merchandisers, which include retailers like Barnes & Noble, were down 9.9 percent, while sales through independent bookstores, online booksellers and book clubs were up by 4.8 percent combined. In addition, Cader noted, “the backlist is up 13 million units, and frontlist is down about 800,000 units.”

Cader wrote separately about a bleaker development: declining stock prices for publicly traded publishing corporations. In 2015, Pearson’s share price decreased significantly and continued to decline in the new year; on January 21, the company announced that it was cutting four thousand jobs worldwide. Houghton Mifflin Harcourt and John Wiley also saw share prices drop following recent quarterly reports. In addition, Barnes & Noble and Barnes & Noble Education have performed poorly. “None of this matters much day to day,” Cader writes, “except for employees holding stock, but any kind of long-term deflation of publishing company values is bad for the whole business, attracting less investment and reducing the equity value of private companies as well.”
Paul Daymond Aiken

Paul Aiken was the Executive Director of the Authors Guild from 1995 to 2014, when he stepped down because illness made it impossible for him to do the work he loved with the vigor he had brought to for so long.

He was widely known for his dedication to authors’ rights and the preservation of copyright, and for his eloquence and ferocity in making the case for both.

He was known to his family, his extended family and a wide circle of friends, colleagues and collaborators, as about as serious a guy as you could imagine when it came to the law and writers’ rights, and as an equally delightful companion given to outbursts of high laughter that could easily be confused with barks of joy.

He came to the Guild with prodigious credentials as a lawyer, along with interests and talents that few could have predicted would matter as much as they turned out to. He was a “computer geek” who understood technology and he kept up with it the way he kept up with the Chicago Cubs, which is to say he knew everything there was to know long before most of his peers did. He dreamed up the Authors Registry, which has since earned $28 million for authors, and Back in Print, which has given new life to thousands of books.

“Paul’s integrity was contagious,” said Jan Constantin, the Guild’s General Counsel, at his funeral, “and everyone who worked for or with him strived to live up to his example. He had an unflagging commitment to advocacy. Whatever happens in the Google case at the Supreme Court, Paul’s ferocious commitment to protecting copyright will live on.”

“Many people in this room undoubtedly worship in the Church of Literature,” said Scott Turow in his eulogy for Paul, “regarding books as one of the greatest achievements of the human spirit. For those who follow that faith, Paul Aiken becomes a candidate for immediate canonization. In the last 20 years no person in the U.S., perhaps in the world, has struggled in behalf of authors and the writing life with greater passion or success. If the position of authors in the digital age has grown perilous, one cannot even imagine how much worse it would be without Paul Aiken.”

Diagnosed with amyotrophic lateral sclerosis, Lou Gehrig’s disease, in the summer of 2013, Paul fought bravely and with great dignity against it until his death. When he could no longer speak, he typed. When he could no longer walk, he scooted in his “monster electric wheelchair” through the streets of Greenwich Village and the curving pathways of Washington Square Park. He followed developments in the Google case from home, blogged about ALS with the precision of a researcher, made a last trip to Chicago to see the Cubs play and started a foundation, N=2, with the goal of creating a global registry of ALS patients and providing assistance to ALS patients in developing countries.

Paul was an exceptionally happy and devoted husband and father. The only thing he talked about more on business trips than saving the world for authors, colleagues recall, was his family, and he lived out his life in their care and their company, with jokes and good news continuing to ricochet around the room. He died at home, surrounded by a family that had met his illness with equal fortitude. He leaves his wife, Stefanie Rosenfeld and their three children, Melanie, Wil, and A.J. Aiken.

In the days following Paul’s death, the Guild received a flood of condolences from around the world. We include excerpts from the many moving messages we received, with thanks to all.

What can I say? All I can think about is how often I saw him smile and laugh—even on difficult days. To me he was kind, thoughtful, and courageous. The loss to you and the whole Guild is immeasurable.

—Michael Healy, Executive Director, International Relations, Copyright Clearance Center.

I am so sad for you and everyone at the Authors Guild who have lost their colleague, Paul. It’s a loss for all of us. Simply put, he was terrific and a fine man.

—Denise Marcil,
Denise Marcil Literary Agency, LLC
It was with profound sadness that I and the IFRRO community, with its 145 member organizations, and the millions of authors they represent ... learnt about your passing. In this, I, and many with me in the IFRRO family, have lost a friend; and authors, copyright and authors rights have lost a true champion.

—Olav Stokkmo, CEO of International Federation of Reproduction Rights Organization.

Paul was a rare and inspiring individual, and he will be sorely missed in the copyright community.

—Caroline Morgan, GM Copyright Agency

In my book Paul has been one of the great fighters and a great champion for writers. The world is a lesser place without him.

—Owen Atkinson, Chief Executive of the UK Authors’ Licensing and Collecting Society.

The Textbook & Academic Authors Association expresses its sadness for the loss of Paul Aiken, and extends it condolences to his family. Paul’s life was influential in his profession well beyond those who knew and worked with him directly. He will be greatly missed.

Paul played a key role in getting Authors Coalition started and provided me with much guidance as the Coalition grew. I will miss him.

—Mike Sullivan, TAA Authors Coalition Representative

SFWA sends sincere condolences to Paul’s family, friends, and colleagues at the AG. Paul was an inspiration over the many years we worked together in the Authors Coalition, and I will miss his enthusiasm, sense of humor, and determination.

—Michael Capobianco, Science Fiction and Fantasy Writers of America

This is such sad news and heart breaking for his family. In my book Paul has been one of the great fighters and a great champion for writers. The world is a lesser place without him.

—Owen Atkinson, Chief Executive of the UK Authors’ Licensing and Collecting Society.

I am writing to express my sadness upon learning of Paul’s passing. He fought very hard for things he believed in and was a champion for author rights . . .

I am remembering a story he told at an IFRRO meeting in Boston several years ago where he de-scribed walking his twins to school, and stopping at newstands and bookstores along this routine journey they took together every day. It seems like just yesterday I was listening to him describe this and imagining him in New York walking the kids there.

It is really tragic thinking about his young family and his own life cut short. I am very sorry for the loss of your good friend and colleague.

—Tracey Armstrong,
Copyright Clearance Center

ASMP sends our sincerest condolences out to Paul’s family and friends. We have all benefited from his leadership and vision and he will be deeply missed.

—Tom Kennedy, Executive Director, the American Society of Media Photographers

It is indeed a sad day and one to reflect upon the highly devoted, enthusiastic and successful career of Paul Aiken, an advocate extraordinaire for authors the world over.

I have counted Paul as a special friend and colleague for over 22 years . . .

Paul led a crusade to form the Authors’ Coalition and gain prominent membership in the International Federation of Reproductive Rights Organisations (“IFRRO”), and thereby fund U.S. author organizations and their author members with many tens of millions of dollars of reprographic rights revenues over the ensuing years.

I will fondly remember and miss Paul as I know so many authors throughout the United States and Europe will.

—Michael R. Lennie,
Lennie Literary Agency & Authors’ Attorney

Thank you so much for letting me know. I was thinking about him this morning as a reminder popped up on my email that it was his birthday yesterday.

He was an amazing man and truly inspiring as both an advocate for writers, as a father and husband, and as a human being.

—Siobhan O’Connor, Associate Director.
The Writers’ Union of Canada

The Society of Children’s Book Writers and Illustrators is so sorry to get this news. Paul was a tireless advocate for authors, a force in building the Guild and the ACA, a tremendous father and husband and an irreplaceable personal friend. Tremendously missed.

—Steve Mooser, president, SCBWI

Continued on page 34
The Guild Files an Amicus Brief in Support of Apple’s Supreme Court Hopes

On December 2, 2015, the Authors Guild filed a friend-of-the-court brief with the Supreme Court of the United States supporting Apple in its request to have the Supreme Court review the Second Circuit’s decision in United States v. Apple.

The brief, filed jointly by the Authors Guild, Authors United, the American Booksellers Association, and Barnes & Noble, and drafted by attorneys with Kirkland & Ellis in New York and Washington, DC, argued for the benefits of the competitive e-book pricing that Apple brought to the table when it established agency pricing with the publishers. An abbreviated version follows.

Introduction

The Department of Justice brought the lawsuit in 2012, maintaining that the publishers and Apple—by striking a coordinated deal to establish agency pricing for e-books—exhibited anticompetitive conduct by conspiring to fix prices. In response, the publishers and Apple argued that Apple’s entry into the market actually increased competition, as demonstrated by the fall of Amazon’s market share from 90 percent in 2010 to around 60 percent two years later. After a 20-day trial during the summer of 2013, the trial court found that Apple colluded with the publishers to drive the price of e-books above the $9.99 favored by Amazon. The Second Circuit upheld that decision.

Competition is vital to the book industry, which in turn fuels the marketplace of ideas on which this country is founded. In a competitive market, authors create a variety of works, from science fiction to historical biographies, each making an important contribution to American discourse and First Amendment–protected expression. Retailers then compete to sell these books, serving as a link between authors and consumers and providing distribution channels for authors’ content, as well as forums where consumers can learn about authors and exchange ideas. A healthy, competitive book industry fosters more book titles, diversity and output.

In late 2009, the market for retail distribution of electronic books (e-books) was essentially a monopoly, with Amazon controlling 90 percent of e-book sales. Amazon sold many of the most popular e-books at a loss, making it difficult for other retailers to enter the e-book market.

Around this time, Apple sought to enter the e-book market with its iBookstore app, which would allow consumers to download e-books and read them on Apple’s iPad device. To compete with Amazon and facilitate the launch of the iBookstore, Apple entered agreements with five publishers to distribute e-books. These agreements included (1) an agency model, which allowed each publisher to set the retail prices at which its e-books were sold through the iBookstore, (2) caps on e-book retail prices, and (3) a most-favored-nation clause, which ensured that while competition would be among publishers, Apple, as a retailer, would not be left unable to respond to its competitors’ pricing. With these agreements in place, in April 2010 Apple entered the e-book market.

Following Apple’s entry into the market and the adoption of the agency model, competition within the e-book retail industry increased dramatically. Average retail prices for trade e-books—e-books sold to the general public, as opposed to textbooks or technical manuals—fell and output increased because there were more price setters competing on retail prices and more opportunities and better incentives for authors and independent publishers to write books and distribute them through the e-book market.

The number of e-book titles available to consumers increased. Self-publishing terms improved, which spurred authors to create and self-publish new works. At the same time, individual publishers were able to independently set e-book retail prices for the e-books they produced and ensure that revenue remained at the level necessary to support the creation of research-intensive and/or time-consuming book titles that often can be written only with publisher support.

The number of retailers selling e-books also increased. Following Apple’s entry into the e-book market and the adoption of the agency model, Amazon’s market share decreased from 90 percent to about 60
percent. Hundreds of independent bookstores began selling e-books, and Barnes & Noble’s e-book business grew as well. This retail competition spurred Barnes & Noble, Apple and others to create many technological innovations for e-books and e-readers, including a fixed format for e-books that made it easier for consumers to read visually focused e-books, such as cookbooks, which require text and graphics to appear at specific locations on the “page.”

After Apple’s entry into the e-book market, a single distributor no longer controlled the electronic marketplace of ideas, consumers had access to more content and a greater variety of retailers from which they could learn about and purchase e-books, and authors, including those represented by amici, had a choice of multiple electronic distribution platforms.

The Second Circuit’s decision is inconsistent with this Court’s precedent. Absent correction, the lower court’s wooden approach threatens to undermine the very objective of antitrust law—to ensure robust competition. Such concerns are particularly heightened here, where the adoption of the agency model of e-book pricing in fact invigorated competition in the marketplace of ideas and intellectual discourse.

Follow Apple’s entry into the market and the adoption of the agency model, competition within the e-book retail industry increased dramatically. Average retail prices for trade e-books—e-books sold to the general public, as opposed to textbooks or technical manuals—fell and output increased.

The Book Industry

In order to appreciate the pro-competitive effect of Apple’s entry into the e-book market, and the tremendous benefit to competition among authors and retailers generally, it is necessary to understand the various players in the book industry. Authors write and research a variety of books. While some books can be written quickly without outside input, most books require input from development editors, copy editors and designers before they are ready for publication. In addition, once books are finished, they need to be marketed to consumers.

