Amazon Takes the Gloves Off
Builds Kindle "Library" Over Publisher Objections,
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Reading With a Crowd
Scott Turow: There Will Be Books. Will There Be Bookstores?
Free Ride's Robert Levine on Culture, Commerce, and Silicon Valley
ALONG PUBLISHERS ROW

BY CAMPBELL GEESLIN


The Abbey is about “a former homicide detective [who] begins an investigation into his niece’s murder.” The Mill River Recluse is about an abused widow with a secret that will “change many lives in her Vermont town.”

Both books were priced at 99 cents.

BATTLE OF THE TITANS: Last summer, Amazon announced it was officially going into the publishing business and scared the pants off everyone already in it. In mid-October it announced another market share coup—exclusive digital rights to a hundred DC comic novels about such popular heroes as Superman, Batman, Green Lantern and others. Amazon’s Kindle Fire tablet is the only device they can be viewed on.

Barnes & Noble, trying to compete with its Nook, removed all copies of the DC books from its 1,300 stores. B&N “would not carry any book if it were denied the right to sell the digital version,” The New York Times reported. Books-a-Million did the same at its 231 stores. “The two chains,” the Times said, “are desperate to avoid becoming showrooms for Amazon’s digital warehouse, which would quickly send them to the bookstore graveyard . . .”

This is just the beginning, according to Lorraine Shanley, a publishing consultant. “Content providers and online purveyors have a few more rounds to go.”

Jack Rems, owner of the Escapist Comic Bookstore in Berkeley, Calif., said what happened was like “the tide or a storm or an earthquake. Nothing I can do about it.”

The Times begged to differ: “Well, there is one thing. Escapist is offering 20 percent off all the DC titles that the chains removed. Mr. Rems said he hoped the deal would bring some new business in the door.”

BAN LIFTED: In 1906, the library in Charlton, Mass., banned Mark Twain’s Eve’s Diary because of illustrations by Lester Ralph that showed a naked Eve in the garden of Eden.

In September, the library trustees lifted the ban. Trustee Richard Whitehead told The New York Times, “There’s nothing outrageous about [the illustrations]. It’s kind of a shame that for what seems to me like very good artwork, a great piece of literature was banned.” Two copies were put into circulation and an older edition was bought for display in a glass case.

All this was to call attention to Banned Book Week. The article included a quote from a letter written by Twain himself: “But the truth is, that when a library expels a book of mine and leaves an unexpurgated Bible lying around where unprotected youth and age can get hold of it, the deep unconscious irony of it delights me.”

SELLERS: “Book publishers are surrounded by hungry new competitors: Amazon, with its steadily growing imprints; authors who publish their own e-books; online startups like the Atavist and Byliner.

“Now they have to contend with another group elbowed into their territory: news organizations,” said The New York Times.


Many of the works sold as e-books are a hybrid between a long magazine article and a serialized book. Jon Meacham, an executive editor at Random House told the Times, “We think that the nature of a book is changing. The line between articles and books is getting ever fuzzier.”

How are the authors making out? The Huffington Post pays its authors for their work and then shares the profits from the sales of any e-book version.

NEW APPROACH: Perseus Books has started a marketing and distribution service for authors of self-published e-books. The revenue split is unusual: 70 percent goes to the author and 30 percent to the distributor.

This new division is called Argo Navis Author Services and is available only to authors who are represented by an agency that has signed an agreement with Perseus. David Steinberger of Perseus told The New York Times, “We’ve heard from authors that they may have a book that’s never been published, but it

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From the President

BY SCOTT TUROW

Some people argue that books are outmoded, that there are other media available today that offer more immediate methods for delivering knowledge and insight. But right now, long-form, substantively driven, and thoughtful consideration of the challenges that our society is facing and how they must be addressed are served best by this format. Nobody wants to read 250 pages off a computer screen, nor does even the best documentary provide the same opportunity to pause for reflection.

So yes, we will want books. But that doesn’t really answer the question of whether evolving commercial conditions will actually support the writing and publication of books.

As president of the Authors Guild, I am trying to protect the livelihoods of American writers, not just because a lot of my friends are authors, but because a vigorous literary culture is an important component of our democracy, not to mention a worthwhile life.

I am not scared of e-books, although I recognize their limitations. E-books don’t furnish a room; they don’t offer the same reminders, as the presence of a physical book does, of past reading experiences, or the same testimonial to who you are that’s silently offered by a book you put on your shelf. But I do most of my book reading these days on an iPad, although I still like to hold broadsheet newspapers in my hands in the morning, and frequently buy hard copies of books I especially like.

But the increasing popularity of e-books and e-readers has some alarming consequences. The most obvious is that American booksellers, already under heavy pressure from the discounting of bestsellers and online retailing, are being pushed to the point of collapse. Bookstores are not simply places to buy books. They are intellectual hubs in our communities.

My Italian publisher has proposed a model in which bookstores become the place to buy a universal license to own a book in all formats—as a physical object on paper, as an e-book for your reader or computer screen, as an audiobook, and whatever else comes down the pipe. But unless momentum gathers quickly for this solution, we will see more and more bookstores going dark.

The second problem is going to be persuading American publishers to maintain a compensation system that maintains reasonable rewards. Right now publishers want to pay a royalty on e-books that is roughly half of what they traditionally paid for books on paper; most are willing to increase that royalty in the second year of a book’s life. What the publishers are trying to create is a model that will allow them to recover their costs quickly and to pay less to the authors of books that don’t have an extended life.

The problem is that the average American author earns about $9,000 a year from writing as it is. Decreasing the rewards will inevitably drive more people out of the profession. And it is hugely unfair, because publishers do quite well with e-books. They have no costs for paper, printing, warehousing or distribution—and no risk, as is the case with physical books, that the volume will be returned for full credit by the bookseller, which is the great bugaboo of publishing.

But far and away the greatest risk of e-books and e-readers is book piracy. Book pirates, who almost inevitably work offshore, can scan and digitize a new book instantly, which they then offer in any available format at a fraction of the publisher’s price. Unchecked, book piracy will destroy the retail book business, much as the illegal swapping of digitized music led to the demise of most retail outlets for popular music. (And please don’t tell me about iTunes—authors write whole books that can’t be sliced up into segregated units like songs.)

The resulting drop in earnings for authors and publishers and booksellers will wither our literary culture. The Constitution empowered Congress to create intellectual property laws out of a belief that creative monopolies are essential to inspire innovation, which invigorates our society. Wiping out the rewards liter-

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Mr. Turow’s column in this issue is adapted from an essay titled “Will There Be Books?” that first appeared in Shift and Reset: Strategies for Addressing Serious Issues in a Connected Society, by Brian Reich (Wiley, 2011). It is reprinted here with the permission of Mr. Turow and Mr. Reich.
FALL 2011/WINTER 2012

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About the Cover Artist
Kevin Sanchez Walsh is a freelance artist and longtime contributor to
the Bulletin. He can be found at kswradiographic@gmail.com.
ally means toppling one of the pillars of our democracy.

Of course, it is not all doom and gloom. The traditional barriers to becoming an author have been lowered by digitization. The online publication of books, albeit for free, means that first-time authors who can’t interest a traditional publisher still have a chance to disseminate their work. I take it for granted that some important new voices will first be heard this way. I like that.

And the promise of digitizing our greatest libraries, so that their contents are available worldwide, will be an enormous boon to freedom of thought everywhere. The legal issues involved are proving difficult in the short run, but I expect those issues to be resolved eventually.

The nonfiction e-book, replete with links to all its sources, to pictures and maps that augment the text, will be a joy. Novels, too, may end up accompanied by some form of instant illustration.