For many authors, publishers provide these editing and marketing services. Publishers also provide advances to help authors cover their costs while they are researching and writing. By pooling resources, publishers function like venture capitalists for the book industry, funding a variety of books and taking risks on authors and their ideas. Self-published authors, on the other hand, have to forgo such support or pay for editing and marketing services on their own, without any publisher marketing efforts or the benefit of an advance to buoy them during the writing process.

Once a book is complete, it is usually sold through a retailer—such as a brick-and-mortar bookstore or an e-retailer. Bookstores, however, provide many services beyond selling books. Fundamentally, they provide channels for authors and content creators to distribute their works. By displaying books and providing spaces for author events, book readings and book groups, bookstores provide marketing and promotional support to authors, allowing them to share their vital contributions with the American public. They also serve as “cultural centers” for consumers, where consumers can browse books and exchange ideas. By developing relationships with their customers, booksellers can also provide tailored recommendations to serve their customers’ needs.

Amazon’s Domination of the E-book Market

Through 2009, Amazon accounted for almost 90 percent of all e-book sales. It sold both self-published and traditionally published e-books, which consumers could read on Amazon’s e-reader, the Kindle.

For traditionally published book titles, Amazon purchased e-books from publishers at wholesale prices and then set retail prices. For certain new releases and New York Times bestsellers, Amazon set retail prices at less than the wholesale prices it paid for these e-books. Publishers were concerned that this below-cost pricing would diminish the value of all books and threaten the viability of the brick-and-mortar bookstores on which publishers depend to sell and display print books. They also feared that Amazon would leverage its market share to demand lower wholesale prices from publishers for e-books, which would affect the supply of book titles and overall output.

Many authors shared these concerns. It takes a significant investment of time and resources to write books, particularly nonfiction books that require substantial research and travel, as well as literary fiction,
which can take years to write. If Amazon, which had a history of squeezing publishers for more favorable terms, used its power to squeeze down wholesale prices, then authors would no longer be able to write as many books. While lower wholesale prices may increase sales for certain books, they also have the effect of reducing book sales by decreasing the number of overall book titles. When wholesale prices fall, publishers earn less, leaving them less money to offer authors and spend on book promotion, which leads in turn to a decrease in the number of book titles available to consumers. When determining the effects of lower wholesale prices on output and consumer savings, any positive effect due to increased sales for books that do get written has to be weighed against the negative effect of a decrease in the number of titles. In other words, pricing books at $9.99 is not a panacea for consumers or authors; it can lead to fewer books being produced and sold, and any proper analysis of the effects on consumer welfare and output must account for this effect.

From the authors’ perspective, consumer welfare also should take into account the types of titles being cut. Authors feared that if wholesale prices declined to a uniform figure across the board, publishers would invest only in low-risk books with broad appeal, and not in literary fiction or research-intensive nonfiction titles, which tend to have a small, but committed, audience and are especially important to intellectual discourse and free expression. Furthermore, a market that favors low-risk books disproportionately harms midlist and emerging authors. While blockbuster authors can survive on brand recognition alone, midlist and emerging authors’ discovery often hinges on the investments of publishers and the support of brick-and-mortar bookstores. Thus, Amazon’s dominant market position also was a threat to the variety of e-book titles.

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Bookstores provide many services beyond selling books. . . . They provide channels for authors and content creators to distribute their works. By displaying books and providing spaces for author events, book readings and book groups, bookstores provide marketing and promotional support to authors, allowing them to share their vital contributions with the American public. They also serve as “cultural centers” for consumers, where consumers can browse books and exchange ideas.

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After Apple Entered the E-book Market, Competition Increased

Apple entered the e-book market in April 2010 with the launch of the iPad, on which consumers could read e-books purchased from Apple’s iBookstore app, and an offer of agency pricing to all publishers and authors. Control over retail prices for e-books thus shifted from one company to thousands of companies and individuals, including self-publishers, independent publishers and traditional publishers, who competed on retail price and drove average retail prices down. The average retail price in the trade e-book market fell from $7.97 in the two years before the agency model was adopted to $7.34 in the two years after Apple entered the e-book market. Barnes & Noble found in an independent analysis that average e-book retail price weighted by units sold decreased.

As would be expected, trade e-book sales increased during this period. According to Nielsen Book and data from PubTrack Digital, which collects e-book sales data, e-book sales in the United States grew from just over 10 million sales in the first quarter of 2010 to more than 40 million sales in the first quarter of 2012. This growth was due in part to the increase in self-publishing, the increase in e-book titles, and improvements in e-book technology that resulted from the increase in competition in the e-book distribution market.

It cannot be overemphasized that the number of e-book titles increased exponentially following Apple’s entry into the e-book market and the introduction of the agency model. This increase is due in part to the fact that Apple itself converted more than 500,000 titles to EPUB format on behalf of publishers. At the same time, Barnes & Noble continued to convert numerous titles to EPUB format. The improvement in self-publishing terms that resulted from Apple’s entry into the e-book market and the increased competition among booksellers also contributed to the increase in e-book titles, as incentives for authors to create e-books and other copyrighted works improved.

Prior to Apple entering the e-book market, Amazon
offered self-published authors a 35 percent royalty on sales of their e-books. On January 20, 2010, Amazon announced that it would offer a 70 percent royalty to self-published authors who agreed to sell their books on Amazon at retail prices between $2.99 and $9.99, effective June 2010. This decision appeared to be a direct response to Apple’s likely entry into the e-book market and Amazon’s belief that Apple would offer publishers a 70 percent royalty when it entered.

**Competition Spurred Tech Innovations**

Apple’s entry into the e-book market and the adoption of the agency model had pro-competitive effects on e-book distribution. Amazon’s market share dropped from about 90 percent to about 60 percent. Barnes & Noble and Apple cut into Amazon’s market share considerably, Apple with the introduction of its iBookstore app and Barnes & Noble through the increased viability of its Nook. Barnes & Noble, which also shifted to the agency model, continued to develop and promote the Nook e-reader and e-bookstore, which would not have been possible if they had continued to sell e-books under the wholesale model. Moreover, independent e-retailers entered the e-book market. As of November 2015, approximately 500 ABA members are capable of selling e-books through ABA’s partnership with the e-reading service Kobo, including approximately 400 bookstores using ABA’s IndieCommerce subsidiary to sell e-books.

Retail competition also spurred innovation as e-book retailers competed for consumers and content. In late 2010, Barnes & Noble and Apple utilized technology that made it possible to create fixed format e-books, meaning e-books in which the text and graphics appear at specific locations on the “page.” This is essential for visually focused books, such as cookbooks and travel books, which, previously, could not be sold in e-book format without sacrificing quality. In 2012, Apple released iBooks Author, a free software program that made it easier for all authors to write and publish e-books. Barnes & Noble introduced a lending program to cultivate new customers and allow e-book owners to use their e-books in much the same way as they would use their physical books. These technological innovations, which would not have occurred without the agency model and with Amazon dominating distribution, facilitated the expansion of e-book titles, the diversity in e-book genres and the increased e-book output that are the touchstones of a competitive literary market. These developments should have been considered as pro-competitive effects of Apple’s conduct in entering the e-book retail market; the Second Circuit’s disregard of such considerations was in error.

**Broader Access and Competition in the Marketplace of Ideas**

In the publishing landscape, competition increases consumers’ access to ideas. Amazon’s dominant market position, however, threatened the free exchange of ideas that this country values so highly. With a 90 percent market share, nearly every customer who wanted to purchase an e-book had to do so through Amazon. Amazon could exercise this power to suppress specific publishers, authors or messages with which it disagreed, with impunity. It could steer the culture toward the ideas it valued. Moreover, Amazon could, and in fact did, cut off access to certain e-books, leaving many consumers with no practical way to purchase them.

Fortunately, when Apple and others entered the e-book market, Amazon’s control over culture decreased. E-books not sold on Amazon were available elsewhere. E-books not marketed by Amazon were marketed elsewhere. While the reduction in Amazon’s market share from 90 percent to about 60 percent did not resolve all of the book industry’s concerns about Amazon’s market dominance, the fact remains that the cultural conversation surrounding e-books is no longer in the hands of a single company. The increase in competition among retailers that was facilitated by the agency model and Apple’s entry into the e-book market is a significant consideration, and should not be overlooked.

A 2014 contract dispute between Amazon and Hachette regarding e-book pricing is particularly instructive. When contract negotiations reached a standstill, Amazon removed the pre-order button from the point of purchase page for Hachette’s book titles. This was disastrous for authors, as pre-orders are included in a book’s first week of sales and thus play a significant role in books becoming bestsellers. Amazon, which controlled about two-thirds of all online sales for print books, also delayed shipments for many Hachette print books, and when consumers searched Amazon.com for Hachette titles, Amazon pointed its customers to similar items sold at a lower price.

Amazon’s decision to direct consumers away from Hachette’s books in 2014 cost some authors 50 to 90 percent of their sales. Consumers interested in Hachette’s books had a more difficult time purchasing them. If Amazon had adopted these tactics in 2009, when it controlled 90 percent of the e-book market, the damage would have been far greater. Nonetheless, the Second Circuit’s panel majority ignored the positive impact that Apple’s entry into the e-book market and

*Continued on page 45*
Fair Use in the Digital Age

Fox News Network, LLC v. TVEyes, Inc.
U.S. District Court, Southern District, New York

A federal court recently considered whether a company’s archiving and distribution of copyrighted television news footage is fair use. The court’s decision underscored the complexity of applying the fair use doctrine in the digital age, a complexity that will be all too familiar to those who have followed the winding path of the Authors Guild v. Google litigation.

TVEyes, a media search engine, lets its customers—which include journalists and corporations—track news coverage of specific events. It monitors, transcribes and archives broadcasts from over 1,400 television and radio stations for use around the clock. One of those stations is Fox News.

The dispute began in 2013, when Fox News brought a copyright infringement suit against TVEyes. TVEyes, however, argued that its use of Fox’s content was fair use—a defense against charges of copyright infringement, permitting use of a copyrighted work for purposes such as criticism, commentary, reporting or researching. To determine whether there is fair use, courts look at several factors, including among other things, whether the use of the work serves a different purpose from the original by “transforming” the material used (as in a parody or a book review), how much of the original material is used and whether the use of the work could impede on the market for the original work.

In 2014, the Southern District Court of New York ruled on the indexing and clipping aspects of TVEyes, finding that the use of Fox’s content for those two services was fair (in the wake of that same court’s ruling the previous year that Google’s wholesale copying and snippet display of millions of books was fair use). But the court reserved judgment as to the company’s others services, namely the date and time searches and the e-mailing, downloading and archiving services.

The court’s analysis of whether TVEyes sufficiently repurposed Fox’s original material focused on the different services that Fox News and TVEyes respectively perform: time-sensitive news reports and opinion in Fox’s case, and in TVEyes’, the archiving and distribution of selected sound bites to its clients. In the court’s view, TVEyes sufficiently “transformed” the Fox material from news content to commentary on how the media reports news. The court viewed this commentary as a public benefit favoring fair use, in that it allows

organizations such as government bureaus, political campaigns and financial firms to confirm the accuracy of news reports and to provide feedback that benefits the public.

The court then considered whether TVEyes’ use of Fox footage could potentially deprive Fox of a market for that footage. Given that TVEyes’ use of the material did not, according to the court, deprive Fox of its intended audience, the court found that the impact on Fox’s revenue was negligible. So the court found fair use.

In August 2015, the district court took up the remaining issues in the case—TVEyes’ date and time search and its e-mailing, downloading and archiving of content.

The court found that TVEyes’ date and time search was not fair use because it allowed subscribers to search for specific clips they already knew existed. In the absence of TVEyes’ service, these clips would have been procured from Fox or its licensing partners—for a fee. TVEyes was likely depriving Fox of business, the court suggested, and on that basis the court denied TVEyes the fair use defense.

Next, the court found that the unlimited e-mailing and downloading of the copyrighted content also foreclosed a claim of fair use. With no limit to how many people a subscriber can e-mail content to, the court

Legal Services Scorecard

From October 5, 2015 through February 19, 2016, the Authors Guild Legal Services Department handled 366 legal inquiries. Included were:
  93 book contract reviews
  7 agency contract reviews
  14 reversion of rights inquiries
  42 inquiries on copyright law, including infringement, registration, duration and fair use
  6 inquiries regarding securing permissions and privacy releases
  7 electronic rights inquiries
  197 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
found that the sharing service risked depriving Fox of legitimate revenue, which again weighed against fair use.

On the final point—TVEyes’ archiving of Fox’s content—TVEyes argued that its archiving of clips served a different purpose from the original Fox footage, since TVEyes used the footage to monitor media treatment of a subject over time, a process that would prove impossible if the subscriber could not store clips for a significant period. The court agreed with TVEyes and found archiving clips to be fair use.

Though neither side won this legal battle outright, Fox News gained an edge, as the court found that three of TVEyes’ five uses of Fox’s content infringed Fox’s copyrights.

The August 2015 decision led the court to order TVEyes to shut down some of its functions effective December 14, 2015. Under this injunction, subscribers will no longer be able to download telecast content; search by date, time and channel; or share clips by social media of any Fox News Channel and/or Fox Business Network content. The court placed further restrictions on TVEyes’ operations, limiting subscribers’ e-mailing of clips to five or fewer people, and only through each subscriber’s work e-mail. In turn, recipients will need to verify their e-mail addresses to ensure they are the intended recipients before being allowed to see the clip.

While TVEyes won the case in 2014 over its indexing and clipping of Fox News’ content, it appears to be losing the broader legal battle, since the permanent injunction severely limits the services TVEyes can provide to its subscribers based on Fox News’ content. As the permanent injunction addresses the use of Fox’s content only, TVEyes’ use of other news groups’ content has yet to be affected.

On November 30, 2015, however, both sides agreed to put the injunction aside while the U.S. Second Circuit of Appeals reviews this case. The appeal will be watched closely by broadcast media companies and copyright lawyers, as the Second Circuit’s ruling could have a wide-ranging impact on what is considered fair use when indexing and compiling copyrighted works.

The Second Circuit’s decision likely will follow the dubious precedents set by that court’s October 2015 ruling that Google’s mass copying and snippet-display of books is fair use. Unless, that is, the Supreme Court intervenes in the meantime.

—Valerie Kaplan
Legal Intern

Who Left the Back Door Open?

Smith v. Barnesandnoble.com, LLC
U.S. District Court, Southern District, New York

The rise of self-publishing platforms that store and send licensed content between cloud-based platforms and e-reading devices has been raising some new questions about the boundaries of copyright protection. On November 2, 2015, the U.S. District Court for the Southern District of New York considered whether an e-book distributor is liable for copyright infringement of content that remains on a customer’s e-reading device after expiration of the licensing agreement between author and the distributor.

In December 2009, indie author Louis Smith signed up with Smashwords, an indie e-book distributor, to market and distribute his book *The Hardscrabble Zone*. Smith elected to price the book at $3.33 and paid Smashwords a small fee for listing the book for sale on its website, as well as on websites of its publishing partners, which included Barnesandnoble.com. Smith agreed to terms of service granting Smashwords “the non-exclusive right to digitally publish, distribute, market, and sell . . . and to license” Smith’s book and the “right to distribute samples . . . in any form of media.” Smashwords then listed the book on its website, giving customers the option of purchasing the book or downloading a free sample.

At the same time, Smashwords listed the book on Barnesandnoble.com, granting the latter a “non-exclusive worldwide right during the Term to sell, market, display, license, and promote” Smith’s book, along with the right to distribute and display up to 5 percent of its content as a free sample.

Barnesandnoble.com subsequently listed the book and made it available through its cloud-based system, the Digital Locker (“DLS”), which manages content between its customers’ e-reader devices and their cloud storage accounts. When a customer’s e-reader device runs out of storage, the device migrates her purchased and downloaded content to the DLS; if and when the customer seeks access, the e-reader re-downloads the content from the DLS to its local storage.

Smith’s book was listed on Smashwords and Barnesandnoble.com from 2007 to October 2011, at which point Smith terminated the agreement, “unpublishing” *Hardscrabble* and requesting that his account be closed. No one had purchased Smith’s book while the listings were active; however, one customer had downloaded the free sample and saved it to his device. Barnesandnoble.com removed the book from its website, but it did not remove the customer’s de-
An Address to Publishers: Either We Swim Together or We Sink Together

On January 15, Executive Director Mary Rasenberger made the case for authors and publishers to collaborate at a meeting of the Books Committee of the Professional & Scholarly Publishing division of the American Association of Publishers in New York. The speech has been edited for print use.

I. Introduction

The publishing industry is changing at an unprecedented rate. Some see the leveling off of e-book sales as a sign of stability after a decade of disruption, but I think the change is just the beginning of the digital makeover of the publishing industry.

I remember a talk from eight or ten years ago that I heard at the Grolier Club. The speaker talked about the transition from illuminated manuscripts to published books and showed us how the first published books all looked like illuminated manuscripts. It took a century for books to be rethought in a way that suited the new technology—to be printed on paper in easy-to-read fonts for mass distribution. The speaker made the point that we are still at the beginning of the Internet age and don’t know how it will change. I agree; we still have yet to really rethink the e-book—what it is and how it will be distributed. One thing is for certain: all those toddlers who master iPads and iPhones long before they can read will be reading more on screens than we do now.

Right now it feels harder than ever to stay afloat in this business. It’s harder for authors and it’s harder for publishers, especially small publishers, and that includes both university presses and academic publishers. But I am here to talk about authors today.

From the perspective of authors—we’re seeing less and less of the sorts of advances that can constitute a livelihood. Book authors, unless they have other jobs, rely on advances to keep the lights on while the writing is being done. A talented, productive author used to be able to earn a reasonable living through writing, or at least get by. Now most authors struggle to earn a living wage while juggling several jobs at a time.

A talented, productive author used to be able to earn a reasonable living through writing, or at least get by.

Now most authors struggle to earn a living wage while juggling several jobs at a time.

So, at the Authors Guild we are looking closely at the publishing landscape, seeking to identify the causes of lower incomes, which are no doubt complex. We are taking a holistic approach to try to understand the landscape and help authors navigate it. Our goal is to protect our members, of course, but more broadly, to make sure the working American author does not become a thing of the past.

In 2016, we’ll be fighting battles on many fronts:

• We’ll continue to fight for strong and sensible copyright protection, most visibly in our case against Google, which we’re trying to take to the Supreme Court.

• We are fighting on the Hill to give authors a greater voice, working with the Copyright Office and Congress to develop the sort of effective 21st-century copyright system authors need in the digital era.
• We know that an ideal publishing ecosystem depends on the diversity provided by many different types and sizes of publishers and the participation of a variety of retailers. We’ll continue to work to promote a more diverse marketplace for books, so that a single retail giant—and here I am talking about Amazon in particular—isn’t able to dictate terms to the entire industry. Amazon pretty much controls the online market for books, and by driving down the cost of books and forcing publishers to accept oppressive financial terms, Amazon has forced publishers to focus their resources on the most commercial books. I don’t generally like to make quality judgments about books, but there is a certain dumbing-down of publishing when the big advances go to celebrities, not serious writers who have been honing their craft for years.

• We will also work with publishers (including some of you) to make sure that authors have fair contracts, fairly tailored to the realities of the digital era. We will be asking you to think more openly about contracts and to start changing them up a bit. We will encourage you to think outside the box to come up with ways that authors can do more with their books, without cutting into your profits. For instance, if you aren’t doing anything with a book anymore, selling just a few copies a year, give the rights back and let the writer have a crack at it.

The causes of the financial precariousness that plagues publishers and authors alike are manifold, but the implications are clear: both authors and publishers need to do things differently in the future in order to thrive in the new publishing environment. We all have to adapt. And we all have to work together.

But before I talk about some possible adaptations, let’s take a step back and look into the causes of our discontent—a few of the main culprits, at least, the enemies that authors and publishers alike share. To that end, I’ll address, in this order: (1) Amazon’s book retail dominance and ruthless tactics, (2) the unprecedented decline in our courts’ protection of copyright, and (3) the free content movement. I’ll also discuss what the Guild is doing to address each of these threats.

II. Amazon

The Authors Guild has spoken out against Amazon’s dominance of the online market for years, and we have been pushing for a government investigation into the ill effects of that dominance and the sometimes unfair practices that sustain it.

Why do we pursue this? We’ve gotten some criticism from indie authors and others along the way, but the Authors Guild’s mission is to protect and support working writers. And part of that mission means ensuring that the markets for books and ideas remain both vigorous and free.

When a single e-tailer—one that sells 75 percent of print books sold online and close to half of all books in the country—deliberately suppresses the works of certain authors, those authors are harmed, plain and simple. That’s what happened when Amazon removed the buy buttons for Macmillan authors in early 2010, and when it pulled pre-orders for Hachette authors in 2014. Some authors completely lost the window for an entire book. It was blatantly unfair, and a huge number of authors stood up and opposed it. Council member Douglas Preston formed Authors United as a single-purpose, grassroots organization in response, and we helped by providing administrative support.

In the U.S., Amazon commands a share of over 40 percent of new book sales across all platforms. That’s 64 percent of the online sales of physical books and 65 percent of the e-book market. As we all know, Amazon employs a predatory pricing strategy. It set an artificially low price for e-books, which no doubt helped fuel the growth of the e-book market. But it also altered consumer expectations of the value of e-books (and, indeed, of books in general) and sent readers to the Internet to buy books instead of at bookstores, even encouraging readers to buy on Amazon while in a bookstore! It willingly lost money on bestselling titles in order to squeeze retail stores, and now it jacks up the price to the reader of “long tail” books to make up for the losses. Even with agency pricing, Amazon penalizes publishers and authors for charging full price. Since small publishers cannot live without Amazon, Amazon can force pretty bad terms on them. The point is that it exploits its dominance at the choke point in
the distribution chain to extract an ever greater share of a book’s price from publishers, especially smaller publishers.

The Second Circuit Court of Appeals, in *U.S. v. Apple*, recently upheld the district court’s finding that Apple was liable for collusion. Apple has asked the Supreme Court to review that ruling. In early December, the Authors Guild filed a friend-of-the-court brief supporting Apple’s petition to the Supreme Court as part of our efforts to prevent the nation’s book markets from being controlled by a single, dominant player.

In the brief—which we filed with Authors United, the American Booksellers Association and Barnes & Noble—we argued that the government’s focus on Apple’s allegedly anticompetitive activities was misplaced, because Apple’s conduct in fact enhanced competition by increasing e-book output, the number of e-book titles and the number of e-book distributors. That led to technological improvements in the e-book market, enhanced freedom of expression and expanded access to e-books.

At the same time, we continue to urge the government to take a closer look at Amazon’s outsized market share and anticompetitive practices in the publishing industry. In 2014 we prepared a white paper on Amazon’s anticompetitive conduct, which we sent to the Department of Justice and other government entities. We hosted a meeting with DOJ representatives in our offices in August 2014 so that a group of authors could make their case directly. In 2015, we met with the FTC and once again with the DOJ to present our case, bringing several authors to the meetings with us. We found some sympathy, but the DOJ requires evidence of harm to consumers, and the only way they apparently know how to measure that harm is in terms of prices, although we were advised that other information that demonstrates harm to readers, such as showing a reduction in the quality or diversity of books, might help.

While we all know that advances are down for most serious fiction and nonfiction projects and way up for celebrity books and other anticipated bestsellers, concrete evidence of a decrease in book quality is a hard thing to measure or show. Our argument is that before long, many professional authors—who have spent their careers honing their craft—will have to leave the book writing business for more sustainable work. The public suffers by having fewer or a less diverse group of works of real literature.

The next threat I want to discuss is the unprecedented expansion of fair use and the general weakening of copyright protection in this country. In some ways, the effects of copyright abuse are even harder to measure than the damage Amazon has wreaked, but it is palpable.

### III. The Decline in Copyright Protection

Copyright protection is a linchpin of democracy. The Founders wrote copyright law into the Constitution because a democracy needs an informed citizenry. And an informed citizenry benefits greatly from the existence of a class of authors who can support themselves in a free economy, without patronage or the need to rely on payment from special interests.