I believe in text and in the uniquely involving experience of reading. And text’s efficiency is unrivaled. A picture may be worth a thousand words, but see how many megabytes those photos absorb on your hard drive, compared to a written description of the same moment. Text will live.

But we need to think carefully about maintaining the incentives for its creation.+

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New Names, Tougher Tactics in Senate and House Bills Aimed at Online Piracy

The Protect IP Act (short for Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011, also known as S. 968) was introduced on May 12, 2011, by the Chairman of the Senate Judiciary Committee, Patrick Leahy (D-VT) and 11 cosponsors.

The legislation is an update of the Combating Online Infringement and Counterfeits Act (known as COICA), which was introduced in the Senate on September 20, 2010, and approved by the Senate Judiciary Committee in November 2010, but failed to be voted into law before the end of Congress’s session.

In February 2011, the Senate Judiciary Committee held extensive hearings related to the act, focusing on websites “dedicated to stealing American intellectual property,” at which Authors Guild President Scott Turow testified at length [Bulletin, Spring 2011].

Protect IP would provide enhanced remedies against websites “dedicated to infringing activities” that are not registered in the United States, and would give the U. S. Department of Justice the power to seek a court order against those websites. The bill would also require the Attorney General to follow existing federal court procedures, including providing notice to the defendant. Once the court issues an order, it could then be served on financial transaction providers (such as credit card companies), Internet advertising services, and Internet service providers, requiring them to cease financial transactions with the rogue site and to stop linking to it.

The Protect IP Act was reported out of the Senate Judiciary Committee unanimously on May 26, 2011, and currently awaits Senate consideration. The bill currently has 40 cosponsors. As of December 6, only three senators have expressed public opposition to the bill, Senators Ron Wyden (D-OR), Maria Cantwell (D-WA) and Ron Paul (R-KY).

On October 26, a corresponding House bill (H.R. 3261), the Stop Online Piracy Act (SOPA), was introduced by Representative Lamar Smith (R-TX) and a bipartisan group of twelve cosponsors. (The bill now has 28 cosponsors.)

SOPA and Protect IP are similar in that they both seek to deter online piracy by inhibiting the flow of revenue to illegal websites and ensuring that copyright holders in the U. S. are compensated for use of their work. SOPA goes further than Protect IP in broadly defining what constitutes an illegal website. Under the House bill, an illegal website is one that commits or facilitates the commission of criminal violations punishable under U. S. law. In this way, SOPA targets websites that take deliberate actions to avoid the detection of or to foster infringement. SOPA also provides increased penalties for, among other things, willfully streaming copyrighted works.

SOPA, while addressing essentially the same issues as Protect IP, has drawn criticism from many quarters for its sweeping approach to blocking the Domain Name System (DNS) for websites that engage in piracy.

On November 16, the House Judiciary Committee held its third hearing on the issue of rogue websites and its first on SOPA. The Committee was expected to mark up the House bill in December.
Amazon Grabs Titles for Kindle “Library”

Adapted from a member e-mail alert sent November 14, 2011.

Earlier this month, Amazon launched its Kindle Lending Library as a perk for its best group of customers, the millions who’ve paid $79 per year to join Amazon Prime and get free delivery of their Amazon purchases. Under the Lending Library program, Amazon Prime members are allowed to download for free onto their Kindles any of more than 5,000 books. Customers are limited to one book per month and one book at a time—when a new book is downloaded, the old one disappears from the Kindle.

The program has caused quite a stir in the publishing industry, for good reason (as you’ll see).

First, let’s look at how books from some major U.S. trade publishers wound up on the Lending Library list.

Amazon approached the six largest U.S. trade book publishers earlier this year to seek their participation in the program. By all accounts, each refused. Small wonder. Publishers aren’t eager to allow Amazon to undermine the economics of the e-book market, representing the lone bright spot for the industry, by permitting an estimated two to five million Amazon Prime customers to start downloading e-books for free. So books from the Big Six publishers—Random House, Simon & Schuster, Penguin, HarperCollins, Hachette, and Macmillan—are not in the Lending Library Program.

Amazon’s attempts to enlist the next tier of U.S. trade book publishers, major publishers that are slightly smaller than the Big Six, appear to have fared no better. Many, perhaps all, also refused.

No matter. Amazon simply disregarded these publishers’ wishes, and enrolled many of their titles in the program anyway. Some of these publishers learned of Amazon’s unilateral decision as the first news stories about the program appeared.

How can Amazon get away with this? By giving its boilerplate contract with these publishers a tortured reading.

Amazon has decided that it doesn’t need the publishers’ permission, because, as Amazon apparently sees it, its contracts with these publishers merely require it to pay publishers the wholesale price of the books that Amazon Prime customers download. By reasoning this way, Amazon claims it can sell e-books at any price, even giving them away, so long as the publishers are paid.

From our understanding of Amazon’s standard contractual terms, this is nonsense—publishers did not surrender this level of control to the retailer. Amazon’s boilerplate terms specifically contemplate the sale of e-books, not giveaways, subscriptions or lending (Amazon does have a lending program that some publishers have authorized, but it’s a program that allows customers—not Amazon—to lend their purchased e-books). Amazon can make other uses of e-books only with the publishers’ consent.

Amazon, in other words, appears to be boldly breaching its contracts with these publishers. This is an exercise of brute economic power. Amazon knows it can largely dictate terms to non-Big Six publishers, and it badly wanted to launch this program with some notable titles.

Why did it matter so much to Amazon? It’s all about the Kindle Fire, and Amazon’s unexpected e-book device battle with Apple and especially Barnes & Noble.

Now, let’s look at the publishers who did sign on to the Kindle Lending Library. Many (but not all) of these are smaller, newer companies that devote their efforts to e-book and on-demand publishing. They signed licensing agreements with Amazon for a selection of their titles, providing for a flat annual fee per title.

While these publishers generally have the right to license e-book uses for many of their authors’ titles (just as most trade publishers do), our reading of the standard terms of these contracts is that they do not have the right to do so without the prior approval of the books’ authors.

Licenses are traditionally done on an advance-and-royalty basis. In this way, the interests of the author and the publisher are aligned: if the license pays off, both benefit. When a list of titles is licensed for a flat

Continued on page 40.
Amazon’s Price Check Promotion Draws Sharp Rebuke

Amazon’s Price Check app—a smartphone program that allows customers to wander through stores scanning items in order to compare the prices to those on Amazon.com—was launched in August. Amazon first promoted it as a tool for students buying textbooks. It managed to stay under the radar until December 6, when Amazon announced that it would reward customers for using the app on December 10, the start of a major holiday shopping weekend. Shoppers who spent that Saturday in brick-and-mortar stores comparing prices before making their purchases on Amazon.com would collect a 5 percent discount on three qualifying items bought on the site, worth up to $5 per item. “Amazon anticipates December 10th will be one of the biggest days of the year for Price Check,” the press release gushed.

Though the discount did not apply to books, booksellers immediately took issue with Amazon’s promotion. Most bookstores, large or small, sell a variety of items, such as CDs and stationery. Even without the special discount, Amazon’s prices for books tend to be lower than any bookstore can afford to match. Blogs lit up with anger and frustration, and independent booksellers began to fight back: Third Street Books, in McMinnville, Oregon, named December 10 “Ditch Amazon Day,” promising to reward customers who showed proof of having closed their Amazon accounts with 15 percent off all purchases, plus a $5 gift certificate. Others encouraged readers who learned about an interesting book through Amazon to head over to their local bookstore on December 10 instead. A Facebook page was started, Occupy Amazon: Shop Local.