Copyright law allows authors to control use of their work and monetize it by giving them control over who can copy, publish and sell their work, and in what manner. In the last decade or so, since the rise of the Internet and the information-wants-to-be-free movement, a strong anti-copyright faction has been successful in challenging copyright protection. While there are some areas where copyright protectionists may admittedly have overreached, wants-to-be-free advocates use those instances as an excuse to demonstate copyright holders and push back copyright much further than is sustainable over the long run. This movement contends that since copyright law is meant to benefit society, copyright must bend to the immediate benefits of broad access to copyrighted works. The courts have started to buy this view, most notably in our cases—*AG v. HathiTrust* and *AG v. Google*—for which we recently filed for Supreme Court certification. In our view, this reflects a simplistic and mis-

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**Why do we pursue this?** When a single e-tailer—one that sells 75 percent of print books sold online and close to half of all books in the country—deliberately suppresses the works of certain authors, those authors are harmed, plain and simple.

That’s what happened when Amazon removed the buy buttons for Macmillan authors in early 2010, and when it pulled pre-orders for Hachette authors in 2014.
guided view of how copyright works in practice—at least vis-à-vis the author.

First of all, copyright protection, like patent law, itself benefits society. It encourages people to create by giving them control over their work, including the right to make money from it. The idea that because a deviation from that basic right also benefits society it should be considered fair use, is upside-down thinking. All uses of most copyrighted books—and particularly educational texts—are socially beneficial in some way.

This extreme fair use movement privileges users over distributors, and technology over authorship—and it turns the constitutional premise of copyright law on its head. The problem is that this movement has infiltrated court thinking. In the words of Authors Guild Council member Richard Russo, recent fair use cases, including ours and the Georgia State case, amount to no less than “the redistribution of wealth from the creative sector to the tech sector.”

It would be wonderful to have free books for everyone, especially for educational purposes, but someone needs to pay the people who write and publish those books—just as it would be good to have free food for everyone, especially those in need, but we all agree farmers and ranchers need to be paid. In a democracy, as the Founders recognized, we need authors who can earn a living from “free expression,” and publishers who can earn back enough from their investments in that expression that they can keep investing in new books.

Unfortunately, in the Georgia State and Google Books cases, we are starting to see the courts chip away at the book market by using copyright law’s “fair use” doctrine to favor free access over authorization.

Georgia State

The Georgia State case addresses whether universities providing digital course packs to their students must pay permissions fees to authors and publishers.

The decision in the lower court and the Eleventh Circuit have allowed as fair use electronic course packs, even though hard copy packs were always paid for. Traditionally, universities happily paid for course-pack reprint rights; readings were compiled, printed and sold to students through brick-and-mortar copy shops. Royalties were paid to authors for these course packs. But when course packs went digital, a number of schools, including GSU, decided that instead of getting licenses (some complained that licenses were not available), they would rely on fair use, and they began using digital course packs without paying rights holders.

One of the more surprising and wrong-headed conclusions of the court was its determination that unless the publisher was already in a licensing market providing exactly the format for distribution desired by a user—in this case, book excerpts in digital format—the use at issue was a fair use. What this means is that the market for that use is then foreclosed to the copyright owner. How can the copyright owner ever reclaim a market once it is free?

It would be wonderful to have free books for everyone, especially for educational purposes, but someone needs to pay the people who write and publish those books—just as it would be good to have free food for everyone, especially those in need, but we all agree farmers and ranchers need to be paid.

The loss of permissions payments is a significant threat to authors and publishers alike: even small income reductions can mean the difference between a publisher covering its costs and not, a difference that might ultimately determine whether a particular book even sees the light of day.

Section 107 of the Copyright Act clearly states that when analyzing fair use courts must consider whether the use interferes with potential—not just existing—markets; and the Supreme Court has clearly stated that courts must look at not just the harm from the particular use at issue in the case before it, but the effects of widespread unrestricted use on those existing and potential markets. The Eleventh Circuit’s narrow view of
market harm, however, failed to consider the fact that markets for the works existed in print form; electronic markets were not just potential, but were actively being developed for electronic access. Moreover, it failed also to consider the effect of widespread conduct similar to GSU’s—where every university relies on fair use in similar cases. As we said in an amicus brief I filed on behalf of the Authors Guild and the Textbook and Academic Authors Association: “A loss in excerpt permissions fees is precisely the kind of change that could take a book from breaking even or being profitable to becoming unpublishable.”

Authors Guild v. Google

On December 31, we filed for cert. in Authors Guild v. Google, a case with which you are all very familiar. The Second Circuit decision in October excused Google from obtaining permission or paying authors before it made digital copies of their books, some 20 million of them, at least 4 million of which were still protected by copyright.

Google didn’t make just one copy of each book; it made many copies, including an additional “thank-you” copy for each of the libraries in exchange for permission to come in and scan the books. So not only did Google fail to pay or get permission for its initial copies; authors were deprived of more sales to libraries.

In addition to creating Google Books, Google made significant internal uses of the full text of books it scanned, ingesting the copies into its databases so that it could make what it called “non-display” uses of those books. The phrase “non-display” sounds harmless enough. But it masks the fact that those uses allowed Google to data-mine the texts and teach its systems to understand natural language—and it did this in order to improve its search business, creating tremendous value for itself.

As the Guild’s president, Roxana Robinson, has said: “The expressive use of language is one of the most important contributions that writers make to society.”

And since the expressive use of language is the one thing that writers can create and technology cannot, its value to the tech sector is incalculable. Google’s bold appropriation of this priceless aspect of writers’ work, without acknowledgment or compensation, allowed it to gain an enormous competitive advantage by making a whole lot of copies of authors’ works—all without buying or licensing a single copy of any book.

Never before has copyright law permitted a major company to trample on individuals’ rights to make even more money, with the excuse that it provides a useful technological tool. Worse, the Second Circuit’s decision establishes a rule of law that allows any entity to create digital copies of copyrighted work and use them for internal purposes, as long as it also makes the content available on the Internet for public search and excerpt viewing.

That’s why we are still in the case and have gone for cert. After the district court rejected the settlement—where, if you recall, Google agreed to pay $45 million directly to copyright holders for its initial infringement and $34.5 million more to help fund a registry to manage future payments—it agreed with Google that Google’s mass copying was “fair use” because the societal value of the book-search engine was so great it outweighed any harm to authors and their rights to control the use of their works. And the Second Circuit affirmed. The result is that in the Second Circuit at least, it is now fair use to make full copies of works for internal purposes and data mining, and make them fully searchable, with portions returned from search results freely viewable by anyone online.

This is a slippery slope. We will go from four lines per page per search being presented by Google to entire pages, then chapters, being made available by libraries and others. And those entities won’t have the security necessary to keep full copies off the Internet. Pretty soon books will go the way of music, and copies of everything will be findable, searchable and—for nonfiction works—usable online for free. This kills the market for authors trying to bring their out-of-print books back. Close to 80 percent of each Google-scanned book is searchable and available for display, and the search results are often enough for researchers. More importantly, the books serve as mere bait for Google to collect more user data and increase ad revenue. Authors and publishers should be getting a piece
of those profits. In the words of Columbia Law School professor June Besek, “the fair use pendulum has now swung too far away from its roots and purpose, now enabling new business models rather than new works of authorship.”¹ We don’t yet know how books will be accessed and potentially monetized in the future, but my guess is that it will be through search engines, and that’s a problem.

As Mike Shatzkin recently reported in his blog, most online book sales (about half of the market today) already result from online searches. Referring to book sales, he says:

[T]he transactions take place primarily at Amazon, often at Barnes & Noble (still) and Apple, and occasionally at Google. But the drivers to the transactions are Google and Facebook. (And others, of course, but none approaching the importance of those two.) How successfully publishers will sell books in the future will largely depend on how well they master the opportunities presented by Amazon, Apple, Facebook and Google.²

We are still in the very early stages of the digital revolution. We don’t know where the book market is going, as I said, but when I look at how young people read, and especially how they do research, it is pretty clear that it will be increasingly be online and that most books will be obtained through online search.

We’ve been attacked relentlessly as Luddites for pursuing this case, but we think that it is Luddite not to see into the future far enough to understand how important full text search will be to monetizing books. We can’t just give away our right to copy for purposes of search. We’ve already seen the slippery slope effect in the fair use cases.

As advances and royalties for new books dwindle, it has become imperative for most authors to earn in-

payment for the use. We are continuing the suit in hopes that the courts have not lost all sense when it comes to copyright and that the Supreme Court will assert the old rule that rights holders must be consulted before their books are copied in full for commercial, profit-making purposes.

Google has complained that it is too hard to license all the books from authors—that they should be excused from doing so because of the enormous scope of their infringement. In essence, they have successfully argued that they are too big to infringe. We believe these kinds of mass uses could and should be governed by collective licensing. Infringement should not be allowed merely because the use has some social benefit and clearance is hard. Let's respond not by digging our heels in, but by making it a lot less hard. Let's take that excuse away.

Without collective licensing, fair use will continue to determine the outcome of these cases. We have submitted comments to the Copyright Office proposing a collective licensing scheme for mass digitization that would pave the way for a real national digital library—not just the snippets currently offered by Google and others.

Indeed, applying fair use to mass digitization is a form of free compulsive licensing—one created by courts taking only one party's interests into consideration, with the result that authors get no compensation. Congress is the body that should be determining what the rules should be for this sort of use, as it has the ability to broadly study and balance the needs of creators, users and other interested parties in the best interest of the nation as a whole.

In the public comments we submitted in response to a Copyright Office proposal, we recommended establishing collective licensing for out-of-print book rights (which authors and not publishers generally own). This would allow authors, publishers and other rights holders to be compensated at a reasonable rate and, at the same time, pave the way for a true digital library, where full books could be viewed, not just the excerpts and snippets currently offered. At the same time, users would not have to negotiate and obtain licenses on a case-by-case basis. And, critically, the books subject to the license would be out of print, to avoid disrupting commercial markets. Print and e-book distribution rights would not be part of the package—only the author or other rights holder could authorize such uses. The same platform for licensing could be used for in-print licensing, but rates would be set by the copyright owner.

Outside of the Copyright Office Pilot Program, we've also been working with other institutions to create a technical solution—a platform that would make online licensing a reality in the United States, enabling authors and other rights holders to make the rights to their out-of-print works available to potential end-users on licensing terms chosen by the rights holder.

IV. Small Claims Court

We've been supporting the creation of a small claims tribunal for copyright infringements. If created with care, this tribunal would allow individual authors and small publishers much greater access to the courts to protect their property rights, appreciably enhancing market incentives to create the literary works that the public values. Frivolous, harassing claims could be avoided by routine, automatic rejection of claims that do not raise a prima facie case of infringement. Dismissal without prejudice of claims in which a substantial fair use defense is raised would greatly speed and simplify the court's proceedings, as would permitting the proceedings to be conducted by mail and phone. Affiliation with the Copyright Office would assure the court's competence in copyright law. Finally, granting the court limited power to issue injunctions would strengthen the court and its credibility.

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Applying fair use to mass digitization is a form of free compulsive licensing—one created by courts taking only one party's interests into consideration, with the result that authors get no compensation.

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V. Contractual Imbalance and the Beginnings of Real Transformation

We know and respect the fact that publishers—especially in this era of media consolidation—need to meet their bottom lines. But if professional authors are going to continue to produce the sort of work publishing houses are willing to stake their reputations on, those authors need a fair share of the profits from their art and labor.

That's why we launched the Fair Contract Initiative.

3. Section V was not delivered at the meeting due to antitrust concerns.
last May. In our series, we have written about best practices for a number of standard publishing agreement clauses. We would like to start an open dialogue with publishers of all kinds to discuss the issues and what publishers can do to ensure that this business is fair and profitable for those who create the works that sustain it. We have started to reach out to many of you to set up meetings.

The issues for us are:
- half of net proceeds is the fair royalty for e-books;
- publishing contracts should be time-limited;
- standard contracts shouldn’t assign the copyright to the publisher, but should grant licenses;
- noncompete provisions and option clauses shouldn’t stand in the way of an author’s ability to write and publish freely;
- publishers’ accounting practices need to be more timely and transparent;
- deep discount clauses shouldn’t be used to unfairly deprive authors of royalties;
- a contract’s warranties and indemnifications shouldn’t place all legal risk on the author, but only for breach of fair representations that the author can make based on her knowledge;
- delivery and acceptance provisions should not give publishers a loop hole to get out of publishing a book, and they should let the author have the final say over the text of the published work.