Also speaking out were the American Booksellers Association, the Retail Industry Leaders Association, and the Alliance for Main Street Fairness; independent booksellers like Left Bank Books and R.J. Julia; the small but vocal publisher Melville House Books; and Senator Olympia Snowe, ranking member of the U.S. Senate Committee on Small Business and Entrepreneurship.

On December 12, Richard Russo published an op-ed in the New York Times, “Amazon’s Jungle Logic,” describing his frustration with Amazon’s tactics. After learning of the promotion, he wrote, he initiated discussions on the subject with fellow writers, including Authors Guild president Scott Turow, who told Russo, “The law has long been clear that stores do not invite the public in for all purposes... It’s worth wondering whether it’s lawful for Amazon to encourage people to enter a store for the purpose of gathering pricing information for Amazon and buying from the Internet giant, rather than the retailer. Lawful or not, it’s an example of Amazon’s bare-knuckles approach.”

Russo also spoke with Ann Patchett, who recently founded a bookstore in Nashville. Patchett noted, “I do think it’s worthwhile explaining to customers that the lowest price point does not always represent the best deal... If you like seeing the people in your community employed, if you think your city needs a tax base, if you want to buy books from a person who reads, don’t use Amazon.” Lacy Simons, who runs the Hello Hello bookstore in Rockland, Maine, echoed this sentiment: “Amazon asks you to take advantage of my knowledge and my education (which I’m still paying for) and treat the space I rent, the heat and light I pay for, the insurance policies I need to be here, the sales tax I gather for the state, the gathering place I offer, the books and book culture I believe in so much that I’ve wagered everything on it [as merely] a showroom for goods you can just get more cheaply through them.”

Amazon is not the only online retailer with a price comparison app, and the use of such apps is increasingly common. In Amazon’s case, the Price Check promotion coincided with a growing focus on the company’s failure to collect sales tax on most purchases made on the site. This problem is not limited to Amazon; brick-and-mortar stores and retail associations are pushing for a federal law requiring online sellers to collect sales tax. In the case of books, though, the added cost of sales tax is a significant reason why physical stores have trouble competing with Amazon. As a Forbes article on the subject put it, “physical stores... are often ready to match an online price, just as they’ll match the price from a competing store if a consumer brings in a newspaper circular. But they simply can’t match the sales tax savings.”

For his part, Russo sees a glimmer of light at the end of the story, as he wonders whether Amazon’s customers will eventually turn against it, having no reason to remain loyal aside from access to low prices. “Is it just me,” he asks, “or does it feel as if the Amazon brass decided to spend the holidays in the Caribbean and left in charge of the company a computer that’s fallen head over heels in love with its own algorithms?”

—Isabel Howe
Guild Previews

Booktalk Nation

BY KAREN HOLT

In December, the Authors Guild conducted a two-week preview of Booktalk Nation, its initiative to combine an old technology—nationwide conference calls—with e-commerce for the benefit of authors and brick-and-mortar booksellers. Each of the author talks is sponsored by a traditional bookstore and is listed at the Booktalk Nation website, where readers can sign up to join the conference call (there’s no charge to join the call) and order books to be personally inscribed by the featured author. The author signs books at the sponsoring bookstore shortly after the phone call; the bookstore then ships the books to customers nationwide.

The test run featured talks with Judy Blume, Jeffrey Eugenides, Katherine Paterson and Peter Orner, each of whom was interviewed by a fellow writer. Bookstores ranging from The Flying Pig in Shelburne, Vermont, to Books, Inc. in San Francisco sponsored the talks, and readers in 22 states purchased books during December’s brief preview.

In addition to driving increased sales to independents, the program is intended to raise awareness of the pleasure and indispensability of local bookstores. Sales made in connection with the events are credited to the host retailers and to affiliate bookstores, which will be responsible for promoting the talks to their customers.

For authors, participating in Booktalk Nation is a way to exercise some enlightened self-interest while simultaneously giving back to the bookstores that have helped them connect with readers.

"Independents feed the robust publishing culture on which writers depend in a way no other institution does," says Judy Blume, who talked with author Rachel Vail in an event sponsored by Bank Street Books in New York. "They should be cherished and celebrated."

Booktalk Nation comes at a crucial time for independents. Competition from online retailers is intensifying. According to Pubtrack, online booksellers increased their market share by nearly 10 percent, to a high of 37 percent in the second quarter of 2011. With most independents unable to match online retailers’ steep discounts, participating authors can call attention to benefits of indie bookstores that can’t be measured at the cash register.

"I think independents are pivotal not just to our intellectual life, but to our cultural life and our enjoyment of life," said Vail. Twenty years ago, Vail met Blume for the first time as an aspiring writer working at Bickerton & Ripley Books (now Edgartown Books)

in Martha’s Vineyard. Her experiences since then as an author and as a reader have increased her appreciation of independent bookstores.

Katherine Paterson, author of the beloved children’s classic Bridge to Terabithia, was interviewed by writer Tanya Lee Stone at a Booktalk Nation event hosted by the Flying Pig Bookstore in Shelburne, Vermont. Paterson, whose latest book, The Flint Heart, is a retelling of a 1910 fairy tale, said she wanted to get involved because she’s seen how knowledgeable, dedicated booksellers can help readers discover titles that might not show up on the bestseller list. The author of more than 30 books and a two-time winner of the Newbury Medal and of the National Book Award, Paterson recalls the now-defunct Cheshire Cat Bookstore in Washington, D.C. hosting book signings for her early in her career.

“As I began to win some awards the lines got longer,” Paterson says. “But they treated me beautifully back when no one was interested in coming to see me.”

The program will fully launch in early 2012.
Orphans Hiding in Plain Sight
Doing HathiTrust’s Homework

BY ANITA FORE

As many readers are aware, the class action lawsuit brought by the Authors Guild against Google for its unauthorized scanning of copyright-protected works as part of what was called the Library Project is still ongoing (see page 9 for an update on the status of that suit). Google obtained many of the works scanned as part of this project from the collections of multiple libraries, including major university libraries. In exchange for access to the works in these collections, Google was to provide the libraries with digital copies of the works scanned for their archives even though rightsholders of copyright-protected works had not given Google prior permission to digitize and distribute the works. The Guild’s class action copyright infringement suit was filed against Google in 2005, and although a settlement was presented to the Southern District of New York federal court by all parties in 2008, that settlement was ultimately rejected by the court earlier this year and the parties are now on a pretrial preparation schedule.

In the meantime, having obtained scans of an estimated seven million copyrighted books from Google, the universities made a decision to pool these files in a repository organized by the University of Michigan, which was announced in October 2008. That electronic repository, the HathiTrust Digital Library, then underwent massive expansion, the result of the combined efforts of more than fifty research institutions and libraries. It includes not just public domain works but also copyright protected works owned by authors from all around the world.

In June 2011, the University of Michigan announced plans to provide its students and faculty with access to the digital library created from the original Google scans, and from additional scans supplied by the Internet Archive and, in some cases, by library staff. Michigan decided that it would independently ferret out books that could be considered “orphans.” Rather than obtain permission from individual copyright owners to make full editions of their works available—as required under the U.S. Copyright Act—it would instead enable students and faculty to engage in unlimited downloading of any books Michigan deemed orphaned.

The term “orphan” is not a codified term but shorthand among legal scholars and others concerned with copyright issues when referring to works whose copyright owners are extremely difficult if not impossible to identify or locate. The term is inapplicable to copyright owners who can be identified with research, even time-intensive research. An orphan work isn’t an orphan merely because finding the owner would require complicated or inconvenient inquiry.

After cobbling together some in-house rules to identify which HathiTrust works were orphans, Michigan announced what it called the HathiTrust Orphan Works Project in June. Under this program, the university said it would initially focus on works published between 1923 and 1963. If a work in the database was deemed commercially unavailable, the program outlined a procedure whereby an attempt would be made to contact the copyright owner; if no contact was made, bibliographic information for the work would be posted at the HathiTrust website for 90 days. If no copyright owner stepped forward during the 90-day period to prevent HathiTrust from displaying the work, it would be made available in full for reading, downloading and printing by students, faculty and other library users, including visitors.

Michigan said that it would release the first set of books to which it had applied this orphan designation on October 13. Bibliographic information for these works was posted at the HathiTrust website around July 15, 2011. An additional 140 so-called orphan books, including works in Spanish, Yiddish, French and Russian, were to be released to students and fac-

“This group of American universities has no authority to decide whether, when or how authors forfeit their copyright protection. These aren’t orphaned books, they’re abducted books.”

—Angelo Loukakis, executive director of the Australian Society of Authors

Anita Fore is the Authors Guild’s Director of Legal Services.
ulty in November. The original release list was subsequently expanded to 166 works. By August, other universities, including the University of Wisconsin, University of California and Cornell had jumped on board with Michigan’s plan.

On September 12, the Authors Guild brought together the Australian Society of Authors, the Union Des Écrivaines et des Écrivains Québécois (UNEQ), and a number of authors, including children’s book author and illustrator Pat Cummings, novelists Angelo Loukakis, Roxana Robinson, Danièle Simpson and Fay Weldon, poet André Roy, Columbia University professor and Shakespeare scholar James Shapiro, and Pulitzer Prize and National Book Award-winning biographer T. J. Stiles, to sue the HathiTrust Digital Library, the universities of Michigan, California and Wisconsin, Indiana University and Cornell University for copyright infringement. Shortly thereafter, the suit was expanded to include additional plaintiffs: the U.K. Authors’ Licensing and Collecting Society, the Norwegian Nonfiction Writers and Translators Association, the Swedish Writers Union, the Writers’ Union of Canada, and individual authors including University of Oslo professor Helge Ronning, Swedish novelist Erik Grundström, and American novelist J. R. Salamanca. The amended complaint, filed on October 6, also included the Authors League Fund, as holder of rights to an “orphaned” book by Gladys Malvern.

The suit was brought in New York federal court to stave off the October 13 release of the orphaned books and to impound the entirety of the database containing scans of an estimated seven million copyright-protected books obtained from Google. “This is an upsetting and outrageous attempt to dismiss authors’ rights,” said Loukakis, executive director of the Australian Society of Authors. “This group of American universities has no authority to decide whether, when or how authors forfeit their copyright protection. These aren’t orphaned books, they’re abducted books.”

The threatened October and November releases represented only a fraction of the enormous number of potential titles that the HathiTrust might have decided to release in the future. The seven million unauthorized digital files at stake include works from nearly every nation. The database is comprised of many thousands of editions of works by countless authors including Simone de Beauvoir, Italo Calvino, Bernard Clavel, Umberto Eco, Carlos Fuentes, Günter Grass, Peter Handke, Michel Houellebecq, Clarice Lispector, Mario Vargas Llosa, Herta Müller, Haruki Murakami, Kenzaburō Ōe, Octavio Paz and Jose Saramago. The library features more than 65,000 works

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Google Book Search Litigation Update

On September 15, 2011, during a brief status conference for the Google Book Search litigation, Judge Denny Chin agreed to approve a pretrial schedule presented by attorney Michael Boni as spokesperson for the author subclass of plaintiffs that includes the Authors Guild.

The schedule sets forth approximately 10 milestone dates between mid-December 2011 and late July 2012 by which all parties, including the Association of American Publishers and defendant Google, must submit briefs regarding the validity of class certification; complete discovery; identify and depose expert witnesses, and submit motions for summary judgment among other pretrial activities.

Even after Judge Chin’s March 2011 rejection of the settlement agreement, the plaintiffs and Google remained hopeful that the lawsuit brought over Google’s unauthorized scanning and intended display of copyright-protected works could be settled instead of being brought to trial. But the time had come for all parties to agree upon a road map for proceeding to trial. Neither the plaintiffs nor Google could delay the process indefinitely.

The publisher plaintiffs expressed a belief that they would be able to talk their way to a pretrial resolution with Google, and plaintiffs’ counsel, Bruce Keller, said that as far as the publishers are concerned, the proposed trial schedule “may not even matter.” The author plaintiffs remain hopeful that the class action suit can still be settled by agreement, even though Google and the authors do not yet see eye-to-eye on a number of issues. Accordingly, the authors will continue the settlement dialogue with Google on a parallel track with the litigation process currently under way. An amended complaint to address issues currently reflected in the litigation was filed on October 14.

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Of Digital Parasites and Culture

An Interview with Robert Levine

BY ISABEL HOWE

Robert Levine is the author of Free Ride: How Digital Parasites Are Destroying the Culture Business, and How the Culture Business Can Fight Back (Double-day, 2011). We talked to him recently about piracy, publishing, and the fine line between protecting authors' rights and guaranteeing free expression online.

Why did you write Free Ride?

Before I wrote the book, I was the editor of Billboard. So the joke response is that I wanted to do something that was harder than running a music magazine while the business is falling apart. Writing the book was about the only thing I could think of that was harder.

I also worked at WIRED for a while, just after Napster, which is when I first got interested in this stuff. I thought, "Wow, the music industry’s really going to change. This is going to be great for fans, artists, labels. We’re going to have a new market." And I thought the labels were stupid for fighting Napster. As the years went by—I was a freelancer for years after this, covering music and other stuff—I started wondering where that market was.

I was running Billboard for over a year when I realized that as long as illegal sites that give away music are an option, you’re never going to develop a market, because there’s too much illegal competition. Piracy really destroyed the music market.

In the book, you argue in favor of stronger copyright enforcement. What kind of case can you make for it to people who think it’s an outmoded concept?

Some people will say they support copyright but they don’t want to do anything to enforce it. To me, giving me rights without a mechanism to enforce them is the same as not giving me rights. You can have a debate on how to enforce rights. Should we limit people’s Internet access, should we sue people in civil court? But there are so many people on the other side who just think enforcement is unacceptable. They want to take away that right.

I take a lot of pride in the fact that, as a freelance writer, people bought what I was selling. I wasn’t selling it to consumers, obviously; editors were buying it. But I think there’s a difference. People always ask, "Are you making a living as a writer?" and the implication is, "Are you a real writer or not?" People are happy to make a living as a writer because it confirms on them some legitimacy. Should the market be the ultimate arbiter of legitimacy? I don’t think it is, but there’s a reason that people take pride in it. You’re not doing something that no one needs; you’re doing something that someone has decided they need.

I also think people forget that copyright represented progress. Before copyright, people had patrons. People say, "Sell T-shirts, do readings, find a rich person to support you." The fact that I don’t have to do that represents, to me, an immense amount of progress.

Let’s talk about e-book piracy in particular. What do you say to the claim that piracy is popular because e-books are overpriced? That customers are just trying to get a decent deal?

Yeah, that’s not really a legal claim. There are legitimate legal claims on the other side. I think Fair Use is important. I don’t want to police the Internet in a way that would damage a lot of what makes it great. By the same token, "I don’t want to pay more than $10" is not really a legal claim. "I don’t want to pay more than $10 so I’m going to buy something cheaper" is a valid claim, but "I don’t want to pay more than $10 so I’m going to take it" isn’t. I think it’s an understandable way for people to feel. I like to pay as little for things as I possibly can. I don’t think of it as a right, though.