We hope you and your lawyers will be willing to sit down with us to discuss these best practices. We are advocating on behalf of authors, of course, but we believe that authors and publishers are going to have to work together to combat all of the other forces that are trying to devalue books and the intellectual contributions of authors. No matter what forms publishing takes in the future—and there will be a variety of them—we believe that most professional authors will continue to want to work with publishers, because they help edit and market and sell, and because they pay the advances that give authors the freedom to devote themselves full-time to writing. Publishers play a major role in allowing professional authors to write quality books, particularly books that further knowledge and learning—which is, after all, the very purpose of copyright.

I hope we can stake out our common ground in the coming years and work together to make the book ecosystem robust and diverse so that our literature can continue to thrive. ✤

Paul Daymond Aiken

Continued from page 20

Western Writers of America sends our sincere condolences to Paul’s family, friends, and to the Authors Guild.

—Candy Moulton,
Western Writers of America

The Graphic Artists Guild also sends our condolences. Paul was a fighter, and we will miss his determination in taking on the biggest of adversaries.

—Lisa Shaftel and John Schmelzer.
The Graphic Artists Guild

We at the National Press Photographers Association also send our condolences. Paul impressed me the moment I met him. And he is missed.

—Greg Smith, Business Practices Chair, NPPA

The Society of Illustrators sends our sincerest condolences to all friends and family.

I will remember Paul for his wit, his brilliance, and his dogged determination to fight the good fight, both in life and in business. My sympathies to our friends at the Authors Guild.

—Dorien Kelly, Authors Coalition

I am so sorry to hear of Paul’s passing and send my sympathies to his friends, family, and colleagues. I am thankful that they shared Paul with the Authors Coalition for so many years. We are certainly better for it.

—Tinsley H. Davis, Executive Director
National Association of Science Writers

Saying goodbye is never easy, especially to someone who has made such an impact on so many lives. Ninc sends our sincerest condolences to his family and colleagues.

—Pat Hamon, Novelist Inc.

I’m very sorry to hear this. Paul was also known to many of us in Australia for his work in support of authors. I can still very clearly hear that resonant voice.

—Angelo Loukakis,
Australian Society of Authors
Along Publishers Row

Continued from page 2

The story includes several familiar Potter characters—archvillain Mr. Tod, Mrs. Tiggy-Winkle, Ribby and Tabitha Twitchit—but just two original sketches by Potter have been found. Quentin Blake, the illustrator of Roald Dahl’s books, is doing the art. “I liked the story immediately,” Blake told The Guardian. “It’s full of incident and mischief and character—and I was fascinated to think that I was being asked to draw pictures for it.”

Blake went on to say, “I have a strange feeling that it might have been waiting for me.”

MORE MEMOIR: Diana Athill, retired London book editor, is 98, and she has written a follow-up memoir to her much-praised Somewhere Towards the End (2009).

According to the Times, the new book, Alive, Alive Oh!: And Other Things That Matter, is “an invitation to sit a spell with an intractable and witty friend who’s pushed even further into what the poet May Sarton termed the ‘foreign country of old age.’”

APOLOGY: “When is criticism unfair?” the Times asked in its Bookends column. Alice Gregory, a contributing editor at The New York Times Style Magazine and one of the responding essayists, wrote about her early career as a critic, starting at 23. “I labored under the delusion that it didn’t matter whether or not I knew anything at all. I’d confidently critique nonfiction books about topics I’d never thought about before. I’d make arguments about novels by authors whose other books I hadn’t read.”

There’s something to be said for critical writing “done by very young people who don’t yet know how much they have to lose,” Gregory said, but offered an apology to writers she had reviewed all the same.

“I don’t think I was unfair to those books, but do I think I was unfair to the people who wrote them. There is a difference, and I am inclined to acknowledge it in a way that I once, even quite recently, was not.”

EARLY HIT: Harry Potter and the Cursed Child, the “eighth story” about the fictional lad from J. K. Rowling, written as a two-part play, hit the top of the bestseller lists less than 24 hours after it was announced—and five months before its expected release. The book is being held until the day after the play opens in London on July 30.

The Guardian said the action takes place 19 years after the end of Harry Potter and the Deathly Hallows. Harry, according to Pottermore, Rowling’s online encyclopedia of all things Harry, will be “an overworked employee of the Ministry of Magic, a husband and father of three school-age children” grappling “with a past that refuses to stay where it belongs.”

LIARS LOVE IT: “Britain is racing to address the fact that only 4 percent of Britons have read War and Peace, with Leo Tolstoy’s doorstopping epic entering the UK’s book charts for the first time.”

Alison Flood’s tongue-in-cheek piece in The Guardian’s on the popular success of the BBC’s latest adaptation of a canonical work was one of many that have run in British papers since the series launched in December. Most cited as well a BBC survey that found that “War and Peace was in the top five works of fiction people are most likely to lie about having read.”

“Judging by our recent sales,” Waterstones’ Joseph Knobbs told The Guardian, “an awful lot of people have finally crossed this classic off their must-read list. Four different editions of the book have hit our bestseller list, shifting an almost equal number of copies each.”

WHAT KIND DO YOU READ?: The Times research and analytics department asked 2,987 subscribers, “Do you still read physical books, or do you read them on electronic devices?”

The results were as follows: 38 percent said they read only physical books, 4 percent read books on electronic devices and 58 percent said they read in both forms.

REWIRED: “The average human attention span [has] dropped to eight seconds, shorter than that of a goldfish,” wrote Sam Sacks in his Wall Street Journal column.

He was commenting on remarks made in Nicholas Carr’s bestselling The Shallows, “that our attachment to phones and computers is actively rewiring our brains, strengthening our capacity to mentally multi-task but diminishing our ability to sustain focus for prolonged periods. I used to find it easy to immerse myself in a book or a lengthy article,’ Mr. Carr wrote. ‘That’s rarely the case anymore. Now my concentration starts to drift after a page or two.’”

Sacks cited Sven Birkert’s Changing the Subject: Art and Attention in the Internet Age as well. “We may have been engineered for the exploration of depths—our noblest first traditions were, after all, philosophy and poetry—but we have made a U-turn and are now heading in the opposite direction.”

A CLOSER LOOK: Jacqueline Kelly is the author of The Curious World of Calpurnia Tate. In an essay in the Times Book Review, she wrote: “With all the emphasis today’s educators and policy makers are placing on the STEM subjects—science, technology, engineering and mathematics—you would think there would
be a steady stream of novels capable of inspiring young girls to consider a future in those fields. Not so. Such books come around so infrequently that special attention should be paid to them when they do.”

Kelly was reviewing The Thing About Jellyfish by Ali Benjamin. Kelly suggests that the book’s dedication might read: “For all those kids who need a gentle nudge to look closer at nature and science.”

ENVYING BLOOM: Colm Toibin’s most recent novel is Nora Webster. In an interview in the Times Book Review, he was asked to name his favorite fictional hero. He said, “I wish I was Leopold Bloom, the man who wanders Dublin in Ulysses. I love the way he notices and registers things, his wit, his sensuous good humor. I envy all the fun he had when he went to Nighttown and got involved in gender-bendering.”

WINNER: The Jamaican author Marlon James won the 2015 Man Booker Prize for A Brief History of Seven Killings, a novel that The New York Times called “raw, violent” and The Guardian “uncompromising” and “not for the faint of heart.”

The author told The Guardian that Killings—about Jamaica in the 1970s and ’80s and the attempted assassination of Bob Marley—was turned down 76 times before publication.

James, who currently lives in Minneapolis and teaches at Macalester College, is the first Jamaican to win the Booker, currently worth about $80,000.

A BIG LIFE: In a new biography, Ted Hughes: The Unauthorized Life, Jonathan Bate describes the British poet, who died in 1998, as “crow, blood, mud, death, short line, break, no verb.” After the poet Sylvia Plath met Hughes at a party, she wrote in her diary: “That big, dark, hunky boy, the only one there huge enough for me.” They married, had two children, and divorced.


He quoted the 85-year-old Wolfe: “There are two kinds of writer’s block. One is when you freeze up because you think you can’t do it. The other is when you think it’s not worth doing.”

WHAT BOOKS ARE MADE OF: Matt Bell is the author of Scrapper. In an essay, “Influence Looming,” in the Times Book Review, Bell wrote: “Novels have two primary sources: writer’s life experiences or their art experiences—although I suppose more religious writers might also make room for divine inspiration. While it’s popular in publicity to focus on the life experience that informs a book, a writer’s art experiences are just as responsible for how a story emerges from the imagination and eventually appears on the page. As Cormac McCarthy once said: ‘The ugly fact is books are made out of books. The novel depends for its life on the novels that have been written.’”

SO LONG TOMBOYS: Like clothing, a word can become old-fashioned and fall out of use. Last fall, The New York Times declared that we have outgrown “tomboy.” New phrases like “gender-nonconformist” or “gender-expansive” are taking its place.

Jennifer Baumgardner, publisher of The Feminist Press, told the Times, “‘Tomboy’ doesn’t feel present tense to me at all. It feels retro, this affirmative way of talking about a girl who likes boy things, as if boy things were better.”

ABOUT FEAR: Patricia Cornwell’s 23rd crime novel, Depraved Heart, features Dr. Kay Scarpetta, the medical examiner she introduced to readers in 1990.

In a Guardian interview, Cornwell was asked why she writes about psychopaths. “It’s fear,” she said. “It’s because I grew up with fear.” Her father walked out on the family when she was 5. She was molested by a policeman as a child and testified against him in court. Her mother was hospitalized when Cornwell was 9, and she was abused by a foster mother.

“I’m supposed to be writing my memoirs,” Cornwell said, “and I keep going, ‘I kind of already am. I do it in every book.’ That’s what artists do. We take things and filter it through us and it comes out in a different form.”

Scarpetta says in the opening pages of Depraved Heart: “A select few of us come into the world not bothered by gruesomeness. In fact we are drawn to it.”

PLANT MAN: Richard Mabey is the author of The Cabaret of Plants: Botany and the Imagination. For 40 years, the botanist has been writing books and articles about the flowering world.

“Mabey,” Tim Dee wrote in an extended review in The Guardian, “is a professional writer and has never been other than an amateur botanist. But his amateurishness, as written, has always revealed the roots of the word: to be an amateur is to be a lover, and this is the book of a man in love with both the known facts of plants and the dreams they sponsor.

In 1972, Mabey published Food for Free, which told his readers how to forage. That book is still in print, and Mabey says it’s his pension.

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.
COUPLED: Judith Thurman is a staff writer for The New Yorker. In November she wrote about Véra and Vladimir Nabokov, who were married for 52 years: “She was his first reader, his agent, his typist, his archivist, his translator, his dresser, his money manager, his mouthpiece, his muse, his teaching assistant, his driver, his bodyguard (she carried a pistol in her handbag), the mother of his child, and, after he died, the implacable guardian of his legacy.”

Thurman said that the luckiest writers “are those married to ‘a Véra,’ a spouse of either sex who liberates them from life’s mundane chores; the less fortunate long for a Véra between loads at the laundromat. There is also the option of a paid Véra for writers of means—or of scruples.”

POEM FOUND: The Bodleian Libraries at Oxford has acquired a poem written by Percy Bysshe Shelley during his first year at the university.


In 1811, after he published a book on atheism, Shelley was expelled from Oxford.

FOR DAUGHTERS: Robert Beatty, a former tech entrepreneur, is the author of Serafina and the Black Cloak for middle graders. He lives in the Blue Ridge Mountains of Asheville, NC, with his wife and children. The New York Times said the book is set in 1899, when “children go missing at a sumptuous Vanderbilt estate.”

On his website, Beatty said: “Serafina’s journey grew out of my desire to write about an unusual and heroic young girl for my three daughters.”

WEATHER: Donald Barthelme once said that he would never write about the weather in any story. In an essay in The New Yorker, “Writers in the Storm: How Weather Went from Symbol to Science and Back Again,” Kathryn Schulz analyzed the shifts in perception and interpretation of weather over the centuries.

“Storms sent to punish, lightning to frighten, thunder to humble, floods to obliterate: across nearly all cultures the first stories that we told about weather were efforts to explain it, and the explanations invariably came down to divine agency.”

“At the dawn of the 19th century,” she wrote, “nearly everything about weather remained a mystery. No one understood the wind. No one knew why temperatures dropped as you climbed closer to the sun. No one could explain how clouds, with their countless tons of rainwater, somehow remained suspended in midair.”