I also think a lot of that stuff gets ginned up. People see $12 e-books as expensive because Amazon trained them to believe it’s expensive, because it set a $10 price point in order to sell Kindles. It’s not as if the American public spontaneously said, "Here’s what we want." They were nudged to do this.

Similarly, the idea that copyright terms are too long, therefore I’m going to download everything from the Internet illegally—I’ve never quite been able to make that leap. I think it’s kind of a rallying cry for the other side.

Could proponents of the copyleft compare it to civil disobedience? They see copyright law as flawed, so they’re going to disobey it to make a point.
I’m a big supporter of civil disobedience. But if you’re going to participate in civil disobedience, you have to a) identify yourself as the person who’s committing the act, and b) be willing to take the consequences. Most people who are taking files illegally online do neither of those. You’re not doing it with the intent to bring attention to a cause, you’re doing it because it’s convenient and cheap. That’s not a social movement, it’s a mob.

You see that a lot online. When creators stick up for themselves, there’s this mob mentality of shouting them down. That’s frightening.

How have technology and politics come together to shape today’s Internet environment for all kinds of media—books, movies, music?

A lot of it was the Digital Millennium Copyright Act.¹ The act and the way the courts interpreted it was a big part of what broke the market. The people who lobbied for the part of the act that provided a safe harbor for infringement, and the intended beneficiaries of the act, were Internet service providers who needed a way to invest millions of dollars in broadband infrastructure without worrying that they would be liable for massive damages.

That made a certain amount of sense. But should the same thing have applied to sites like YouTube, which used the safe harbor to build a business, and get a lot of content for cheap, because, “Hey, you can’t keep it off YouTube anyway, you might as well sign a deal with us.” That doesn’t seem like the best way to build a business. I don’t think YouTube should have the duty to monitor everything on its servers, but I also don’t think they should be able to monitor none of what’s on their servers. There must be a middle ground.

I’ve seen my book up on a few pirate book sites. Most of my friends say, “Wait, your book’s pirated?” That’s crazy!” They don’t know what’s going on. My friends in the technology business say, “Just issue a few takedown notices.” But how many of these things are linked to auto-repeaters? How many are back up in a day?

What did you end up doing?

I told my publisher, Random House, about it.

For three hundred years, copyright’s been an opt-in system. Now it’s an opt-out system. Everyone on the Internet is using your stuff until you tell them to stop. I don’t think that’s as good a system. It makes it very hard to negotiate. You don’t have any negotiating power, because they have the file anyway. You take it down, it’ll go back up.

Has e-book piracy been useful to Amazon in any way?

Oh, yeah, because they push the prices way down. If there weren’t a huge piracy problem, Amazon would have a really hard time pushing prices low as they do. I don’t think they’re that easy to separate.

I don’t think e-books are making less revenue now that they’re more expensive, on average. People seem to be more convenience-sensitive than they are price-sensitive. The great thing about Amazon is, boom, it’s there. That’s what people really want, this incredible convenience. Whether it costs $10 or $14, I’m not sure people care that much.

Barnes & Noble and Apple—and, to an extent, Google—are now viable competitors to Amazon. Has this made for a healthier e-book marketplace?

In terms of competition, yes. But I also think the publishers managed the reset of a tricky market very well. When Amazon was selling digital books for $10, it was difficult for anyone to compete because it was hard to make a profit selling a $10 book in any format. Amazon was making profits on sales of its Kindle, the machine, and eating losses on the books themselves. The publishers went to the other companies, they worked out a deal, they went to Amazon and said, “Here’s what we want.” Amazon got into a stare-down with Macmillan. Macmillan came out on top. And now those publishers set their own prices using the agency model. I think that has made bookselling more competitive. It’s slowed sales a little, but it’s created a much healthier market.

At the time, Amazon released a statement complaining that “Macmillan has a monopoly over their own titles.”

All these anti-copyright people picked up on that. “Oh, monopoly? Bad. We do not like monopoly.” Most people just ignored it. But it’s important to remember

¹The Digital Millennium Copyright Act was a 1998 amendment to the Copyright Act that provided limitations on how much online service providers can be held liable for copyright infringement.
that a monopoly over a particular piece of work is not restricting a whole market. Bruce Springsteen has a monopoly on “Born to Run,” but he doesn’t have a monopoly on songs about getting out of New Jersey. How harmful is that very narrow monopoly? If you don’t like my book, you can buy another book on the subject. I’m sure a lot of people will. It’s not a harmful monopoly that stands in the way of commerce.

People have complained about the monopoly power of labels, but YouTube has a lot more influence. It’s an interesting thing. I mean, have you looked at Google lately?

You say in Free Ride that “Amazon seems to see publishers the way technology executives see record labels: as companies that manufacture and distribute physical goods no one needs anymore. Naturally, it wants to deal directly with writers and cut out what it sees as the middleman.” What’s missing from this approach?

Amazon gives writers a higher percentage than traditional publishers. But, in most cases, it’s a higher percentage of less money.

I think this was the problem with Napster too. Napster said they replaced the record business. But they really just replaced the trucks that brought CDs to stores. Publishers and record labels do a lot of things: they identify talent, they develop talent, they promote talent. Those three investments in talent are important things. Amazon just does distribution. They aren’t identifying talent, because they’re taking everyone. They’re not developing talent, because they’re not really doing intense editing. I guess they do some. They’re not promoting talent, because they don’t do much in the way of marketing. They’re not investing in talent, because usually they don’t offer advances. Which of the functions of publishing are they selling? Only getting stuff to places.

If you think about the publishing business, the people with the power are the editors, not the guys who drive the trucks that deliver books to warehouses. Why would you want distribution to control an entire business?

For so long, the established view has been that publishing houses—and record labels and magazines—are cultural gatekeepers. Once you have a company as big as Amazon functioning like a publisher, though without those perks you just described, what happens to that idea?

There’s a tendency not to like gatekeepers because the word has a negative connotation. But I’m not sure we won’t miss them when they’re gone. We’ll see. The publishers have to adapt, definitely. But I don’t think writers need to worry about competition from amateur writers. If someone else wants to write a book like mine, I welcome the competition.

Still, there’s a big difference between saying everyone should be able to publish their own book, and everyone should be able to publish my book. I don’t want a monopoly on the idea of a book about digital parasites. If someone else wants to write a book about that, I say go for it. But if someone wants to offer my book on an unauthorized basis, that’s not competition.

People say that legacy media companies are afraid of competition. I think the opposite is true. Amazon’s

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“Amazon just does distribution. . . .

If you think about the publishing business, the people with the power are the editors, not the guys who drive the trucks that deliver books to warehouses. Why would you want distribution to control an entire business?”

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not publishing that many books. It’s still relying on the books of the old media business. The Huffington Post is not out there reporting many stories; they use other people’s reporting. That, to me, isn’t competition. Competition is everyone out there doing something, not some people copying stuff. Just to be clear, I’m not talking about mash-ups. I’m all for that.

I also think we need to distinguish between the downloaders and the distributors. If someone takes my book for free, illegally, I don’t get that angry. I know it’s a bad thing and beyond a certain point it’ll hurt me, but it doesn’t enrage me. Maybe they couldn’t afford it. What enrages me is that people have turned offering my book for free into a paying business and they’re making money on my back. That bothers me. And the issue has been framed in terms of the former, the downloaders, not the latter, the distributors. “Oh, kids are downloading stuff. Why do entertainment companies want to go after the kids?” But it’s not that kids are downloading stuff, it’s that big companies run by venture capitalists are making it available. Napster wasn’t a charity; it was backed by venture capitalists. Scribd is not a charity. None of these companies are.

If people want to take the book out of the library, great, I hope they like it. That’s part of the system. If a site in Brazil wants to offer copies for nothing, that’s
really a bad thing. They should be shut down. I would rather see people who run sites like that face prosecution than kids face fines. That’s where the crime is.

Is piracy an unstoppable force?

If you talk to people in Silicon Valley, there’s this whole idea of inevitability that’s almost Marxist. The future’s gonna be this way, and technology is the great engine of history pushing us ever-forward into a glorious future. That doesn’t even sound true. The future’s just not what you think. The first musician to be on the cover of WIRED was Peter Gabriel for his CD-ROM. WIRED said he was reinventing the music business. But who talks about CD-ROMs these days? The future’s just not what you think it will be. Piracy is not necessarily inevitable.

Here’s what we know: We know that computers are going to get more powerful, we know that storage is going to get cheaper, we know that broadband is going to get faster. But what’s online is up to us. And we need laws to regulate that. Should they be laws that make it impossible to start a business? I hope not. At the same time, we need laws that protect our rights. The same laws that people see as getting in their way are defending me.

People say, “Oh, copyright’s a hassle, it’s a huge inconvenience.” Yeah, I see that. Speed limits are a hassle and an inconvenience, too, but they’re also important to society. Just because something’s inconvenient doesn’t mean you can ignore it.

Lawrence Lessig likes to compare the war on file-sharing to the war on drugs. But that’s stupid, because drugs don’t have rights. Creators have rights. The U.S. government has some obligation to protect my rights. You can argue about how much obligation it has and how much money should be spent to do that, but it has to protect my rights.

People always act like the Internet’s different. That’s not a legal argument. When people say it’s impossible to enforce law on the Internet, a) it’s not, and b) the Internet didn’t spring from the brow of Zeus or Al Gore. We need to make sure it’s not impossible to enforce law on the Internet. I want to make sure my rights are protected, including other rights aside from copyright.

The open Internet has come to be seen as a progressive cause, but that’s nonsense. An unregulated market is not a progressive concept; it’s a conservative concept. People think it’s progressive because you can do what you want, but Google can also do what it wants. A progressive society is smartly regulated to protect the vulnerable. That’s what I’d like to see online. Of course, maybe everyone doesn’t want to see that. But it drives me nuts when this weird, anarchic mob is seen as some kind of progressive thing. It’s always been a Silicon Valley fantasy. John Perry Barlow’s Declaration of the Independence of Cyberspace was a libertarian fantasy: “look how much money we’re going to make.”

Right now we’re having a debate about what kind of laws should be enforced. What I find upsetting is that, instead of saying, “Hey, how about doing this?” the answer is often, “Oh, you can’t regulate the Internet; copyright is over.” That’s not a debate, that’s a tantrum. Copyright is the engine of free expression—that’s from Sandra Day O’Connor. How come you never hear that side of the story?

I don’t want to sign away my rights. This idea that we’re not going to do anything to defend our rights seems pretty naïve. Who is this benefitting? The open Internet has resulted in a concentration of wealth and power. For years, people complained about the six big companies in publishing. But YouTube and Netflix together probably have a bigger share of online videos than all six major book publishers combined have of books. It’s a whole other level of concentration of power.

Plus, the Big Six ended up being very useful in keeping Amazon from controlling the e-book market. On that note, how would you grade the Big Six publishers on how well they have responded and adapted to the rise of e-books?

I’m not really qualified to say. I think what Macmillan did was really important, when they stood up to Amazon. I think what Random House did—my publisher—

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CONTRACTS Q&A

By Mark L. Levine

Q. Are print-on-demand books considered print-on-paper or electronic editions?

A. They are generally considered print-on-paper (POP) books, but there are arguments on both sides.

Favoring their treatment as electronic editions: until the time of actual purchase, they exist only as an electronic file and not as a printed book.

Favoring their treatment as print-on-paper editions: the purchaser receives a print-on-paper book, not a file to be read on a computer or other e-device.

To avoid possible future disagreements between you and your publisher, your contract should specify how you and the publisher intend print-on-demand (POD) books to be treated. If the two of you agree, they can even be treated differently in different sections of the agreement.

Clauses affected by this decision primarily include grant of rights, royalties, out of print and reversion of rights. If your contract includes—as it should—provisions for separately determining when your e-edition and print-on-paper editions go out of print, you need to avoid confusion about what rights revert to you.

A reversion of POP rights to you will be illusory—and you will not find a traditional publisher interested in bringing out a new edition—if your original publisher, retaining the e-rights after your POP edition goes out of print, can cause a POD edition to be printed whenever someone wants to buy a traditional book. So even if your contract treats PODs as electronic editions for royalty or out-of-print purposes, specify that they are treated as POP copies for grant of rights purposes if POP rights revert to you when the POD edition goes out of print.

Q. Is there anything I have to be particularly careful about in the “competitive books” clause?

A. Yes. Lots.

The most important is to make sure that the prohibition on competitive works applies only to competitive books. Otherwise, your publisher might be able to prohibit you from publishing certain magazine articles and very likely could prohibit you from licensing an “app” on the same subject to app publishers. But the following points are important too:

1. Narrow the section’s scope as much as possible by carefully defining what kind of book would be competitive, e.g., “a book on the same subject directed to the same audience and treated in the same manner and depth.”

2. If the book is fiction, try to get the clause deleted altogether. Many publishers will insist on it only for nonfiction books.

3. Add a sentence saying that books featuring the same character (in the case of fiction) and sequels are not competitive.

4. Add a sentence saying that the prohibition will not apply to books offered to the publisher under the contract’s option clause and declined by the publisher.

5. Try to have the section apply only for a limited number of years, e.g. three or four. This is often a way to bridge disagreements between you and the publisher about other aspects of the clause, and more publishers will agree to this limitation than one would expect.

6. Especially if you are unable to limit the time period during which the section applies, provide that it applies only when a specified number of books have been sold within the most recent two six-month royalty reporting periods. Or only when the amount of money you received in royalties during those periods exceeds a specified amount. These numbers, whether of books sold or royalties received, should be significantly higher than those used for out-of-print determinations. There is no good reason for a publisher to insist that the low numbers in a typical contract’s out-of-print clause should prevent you from publishing another book on the same subject that could reach new readers and earn you significantly more money than you’re getting under the existing contract.

The same point—setting more stringent sales criteria—should also apply to your right to license an app on the same subject as the book if the publisher refuses to limit the section’s scope to books.

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The High Price of Lowballing the Donald

Superior Court of New Jersey, Appellate Division

Timothy O’Brien is a financial reporter who has written extensively about Donald Trump throughout his career. In December 2004, O’Brien signed a contract with Warner Books to write *TrumpNation*. Despite O’Brien’s negative reporting on Trump in the past, Trump agreed to cooperate, granting O’Brien several interviews, making members of his staff available, and providing him with certain financial documents. O’Brien supplemented this fresh material with extensive research from previous years. He also re-interviewed three anonymous sources who had initially estimated Trump’s total net worth as being in the $200 to $300 million range, but in follow-up interviews lowered their estimates to $150 to $200 million.