Schulz concluded: “End-times narratives offer the terrible resolution of ultimate destruction. Partial destruction, displacement, hunger, want, weakness, loss, need—these are more difficult stories. That is all the more reason we should be glad writers are beginning to tell them: to help us imagine not dying this way but living this way. To weather something is, after all, to survive.”

NO DRAFTS: In an article in Poets & Writers, Marilynne Robinson was quoted on writing fiction: “I don’t write drafts. The first sentence in my novels is the first sentence in my notebook, and I write from beginning to end. I don’t revise. The scene is written in the order in which it comes to the page. In a way, it’s as if there are different voices in my mind. The illusion of hearing the language is always very strong with me.”

FACT AND FANTASY: Twenty-eight years after his death, The Complete Works of Primo Levi has been published as a three-volume collection. Ann Goldstein was the editor.

A trained chemist who joined the Italian partisan movement at 24 and survived a year in Auschwitz mainly because his skills ensured him indoor labor, Levi wrote about his experience after returning home to Turin in 1945.

“Levi earned world fame for the quiet, undramatic lucidity of If This Is a Man (his memoir of Auschwitz) and for the strangely moving blend of scientific fact and quicksilver fantasy in The Periodic Table (his autobiography),” wrote Edward Mendelson in the Times Book Review.

“Levi gave two different explanations of how he became a writer,” said Mendelson: “I write precisely because I am a chemist,” he said once. He also said, ‘If I hadn’t had the experience of Auschwitz, I probably would not have written anything.”

CRITIC: The Man with the Golden Typewriter is a collection of letters by

Authors Guild Members

IN MEMORIAM

Helen Brann  
Peggy Cole  
Jean Ferris  
Curt Gentry  
Peter Hannaford  
Harriet Joseph  
Robert Kelly  
William Lansford  
Paul McCarthy  
Ann McGovern  
Rod McKuen  
holley Rubinsky  
Judith St. George  
Vera Williams

Guild members who learn of a fellow member’s death are encouraged to let us know, as we sometimes don’t receive notice from family members until much later.
Ian Fleming, edited by his nephew Fergus Fleming.

The author was a critic of his bestselling James Bond novels: “Probably the fault of my books is that I don’t take them seriously enough and meekly accept having my head ragged off about them. If one has a grain of intelligence it is difficult to go on being serious about a character like James Bond. . . . My books are straight pillow fantasies of the bang-bang, kiss-kiss variety.”

The quote is from a letter Ian Fleming wrote to his friend and fellow crime writer Raymond Chandler in 1956.

THE REAL: Vendela Vida is the author of five books. In an Author’s Note essay in the Times Book Review, she wrote: “When something extraordinary happens, we often say it’s stranger than fiction. But reality routinely, every minute of every day, outdoes all realist fiction in its strangeness. Recently two women working on the same floor of a Florida hospital discovered they were sisters (they had been adopted by different families in the 1970s). We read this item in the newspaper and accept it as astonishing, but real. The same occurrence in a realist novel, though, would be called unlikely or unbelievable. We’ve arrived at a point where not only is reality stranger than fiction, but we don’t allow our fiction to be even close to how strange real life is every day.”

LETTERS: Shaun Usher is the compiler of Letters of Note and More Letters of Note—epistolary treasures that have made a successful leap from the website he started in 2009 to bestselling anthologies. “The literary equivalent of a box of chocolates—bite-sized and pure addictive pleasure,” said London’s Times of the original Letters.

What all the fuss is about is Usher’s simple presentation of old-school letters in their original form, handwritten or typed, on real paper, sent from one person—usually a famous one—to another. A brief text by Usher sets the stage and names the correspondents—David Bowie to his first American fan, Mark Twain to a salesman, Queen Elizabeth to Dwight D. Eisenhower, Ursula K. Le Guin to an editor explaining why she would not blur a book of science fiction “which not only contains no writing by women, but the tone of which is so self-contentedly, exclusively male, like a club, or a locker room.”

“If I’m reading an email I’ve always got my eye on something else,” Usher told The Guardian. “But if a letter comes through the door, I’m always in awe that someone has taken the time and made the effort. There’s something beautiful just looking at the paper someone’s chosen, looking at the letterhead if there is one, working out what they have typed the letter on or looking at the handwriting. There’s just so much more to enjoy.”

HOT TRIO: Rainbow Rowell has three young-adult novels on the bestseller list: most recently published is Carry On. The other two are Eleanor & Park, about two high school misfits, and Fangirl, about a girl obsessed with fan fiction.

Rowell was asked if Rainbow was her real name, on her birth certificate, and she said, “Yep.”

FAT SELLS: There is no dieting these days in the book trade. “The average book is now 25 percent bigger than 15 years ago,” according to The Guardian. A study of 2,500 books revealed that the average length had gone from 320 pages in 1999 to 400 pages in 2014.

Today, the biggest challenge appears to be publishing a book that is neither very short nor very long. “The most difficult area now appears to be the middle,” said literary agent Clare Alexander. “Mid-list, mid-career, middle-sized—in fact anything that’s middling.”

ACRONYM: SPQR is the title of Mary Beard’s new history of ancient Rome. It’s short for Senatus Populusque Romanus, which means “the Senate and people of Rome.” In his column in the Times Book Review, Gregory Cowles wrote, “as the Concise Oxford English Dictionary notes, some merchants have also adopted the acronym as a wry motto meaning ‘small profits and quick returns.’”

Beard, a professor of classics at Cambridge, has a reputation as a scholar with a gift for making history enjoyable to non-scholars. In an interview with Salon, she was asked if she wished more academics took her approach. “It’s a great privilege to work, and be paid, studying the Romans,” she said. “And to some extent, because the academy is still relatively protected, and people can speak without losing their jobs, there is an obligation to speak—not to rant, not to shout.”

But, she said, “I hope there is still a role for people who spent their lives in the library looking at three lines of Aeschylus, or Homer, or whatever . . . Not every academic has to be like me.”


Garner then quoted lines that he recalled from his book reviewing in 2015: “A man’s daughter is his heart. Just with feet, walking out in the world,” is from Mat Johnson’s Loving Day. “Bugs Bunny wasn’t nothing but Br’er Rabbit with a better agent,” is from Paul Beatty’s The Sellout. “Death is the only monopoly,” is from Joshua Cohen’s Book of Numbers.
HAIL TO STEIN: Here’s a tribute to Gertrude Stein: “She has for the present half century kept hammering away at words—and frequently knocking the daylight out of them.” The writer was Samuel Steward who wrote essays under the name of Philip Sparrow. They have just been published in the book Philip Sparrow Tells All.

The Times’s review of the book was full of quotes. Here’s another: “There are six stages in getting drunk: jocose, amorous, bellicose, morose, lachrymose, and comatose.” Sparrow considers the comatose ones to be the worst, referring to them as “a vegetable grater on everyone’s nerves and patience.”

OFF WITH THE LEASH: Poet Mary Oliver’s Dog Songs was published in 2013, and has moved onto the bestseller list for the third time. Oliver ends the book of poems with an essay titled “Dog Talk,” about her dislike of leashes:

“The other dog—the one that all its life walks leashed and obedient down the sidewalk—is what a chair is to a tree. It is a possession only, the ornament of a human life. Such dogs can remind us of nothing large or noble or mysterious or lost. They cannot make us sweeter or more kind.

“Only unleashed dogs can do that.”

PLOTTING IS HARD: The Hired Girl is a bestselling young adult novel by Laura Amy Schlitz. Following a detailed, favorable review in November, the Times summarized the book’s plot on its Best Sellers list in this way: “To escape her hard-scrabble life, a farm girl pursues work as a domestic for a Jewish family in 1910s Baltimore.”

An earlier prize-winning Schlitz novel, Splendors and Glooms (2012), was the subject of a Q & A in PW. Schlitz was quoted: “I love making up characters. I could make up characters till the cows come home. Plot’s what’s hard. Very hard.”

EARLY START: “Can you imagine a writer writing about a writer?” Elizabeth Strout asked at a New York press luncheon. Strout’s first book, Amy and Isabelle, and all her subsequent ones, have been bestsellers. Her third novel, Olive Kitteridge, won the Pulitzer Prize in 2009. Her fifth, My Name Is Lucy Barton, was released January 12 of this year.

Interviewed by Carrie Tuhy for PW, Strout said, “I have been writing sentences since the time I was old enough to hold a pencil.”

“I like to think I come to the page without judgments,” she told Tuhy. “I always have hope for my characters. I have to come with a purity of heart.” Her characters, she said, “wander into her mind unbidden. . . Lucy wanted her own book.”

Tuhy asked Strout what she would like to be if not a writer. Strout said, “I think I would have liked to be a doctor, an internist. I’d like to hear people’s bodily complaints and then diagnose them.”

Reviewing Lucy Barton in Time, Sarah Begley wrote that Strout “captures the ache of loneliness we all feel sometimes, ‘with longings so large you can’t even weep.’”

TOUGH GOING: Lorin Stein is editor in chief of The Paris Review and editor of its latest collection, The Unprofessionals: New American Writing from “The Paris Review.” In an essay in the Times on the rise of young writers who have stepped back from the tweet and the post to dig deep, he wrote: “By writing offline, literally and metaphorically, this new generation of writers gives us the intimacy, the assurance of their solitude. They let us read the word ‘I’ and feel that it’s not attached to a product. They let us read an essay, or a stanza, and feel the silence around it—the actual, physical stillness of a body when it’s deep in thought. It can’t be faked, in life or on the page. We see the opposite all around us every day, but to me, that kind of writing matters now more than ever before—precisely because it’s become so hard to do.”

DEATHS

Amir Aczel, 65, died November 20 in Nimes, France. He was the author of Fermat’s Last Theorem: Unlocking the Secret of an Ancient Mathematical Problem (1996).


Peggy Anderson, 77, died January 17 in Philadelphia. She was the author of Nurse (1978) which sold millions of copies and inspired a TV series and movie.

Rosalyn Baxandall, 76, died October 13 in Manhattan. The historian was coauthor of America’s Working Women: A Documentary History, 1600 to the Present (1976), Technology, the Labor Process and the Working Class: A Collection of Essays (1976) and Words on Fire: The Life and Writing of Elizabeth Gurley Flynn (1967).

Thomas Blatt, 88, died November 1 in Santa Barbara, CA. He was the author of a memoir, Sobibor: The Forgotten Revolt—A Survivor’s Report (1997).

Jackie Collins, 77, died September 19 in Los Angeles. She was the author of more than 30 books, which sold more than five hundred million copies. Her first novel was The World Is Full of Married Men (1968). A big seller was Hollywood Wives (2001).

Robert Curvin, 81, died September 29 in Newark, NJ. He was the author of Inside Newark: Decline, Rebellion, and the Search for Transformation (2014).
Lewis M. Dabney, 83, died December 22 in Easton, MD. He was the author of Edmund Wilson: A Life in Literature (2005).

Alice Denham, 89, died January 27 in Manhattan. She was the author of Sleeping with Bad Boys: A Juicy Tell-All of Literary New York in the Fifties and Sixties (2006).

Peter Dickinson, 88, died December 16 in Winchester, Hampshire, England. He was the author of nearly 60 novels, including The Glass-Sided Ants’ Nest (1968).

Umberto Eco, 84, died February 19, in Milan, Italy. The author of the bestselling The Name of the Rose (1980), Foucault’s Pendulum (1988), and five other novels, Eco was a professor of semiotics at the University of Bologna. He also wrote three children’s books and more than 30 works on signs, language, and related scholarly subjects.


Arthur T. Hadley, 91, died November 25 in Manhattan. He was the author of The Straw Giant—Triumph and Failure: America’s Armed Forces, a Report from the Field (1986) and The Nation’s Safety and Arms Control (1961).


John Holm, 72, died December 28 in Azeitão, Portugal. He was the author of An Introduction to Pidgins and Creoles (2000) and coeditor of Central American English (1982).

George Jonas, 80, died January 10 in Toronto. He was the author of 16 books, including Vengeance: The True Story of an Israeli Counter-Terrorist Team (1984).

Florence King, 80, died December 6 in Fredericksburg, VA. She was the author of Southern Ladies and Gentlemen (1975) and Confessions of a Failed Southern Lady (1985).