On October 23, 2005, *The New York Times* published an excerpt from Chapter 6 of *TrumpNation*. The excerpt included the lower estimates of Trump’s net worth, but also the addendum that “Donald’s casino holdings have recently rebounded in value, perhaps adding as much as $135 million to these estimates.” Three days later, on October 26, the book was published without the statement clarifying the lowered amounts contained in Chapter 6. Moreover, O’Brien discussed Trump’s vacillating fortune and his own difficulties in arriving at Trump’s net worth, since there was so much conflicting information supplied by various sources and by Trump himself.

Following publication of *TrumpNation*, Trump filed a defamation lawsuit. On March 20, 2009, O’Brien filed two motions for summary judgment claiming 1) that Trump failed to demonstrate by clear and convincing evidence actual malice on his part or *Respondeat Superior* liability on the part of his publisher, Warner Books, and 2) that Trump failed to demonstrate that he had been damaged by O’Brien’s alleged defamatory statements. The Law Division Judge granted summary judgment in favor of O’Brien on the first ground, that Trump had failed to establish actual malice. Trump appealed the judgment.

The Superior Court of New Jersey, Appellate Division, noted that to establish a case of defamation, Trump was required to show that O’Brien communicated to a third person a false statement about Trump that either tended to harm his reputation in the eyes of the community or caused others to avoid Trump. For a public figure such as Donald Trump—the court found there was no legal issue as to whether Trump qualified as a public figure for defamation purposes—to succeed in a defamation claim, the defamatory statements made by O’Brien must have been published with actual malice. The court found that in order to establish actual malice, Trump was required to demonstrate by clear and convincing evidence that O’Brien published his statements about Trump’s wealth either knowing they were false or with reckless disregard for their truth. The court pointed out that “reckless disregard” refers to “publishing defamatory statements with a high degree of awareness of their probable falsity.”

Trump alleged that O’Brien’s anonymous sources provided false information and that O’Brien deliberately disregarded this contrary information. Trump argued that this constituted actual malice. The court disagreed, noting that a finding of actual malice may not be based solely on the character of the published statement or solely on the publisher’s failure to seek independent verification. Rather, the two must be evaluated together to determine whether O’Brien acted with recklessness. The court did stipulate that “a public figure can recover for defamatory falsehood whose substance makes substantial danger to reputation apparent, on a showing of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers.”

Moreover, the court noted that an inference of actual malice may arise when a false report is published solely in reliance on confidential sources if 1) the content of the report is defamatory as a matter of law; 2) the defendant knew or should have known of some reasonable means of verifying its accuracy, and 3) the failure to verify the report rises to the level of a gross violation of the standards of responsible journalism. Accordingly, the court found that if O’Brien’s state-
ments in his book approached the level of publishing a knowing calculated falsehood, the decision whether O'Brien acted with reckless disregard for the truth should be submitted to a jury, as a summary judgment verdict would not be appropriate.

In the case at hand, the court found that this standard of “reckless disregard” was not met. The court pointed to the fact that O'Brien certified that he re-interviewed his three confidential sources prior to publishing Trump’s net worth estimates and that he produced notes of his meetings with these sources from 2004 and 2005. The court recognized that the notes were significant in that they provided similar estimates of Trump’s net worth, suggesting the accuracy of the information conveyed by O'Brien.

The court pointed out that the accounts of the three sources contained significant amounts of additional information that O'Brien was able to verify independently, which included Trump’s interests in various building projects and real estate sales, Trump’s restructured casino debts, and Trump’s own restructured personal debts. The court also acknowledged the legal precedent that anonymous sources who provide other reliable information are recognized as an indicator of reliability in defamation cases to demonstrate the absence of malice. As such, the court wound up agreeing with O'Brien that his position had merit, since he didn’t adopt the lowest estimates of Trump’s net worth but merely utilized the lower figures to illustrate the spread in accurately estimating Trump’s wealth, while suggesting that in his own opinion, Trump was highly exaggerating his wealth publicly. Accordingly, the court concluded that O’Brien’s opinions in this regard were not actionable by Trump because they were absolutely privileged.

The court also acknowledged that Trump relied on a 2004 Statement of Financial Condition to which O’Brien was given access on three separate occasions. However, the court noted that the statement itself contained a written disclaimer stating that the numbers had not been audited or reviewed, and the accountants who prepared the statements stipulated that GAAP (Generally Accepted Accounting Principles) principles were not closely followed, and as such, users of the statement should recognize they might reach different conclusions about Trump’s financial condition. Thus, the court concluded that even with unfettered access, nothing in the record suggested there was sufficiently reliable information to provide O’Brien with an accurate assessment of Trump’s true net worth. This was made even clearer by the fact that Trump’s own estimates of his net worth waxed and waned over time. Ultimately, the court ruled that there was no evidence to support the conclusion that the confidential sources utilized by O’Brien were fictitious, and there was no evidence to suggest his reliance on the confidential sources constituted actual malice. As such, the court granted summary judgment in favor of O’Brien and the other publishing defendants and dismissed Trump’s defamation lawsuit.

**Legal Services Scorecard**

From August 20 through November 23, 2011, the Authors Guild Legal Service Department handled 367 legal inquiries. Included were:

- 38 book contract reviews
- 7 agency contract reviews
- 24 reversion of rights inquiries
- 31 inquiries on copyright law, including infringement, registration, duration and fair use
- 12 inquiries regarding securing permissions and privacy releases
- 39 electronic rights inquiries
- 6 First Amendment inquiries
- 210 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

**Loss of Interest**

*In re Arcade Publishing Inc.*

U.S. Bankruptcy Court, S.D. New York

Many Guild members have had the unfortunate experience of having their small to medium sized publisher file for bankruptcy protection. One of the more prominent independent house bankruptcies in recent years was Arcade Publishing Inc., which had failed to pay its authors royalties for several years running, and was unresponsive to all attempts by Guild attorneys to secure money and/or reversions of rights for our members. One Guild member, author Steven Hodel, filed a breach of contract action against Arcade for failure to pay royalties from sales of his best-selling work, *The Black Dahlia Avenger: A Genius for Murder*. However, before his breach of contract action could be concluded, Arcade filed for Chapter 11 bankruptcy protection on June 5, 2009.
On July 22, 2010, the U.S. Bankruptcy Court entered an order approving the sale of Arcade’s assets to Skyhorse Publishing Inc. Arcade’s Joint Plan of Liquidation of the Official Committee of Unsecured Creditors and Debtors was confirmed on April 15, 2011. Arcade’s disclosure statement estimated recoveries by unsecured creditors in the range of 7 to 8 percent. As an unsecured creditor of Arcade, Hodel’s proof of claim was broken down into three components: i) $224,571.07 in royalties due; ii) $101,056.98 in interest on principal amount, and iii) $7,659.21 in interest on royalties that Arcade paid late in breach of contract.

Arcade filed Debtor’s Objection to Claim No. 62 against Hodel, challenging the second and third portions of his unsecured claim seeking pre-petition pre-judgment statutory interest under section §5001 (a) of the New York Civil Practice Law and Rules (NY CPLR). The court noted that Hodel filed his proof of claim post-bankruptcy in a timely manner, in the amount of $333,335.52 (later amended to $333,287.26, the principal amount owed, $224,571.07, plus combined statutory interest of $108,716.19). Arcade scheduled the amount due Hodel for “author royalties” as $111,453. Arcade’s Statement of Financial Affairs listed Hodel’s state court breach of contract as “pending,” since no final judgment or verdict had been reached in that action. Thus, the only issue for the U.S. Bankruptcy Court was whether Hodel could rightfully pursue statutory interest on his long unpaid royalties under Section 11 United States Code (USC) §502 (b).