Allen Lacy, 80, died December 7 in Tucson, AZ. He wrote or edited about 10 books on gardening and was the author of The Inviting Garden: Gardening for the Senses, Mind, and Spirit (1999).

Paul McCarthy, 64, died August 18 in New York City. He was the author of Books, Authors, and the Ideal Editor (2014).

Forrest McDonald, 89, died January 19 in Tuscaloosa, AL. He was a professor and author of more than a dozen books, including The American Presidency: An Intellectual History (1994).


Sidney W. Mintz, 93, died December 27 in Plainsboro, NJ. He was the author of Sweetness and Power: The Place of Sugar in Modern History (1985) and Tasting Food, Tasting Freedom: Excursions into Eating, Culture, and the Past (1996).

Warren Murphy, 81, died September 4 in Virginia Beach, VA. He was coauthor of 150 titles, including Grandmaster (1984), which sold millions of copies and won an Edgar Award. He was also coauthor of Created, the Destroyer (1963), and the creator of the fictional Remo Williams.


Phil Pepe, 80, died December 13 in Englewood, NJ. The New York sportswriter was author of The Yankees (1995), My Favorite Year (1956) and Yankee Doodles (2015).

Anna Pump, 81, died October 10 in the Hamptons on Long Island. She was coauthor of The Loaves and Fishes Cookbook (1985) and several other cookbooks.

Leon Root, 86, died September 21 in Manhattan. An orthopedic surgeon, he was the author of No More Aching Back: Dr. Root’s New 15-Minute-a-Day Program for a Healthy Back (1990) and coauthor of Beautiful Bones Without Hormones (2005).

Herbert Scarf, 85, died November 15 in Sag Harbor, NY. A Yale mathematician and creator of an algorithm for measuring the effects of taxes and traded shifts, he was the author of the influential The Computation of Economic Equilibria (1973) and many other works.

Phyllis Tickle, 81, died September 22 in Lucy, TN. She was the religion editor of Publishers Weekly for many years and the author of several books, including The Great Emergence: How Christianity Is Changing and Why (2008).

Donald Weinstein, 89, died December 13 in Tucson, AZ. He was the
From the Home Office

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support of Apple’s appeal of the ruling in the e-book price-fixing case U.S. v. Apple. In that brief we asked the Supreme Court to hear Apple’s appeal and also argued that the government erred in going after Apple and five major book publishers in the first place; the government should have taken on Amazon’s stranglehold of the e-book market, not Apple and the publishers’ attempt to loosen Amazon’s grasp. [See page 21]

A panel that we had planned to cohost with the House Creative Rights Caucus, a group of representatives who support authors’ rights and copyright protection, was unfortunately canceled due to the snowstorm but will be rescheduled. AG members Roxana Robinson, Scott Turow and Douglas Preston were to join Representatives Judy Chu (D-CA) and Doug Collins (R-GA) to discuss the challenges and opportunities facing authors in the digital economy.

Our visit to DC also gave us the opportunity to meet with several members of Congress and their staffers. In these meetings the AG contingent discussed our antitrust concerns, as well as our 2016 legislative priorities. These include (1) the establishment of a small claims tribunal that will allow individuals and others to bring infringement cases without a lawyer or going to court; (2) a collective licensing solution for the mass digitization of out-of-print books; (3) a clarification of the safe harbors for internet service providers (ISP’s) that would require the ISP to not just take infringing copies of a work down once, but to keep them down once sufficient information is provided to the ISP; and (4) the modernization of the Copyright Office so that it has the technology, resources and status that creators and users need and deserve in the 21st century. Each of these issues is currently being reviewed by the House Judiciary Committee and is the subject of a thorough Copyright Office study.

Last, we continue our efforts to reach more of you outside of New York by hosting or helping to organize local events. I greatly enjoyed meeting local members and their friends at a reception we held in New Orleans on February 10 and, as has been the case in other cities, heard that there is a desire to get together and share information more regularly. We also met with some members while in DC, and we will have an event in Los Angeles on March 30, at the start of the annual Association of Writers & Writing Programs meeting. If you reside in the LA area, you will be receiving the details for that event by e-mail.

On a more sorrowful note, we mourn the loss of Paul Aiken, our beloved former executive director, who passed away January 29. Throughout his more than 20 years at the helm of the Guild, Paul was a fierce defender of authors. He led the Guild, always with good humor and finesse, through the publishing world’s digital dive. He helped initiate the Authors Guild v. Google lawsuit, and pursued it and the suit against HathiTrust vigorously for almost a decade. He had the foresight to found the Authors Registry—which he would be happy to know is now well in the black—as well as the Back in Print program, which we are about to expand with Open Road as our partner. Personally, I am eternally indebted to Paul for all he did before me and am profoundly saddened by his passing.

As always, don’t hesitate to get in touch. We’d love to hear from you at staff@authorsguild.org.

Onwards,
Mary Rasenberger
Executive Director
The Mystery Writers of America announced the Edgar Award finalists on January 19. Rebecca Scherr’s Unbecoming was nominated for Best Novel. Gordon McAlpine’s Woman with a Blue Pencil was nominated for Best Paperback Original. Mat Coward’s “On Borrowed Time” and Stephen King’s “Obits” were nominated for Best Short Story. Avi’s Catch You Later, Traitor and Matthew Baker’s If You Find This were nominated for Best Juvenile [Book]. Hallie Ephron’s Night Night, Sleep Tight was nominated for the Mary Higgins Clark Award. Walter Mosley was named the winner of the Grand Master Award, the MWA’s highest honor recognizing lifetime achievement.

The National Book Critics Circle Award finalists were announced on January 19. Lauren Groff was nominated for Fates and Furies in the category of Fiction. T.J. Stiles was nominated for Custer’s Trials: A Life on the Frontier of a New America in the category of Nonfiction. Roxana Robinson and Ruth Franklin were named finalists for Nona Balaban Citation for Excellence in Reviewing. Wendell Berry won the Ivan Sandroff Lifetime Achievement Award, which is announced separately. Other winners will be announced on March 17 at the New School’s Tishman Auditorium.

The 2016 Newberry Award winners were announced on January 11. Matt de la Peña won the Newbery Medal for Last Stop on Market Street, illustrated by Christian Robinson. Kimberly Brubaker Bradley’s The War That Saved My Life was a Newbery Honor winner.

The winners of the 2015 Arab American Book Awards were announced last August. Rabih Alameddine received the award in the Fiction category for his novel An Unnecessary Woman. Elsa Marston received an honorable mention in the Children/YA category for The Olive Tree (illustrated by Claire Ewart).

The 2015 Kirkus Prize finalists were announced in October. Lauren Groff’s Fates and Furies was a finalist in the Fiction category; Martha Brockenbrough’s The Game of Love and Death was a finalist in the Young Readers’ Literature category.

The PEN Center USA 2014 Literary Awards were presented on November 16, 2015. Jessica Cohen was a finalist in the Translation category for her translation of David Grossman’s Falling Out of Time. Peter Stark’s Astoria was a finalist in the Research Nonfiction category.

Joseph Patrick Anthony won the 2015 Gelett Burgess Children’s Book Award for The Dandelion Seed’s Big Dream (illustrated by Cris Arbo).

Daco Auffenorde’s The Pisces Affair won the gold award in two categories of the 2015 Global Ebook Awards: Science Fiction and Thriller Fiction. The story was also a 2015 Royal Palm Literary Award winner and a 2015 Shelf Unbound Notable 100 title.

Judy Ayyildiz’s “We Gather Together” received an honorable mention in this year’s Chatter House Press’s Biting the Bullet essay contest.

Susan Baker’s Ledbetter Street earned an honorable mention in the Writer’s Digest Self-Published e-Book Awards in the Mainstream Fiction category.

Annie Dillard was awarded a National Humanities Medal. She received the award at a ceremony at the White House in September 2015.

Clifford Garstang received the Eugene & Marilyn Glick Indiana Emerging Author Award from the Indianapolis Public Library Foundation. The award was presented on October 10, 2015, at the seventh annual awards dinner.

Jane Harrington was nominated for the Pushcart Prize for her story “All God’s Children Gonna Take a Ride,” which was published in the Anthology of Appalachian Writers.

Gail Hosking was selected to deliver the Kearse Distinguished Faculty Lecture at the Mary Kearse Distinguished Lecture & Student Writing Award Ceremony held last spring at Rochester Institute of Technology. Her essay “Ode to a Surrogate’s Grace” was also a Most Notable selection in The Best American Essays 2015.

Stephen King won the 2014 North American Hammett Prize for his novel Mr. Mercedes. The prize is given to a work of literary excellence in the field of crime writing. The winners were announced at the New Atlantic Independent Booksellers Association’s Fall Conference in October.


Marylee MacDonald’s Montpelier Tomorrow won the Readers’ Favorite International Book Awards’ gold medal in Fiction-Drama.

C. M. Mayo’s Metaphysical Odyssey into the Mexican Revolution: Francisco I. Madero and His Secret Book,
“Spiritist Manual” won the 2015 National Indie Excellence Award for History.


Fiza Pathan’s Amina: The Silent One was awarded the Fall 2015 Pinnacle Book Achievement Award in the Fiction category and was selected by IndieReader as one of the Best Self-Published Books of 2015. Her educational work Classics: How We Can Encourage Children to Read Them won the 2015 Readers’ Favorite Book Award winners are chosen from these “Must Read” selections.

Laura Pedersen’s book of humorous essays Life in New York tied for the 2015 Seven Sisters Book Award in Nonfiction.

Karin Slaughter received the Crime Writers’ Association Ian Fleming Steel Dagger award for Cop Town. The winners were announced in September 2015 at a ceremony in London.

Yvonne Ventresca’s Pandemic won the Society of Children’s Book Writers and Illustrators’ 2015 Crystal Kite Award for the Atlantic region.

Gretchen Woelfle’s Mumbet’s Declaration of Independence was chosen as a 2015 “Must-Read” Book in the Picture Book category by the Massachusetts Center for the Book. The Massachusetts Book Awards recognize significant works of fiction, nonfiction, poetry, children’s, and young adult literature published by residents of Massachusetts or covering Massachusetts subjects.

BOOKS BY MEMBERS

David A. Adler (and Sam Ricks, Illus.): Get a Hit, Mo!; David A. Adler (and Edward Miller, Illus.): Place Value; Jan Alexander: Ms. Ming’s Guide to Civilization; Mahendra Arundale: Feast of India: A Legacy of Recipes and Fables; Linda Ashman (and Brooke Boynton Hughes, Illus.): Henry Wants More!; Linda Ashman (and Simona Mulazzani, Illus.): Rock-a-Bye Romp; Daco Auffenorde: Electromanmerce; Daco Auffenorde (and Robert Rotstein): The Alexandrite Necklace;


Meg Cabot: Remembrance; Ethan Canin: A Doubter’s Almanac; Rachel Cantor: Good on Paper; Richard Adams Carey: In the Evil Day: Violence Comes to One Small Town; Loretta Chase: Dukes Prefer Blondes; Alexander Chee: The Queen of the Night; Mary Higgins Clark (and Alafair Burke): All Dressed in White; Mark Coggins: No Hard Feelings; Craig K. Comstock: Gift of Darkness: Growing Up in Occupied Amsterdam; Michael Connelly: The Crossing; Dennis Covington: Revelation: A Search for Faith in a Violent Religious World;

Bruce Degen: Nate Likes to Skate; Lulu Delacre: Olinguito, de la A a la Z!; Phillip DePoy: A Prisoner in Malta; James P. Duffy: War at the End of the World: Douglas MacArthur and the Forgotten Fight for New Guinea, 1942–1943; Patrick Durantou: Les Voiles des Jours; Séjour de Midi; Nouvelles et Poèmes;

Lee Eisenberg: The Point Is: Making Sense of Birth, Death, and Everything in Between; Anne Elizabeth: A SEAL Forever; Mark Engler (and Paul Engler): This Is an Uprising: How Nonviolent Revolt Is Shaping the Twenty-First Century; David Evanier: Woody: The Biography;
Joy Fielding: She's Not There; Douglas Florian (and Sonia Sanchez, Illus.): The Wonderful Habits of Rabbits;

Matt Gallagher: Youngblood; Connie Goldsmith: The Ebola Epidemic: The Fight, the Future; Chris Grabenstein: Mr. Lemoncello’s Library Olympics; Betsy J. Green: Way Back When: Santa Barbara in 1915; Olga Grushin: Forty Rooms;

Parnell Hall: Presumed Puzzled; Stephen L. Harris: Rock of the Marne: The American Soldiers Who Turned the Tide Against the Kaiser in World War I; Carolyn Hart: Ghost to the Rescue; High Stakes; Carol Hebold: Colloquy; Tami Hoag: The Bitter Season; Robin Holleran (and Lindy Philip): Bracing for Impact: True Tales of Air Disasters and the People Who Survived Them; Kerrie Logan Hollihan: In the Fields and the Trenches: The Famous and the Forgotten on the Battlefields of World War I; Karen Hunt: Key of Mystery; Joseph Hutchison, Transl. (Miguel Lupián, Author): Ephemeral;

Elisa James: My American Duchess; Steven James: Every Crooked Path; Kristopher Jansma: Why We Came to the City; Suzanne Tripp Jurmain (and Larry Day, Illus.): Nice Work, Franklin!;

Robert D. Kaplan: In Europe’s Shadow: Two Cold Wars and a Thirty-Year Journey Through Romania and Beyond; Steve Kemper: A Splendid Savage: The Restless Life of Frederick Russell Burnham; Lauren Kessler: Raising the Barre: Big Dreams, False Starts, & My Midlife Quest to Dance “The Nutcracker”; Bharti Kirchner: Goddess of Fire; Michelle Knudsen: The Mage of Trelian; David Kuntz: Being Present: A Book of Daily Reflections;


Michael Maccoby: Strategic Intelligence: Conceptual Tools for Leading Change; Marylee MacDonald: Bonds of Love & Blood; Susan Mallery: The Friends We Keep; Katherine Marsh (and Kelly Murphy, Illus.): The Door by the Staircase; Joyce Maynard: Under the Influence; Barbara McClintock: Emma and Julia Love Ballet; Patrick McGilligan: Young Orson: The Years of Luck and Genius on the Path to “Citizen Kane”; Gardner McKay: Ten, Bloomsbury Square; Trompe L’Oeil; Joseph A. Michelli: Driven to Delight: Delivering World-Class Customer Experience the Mercedes-Benz Way; Nancy Morse: Beneath an Iron Sky; The Life and Art of Wesley Morse; Shirley Rousseau Murphy: Cat Shout for Joy;

Phyllis Reynolds Naylor: Going Where It’s Dark; Jay Neugeboren: Max Baer & the Star of David; G. K. Noyer, Ed., Transl.: Voltaire’s Revolution: Writings from His Campaign to Free Laws from Religion;

Fiza Pathan: Raman and Sunny: Middle School Blues; Kara Platoni: We Have the Technology: How Biohackers, Foodies, Physicians, and Scientists Are Transforming Human Perception, One Sense at a Time; Jean Ann Pollard: Least Angel; David Poyer: Tipping Point;

Joan Quigley: Just Another Southern Town: Mary Church Terrell and the Struggle for Racial Justice in the Nation’s Capital;

Doreen Rappaport (and Matt Faulkner, Illus.): Elizabeth Started All the Trouble; Theresa Rebeck: I’m Glad About You; LuAnne Rice: The Secret Language of Sisters; Sherri Duskey Rinker (and Patrick McDonnell, Illus.): Silly Wonderful You; Anne Boyd Rioux: Constance Fenimore Woolson: Portrait of a Lady Novelist; Roger Rosenblatt: Thomas Murphy; Helen Klein Ross: What Was Mine;


Linda Tancs: The Best Words Ever; Linda Trice (and Hazel Mitchell, Illus.): Kenya’s Art; Pamela S. Turner (and Gareth Hinds, Illus.): Samurai Rising: The Epic Life of Minamoto Yoshitsune;

Lea Wait: Thread and Gone; William Wells: Detective Fiction; Hans Wilhelm: A Hole in the Wall; Diane Williams: Fine, Fine, Fine, Fine, Fine; Stuart Woods: Scandalous Behavior; Julie Wosk: My Fair Ladies: Female Robots, Androids, and Other Artificial Eves; Herman Wouk: Sailor and Fiddler: Reflections of a 100-Year-Old Author;

Marta Zaraska: Meathooked: The History and Science of Our 2.5-Million-Year Obsession with Meat •
vice copy at the termination of Smith’s agreement. Barnes & Noble’s failure to remove the customer copy, though, was due in part to Smith’s hasty deletion of his Smashwords account. The act of unpublishing a book on Smashwords triggers a “takedown notice” that’s transmitted to retailers such as Barnesandnoble.com in the next automated shipment. Despite Smashwords’ advice to the contrary, Smith insisted on deleting his account—and when it was deleted, so was the take-down notice that was to be sent to Barnesandnoble.com. So the book remained listed on Barnesandnoble.com. Subsequently, the free sample was re-downloaded to two distinct e-reader devices at two distinct IP addresses, both of which were connected to the customer’s account. On the basis of those two re-downloads, Smith filed a copyright infringement action in June 2012 against Barnesandnoble.com.

The court found that Barnesandnoble.com was not liable for direct copyright infringement, rejecting Smith’s claim that Barnesandnoble.com had violated his copyright by allowing unauthorized copies to be made. The court explained that direct infringement requires active participation in the infringement (“volitional conduct” is the legal term) and merely creating the system that enables acts of infringement does not rise to the requisite level of volition. (This rule protects distributors in the digital age from liability when their content management platforms are used by customers to reproduce content at the click of a mouse.) The court found that Barnesandnoble.com’s participation was not sufficiently active to constitute direct infringement. It had a license to distribute the book at the time it was originally downloaded, and its lack of a license at the time of the re-download, “does not mean Defendant engaged in volitional conduct sufficient to support a copyright infringement claim,” the court wrote.

The court also found that Barnesandnoble.com was not liable for contributory infringement—a form of secondary liability in copyright cases. Contributory liability requires direct infringement by a third party (such as a customer) that the service provider both contributed to and—this is important—knew or should have known about. In addressing this question, the court noted that this case differed from the typical infringement case because (1) the first transfer of Smith’s book to the customer’s DLS, during the time it was actively listed, was unquestionably authorized, and (2) all transfers made after the end of the licensing term were made by the same customer account. In other words, the customer’s transfer from his DLS account to his devices was analogous to an individual moving copyrighted material on personal hard drives, which the law allows as a fair use. The court ruled for Barnesandnoble.com by finding that the company did not have the requisite knowledge of its customer’s copying to be held liable.

The decision appears to stand on solid legal ground, but Smith’s case can serve as a warning to authors exploring the many self-publishing services now available: take time to understand how the platform works, as well as your rights and obligations under the terms of service, which may contain plenty of fine print and are probably not negotiable.

—Umair Kazi
Legal Intern

The Guild Files an Amicus Brief

Continued from page 24

promotion of agency pricing had on ensuring the robust discourse that is vital to democracy.

Conclusion

Increased competition among authors to write e-books, publishers to price them and retailers to sell them has been good for readers and good for American democracy, which is rooted in broad access to culture and a vibrant marketplace of ideas. Because the Second Circuit majority panel’s decision diminishes, rather than enhances, competition in the market for e-books, this Court should grant Apple’s petition for a writ of certiorari.

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Authors Guild Fall 2015 Seminars Roundup

The Guild offers member seminars throughout the year on a variety of topics related to the business of writing. Seminars are held either by conference call or as online “webinars.” From time to time, we also hold roundtables in which members join us in the office. Seminars typically last 45 minutes to an hour. Member alerts are sent out informing members about upcoming seminar dates and providing instructions on how to sign up. We will hold another series of seminars this spring.

Children’s Book Group Roundtable on School Visits

Bestselling children’s book author and Authors Guild Council member Rachel Vail led a roundtable discussion on school visits and answered questions on what authors should expect and how they should prepare for visits. Patience, communication and flexibility are key to a successful school visit. Confirm as many details as possible with your school contact before your visit, including the school’s tech requirements, its book ordering and signing procedures, what grades you’ll be visiting and whether the students will have read your book. Authors who are relaxed and prepared to go with the flow of a room full of children tend to get booked more. And remember that it takes time to build up a reputation as a valuable school visitor, just as it does to build a rep as a writer.

Publishing Contracts 101

Authors Guild staff attorneys Michael Gross and Stevie Fitzgerald guided members through the basics of a traditional publishing contract, focusing on critical provisions. To avoid feeling overwhelmed by multiple clauses, they recommended focusing on the three most important aspects of your contract: (1) the granting of rights, including the crucial right of retaining copyright in your name, (2) payments you receive from the publisher, and (3) warranties and indemnities. They emphasized that authors should not be afraid to negotiate but urged members to send the Guild their agreements beforehand.

Updating Your Website with SiteBuilder: From Simple Edits to an Overhaul

Authors Guild staff members Abigail Montague and Hector Lugo offered advice on editing your website, explaining how to make use of your site’s custom pages and suggesting a number of quick and easy changes that can transform a site’s appearance. With SiteBuilder’s 40 themes, 12 layouts and multiple color palettes to choose from, there are many ways you can make your website unique. Montague and Lugo provided guidance on how to make changes and how to preview changes before final posting, reminding authors to back up their site regularly in case something goes wrong during the editing process. SiteBuilder comes with a “works” page, designed specifically with authors in mind, with options for starting a blog or creating a newsletter.

How to Make Twitter Work for You

Social media expert Sarah Brumble presented tips and tricks on how to make the most of Twitter to promote your work. She emphasized that tweeting is a mode of conversation, and she urged authors to engage with their audience, share others’ content through retweets and use hashtags where appropriate—without overdoing it. The important thing is to enjoy tweeting and not overthink the process. If you don’t find personal value in using Twitter, then the platform may not be for you, and that’s okay, too.

How to Promote Your Book Using Social Media

Chris Syme—founder of CKSyme Media Group and author of SMART Social Media for Authors—presented simple, effective strategies for authors looking to promote their work via social media, with a special focus on Facebook. Throughout her presentation, she emphasized the 80/20 rule to avoid sounding too sales-crazed: give 80 percent of the time—that is, give information, news, recommendations of your favorite books—and promote only 20 percent of the time. Your audience will be more open to self-promotion if they feel they are getting something valuable from your Facebook page, newsletter or website.

Tax Tips for Writers

Robert Pesce, a partner at Marcum Group and head of its New York City accounting services department,
led a seminar on tax tips for authors. Based on more than 30 years of experience, he noted that what people dread most is calculating their business expenses, so it’s important to keep good records. He suggested using one credit card exclusively for all your business expenses, so you don’t have to check multiple accounts when tax time rolls around. With regard to minor expenses that you pay for with cash, keep your receipts in one place in case you are one day audited. He also covered commonly overlooked expenses, including media research and travel and accommodations for business/writing purposes.

Members can download recordings of these seminars on our website at www.authorsguild.org. Please contact staff@authorsguild.org if you need help logging in and accessing them.

—Nicole Vazquez
Membership Application

Mr./Ms. __________________________________________ Pseudonym(s) ____________________________

Address __________________________________________ City ____________________ State __________ Zip ____________

Phone ( ) __________________ Fax ( ) __________________ E-mail __________________________

Agent name __________________________ Agency __________________________ Agent phone ( ) _______________

How did you become interested in joining the Guild? (check one)
☐ Invitation ☐ Writing journal _____________________
☐ Referred by _________________________________________ ☐ Other __________________________

What is your primary reason for joining? ☐ Support and advocacy efforts ☐ Legal services ☐ Health insurance
☐ Site-builder and other Web services ☐ Other __________________________

Qualifying writers include book authors and freelance journalists. Book authors published by an established American publisher
and self-published writers who earned at least $5,000 in writing income as a book author or freelance writer in the 18 months prior
to applying for membership are eligible. Writers earning at least $500 in writing income in the 18 months prior to applying for
membership may qualify for acceptance as Associate members of the Authors Guild. Freelance journalists must have published
three works, fiction or nonfiction, in a periodical of general circulation within the last 18 months.

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Please enclose a check for your first year’s dues in the amount of $125 payable to “The Authors Guild”
or charge your Visa or MasterCard. Account No. ________________ Expiration Date _____/_____ Amount: $125

Signature ___________________________ Expiration Date _____/_____