At the outset, the U.S. Bankruptcy Court noted that 11 USC §101 (5)(A) of the Bankruptcy Code defined a “claim” to mean a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.” The court further explained that the term “claim” is defined broadly “to encompass any possible right to payment.” The court noted that the Second Circuit has recognized that a claim will be deemed to have arisen pre-petition if the relationship between the debtor and the creditor contained all of the elements necessary to give rise to a legal obligation—a right to payment—under the relevant non-bankruptcy law.” Section §501 (a) of the Bankruptcy Code provides that “a creditor . . . may file a proof of claim” to claim an interest in a debtor’s bankruptcy estate. Section §502 (a) provides that if a claim or interest is properly filed, “it is deemed allowed unless a party in interest . . . objects.” The court noted that under §502, if an objection is made, the court must determine the amount of such claim “as of the filing date.” Most important in this case, the court pointed out that claims for “unmatured interest” are barred in this situation, although courts have allowed interest as part of a claim if the interest has been “earned” by a creditor as of the petition date.

In the case at hand, the court found that for interest to be included in the claim, Hodel must establish an entitlement to pre-petition interest “to the extent . . . permitted under the applicable non-bankruptcy law.” NY CPLR §§5001 (a) states, “Interest shall be recovered upon a sum awarded because of a breach of performance of a contract, or because of an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of property except that in an action of an equitable nature, interest and the rate and date from which it shall be computed shall be in the court’s discretion.” NY CPLR §5001 (b) adds that “interest shall be computed from the earliest ascertainable date the cause of action existed.” The court also pointed out that case law provides that “where there has been a sum awarded because of a breach of performance of a contract, recovery of interest is a matter of right.”

In this case, the court found that the parties’ dispute revolves around whether, as contemplated by NY CPLR §5001 (a), there was a “sum awarded” sufficient to allow the pre-petition judgment interest to be included in the claim. In evaluating this claim, the court noted that Hodel did not obtain a judgment in the state court action. However, Hodel proposed two arguments supporting the conclusion that he was entitled to prejudgment interest. Hodel first argued that since the Bankruptcy Code’s definition of the term “claim” includes “a right to payment, whether or not such right is reduced to judgment,” under 11 USC §101 (5)(a), his right to interest accrued when he filed the state court action and is thus necessarily included as part of his “claim,” notwithstanding a lack of judgment in his state court action. The court rejected this argument, noting that state law determines whether pre-petition interest is allowable as a claim. Under NY CPLR §5001 (a), a verdict, judgment or decision must be rendered in favor of the plaintiff in a breach of con-

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CENSORSHIP WATCH

Marketing 101: Making Censorship Pay. As a part of what may or may not have been a publicity stunt engineered by imaginative minds associated with an independent film based on a novel by James Cañón, or by the organizers of the Barcelona International Gay and Lesbian Film Festival (October 26–November 6, 2011), by both parties or neither, reports surfaced a few days before the kickoff of the event that due to an editorial chop made by the film’s Spanish distributor, organizers had yanked it from the festival in response to what they claim was censorship of the film’s homosexual content.

The film, Without Men, is a comedic adaptation of Tales from the Town of Widows, a 2007 novel about the lives of the women of a Colombia mountain town after the men are forced to join up with a band of guerrillas. Cañón’s debut novel received decent reviews and critical attention; the film may not fare so well.

Rotten Tomatoes, the popular film review website, shows that as of November 2011, four months after the film’s limited release, its average audience rating is 1.3 out of five stars. Only 12 percent of 109 audience reviewers rated it 3.5 stars or higher. “Racist, sexist but worst of all boring,” writes a one-star reviewer. “The misogynist [sic], yet clichéd, raunchy scenes were neither titillating nor shocking. They were neither sexy nor funny. I don’t know what to call it. . . perhaps a lorno?” Although the reviewer leaves her word choice unexplained, contextual clues suggest “lorno” might be interpreted as a portmanteau of Latina and porn or perhaps lesbian and porn—or loser porno.

The Rotten Tomato reviewer’s comments on the film’s raucy content aren’t incidental ramblings. Lesbian love scenes between the film’s star, Eva Longoria (Desperate Housewives), and her costar, Kate del Castillo, were a huge publicity peg for the indie production prior to its U.S. release in July. The film debuted at the Los Angeles Latino International Film Festival with, in addition to Longoria and del Castillo, stars Christian Slater, Oscar Nuñez (The Office), Maria Conchita Alonso, Judy Reyes (Scrubs), Guillermo Díaz (Weeds) and other notables. But there was little buzz about the cast beyond Longoria. Media focus, possibly orchestrated by the film’s public relations team, has been on the lesbian liplock. Even the briefest Internet articles mention Longoria and del Castillo’s “intimate encounter” and “steamy” kiss (CelebrityGossip). Audiences were advised to “get ready for some serious steam as [Longoria] takes on her most provocative role to date” and “swooshes up” her costar in scenes that “all looked very real” (Fox News Latino). During a press junket, says Latina magazine, “all reporters wanted to know was what [the actresses] thought about their now infamous love scenes.” And when the recently divorced Longoria commented on her marital split by saying, “Right now I don’t need a man in my life,” Latina asked the tongue-in-cheek question, “Hm, maybe she is still in character?”

“It’s good that the people are going to see it out of prurient interest,” said its director, Gabriela Tagliavini, in an interview published on the Fox News Latino website. Although Tagliavini went on to claim that Without Men is more than a Sapphic sex romp, on most U.S. websites the R-rated film was publicized with a red band trailer featuring Longoria and del Castillo swimming, kissing and touching each other. Tagliavini insisted the film isn’t a “lesbian drama” with a feminist agenda but rather an “incredibly funny” and “daring comedy.” Nevertheless, Variety reviewer Robert Koehler panned it as a “cheapo sex comedy stuffed with mugging actors” and “corny narration.”

On October 24, press agency AFP reported that Xavier Daniel, director of the Barcelona International Gay and Lesbian Film Festival, said that its screening of Without Men would be canceled to protest the edit of the film made available by Tayrona Entertainment, a Spanish and Latin American film distributor. “We received a statement from [Tayrona Entertainment] saying that when the film premieres it will have the lesbian scenes removed,” said Daniel. “The audience will not understand the film because all the lesbian scenes are cut out. It is unbelievable in the year 2011.”

Tayrona Entertainment subsequently tried to defend its actions to The Hollywood Reporter, claiming that the film was edited “in agreement with the Producers and Director in order to balance the film for a mainstream audience.” Furthermore, “Without Men was never conceived as a lesbian story but as a comedy about situations that happen to a town when all men are sent to war. Those situations included lesbianism among many other ones.” The distributor then went on to claim, “It’s not accurate to say . . . that the festival canceled the screening of the film as Tayrona actually rejected the participation of the film in a Gay and Lesbian Film festival when the film is not a lesbian story and it’s not about lesbianism. . . . It’s a mainstream comedy and to participate in a festival of this nature is against the business of the film [and] will confuse target audiences. . . . We will love to participate in this Festival when we have a film targeted for this community. Unfortunately Without Men is not that film.”

However, in a bit of have-your-cake-and-eat-it-too
backtracking, Tayrona Entertainment simultaneously told The Hollywood Reporter, “It’s absolutely not accurate to say that Eva Longoria’s lesbian scenes were entirely removed from the film…. Actually they are part of our Marketing campaign as you can see in the trailer made for Spain and Latin America (which is completely different from the campaign made by Maya Entertainment [the U.S. distributor]).”

Tayrona Entertainment’s trailer also spends less time on the supposedly comedic elements of the film—scenes such as the one in which the women ask, “Who is going to take out the trash?! Who is going to give us money for shopping?!” and the one in which they’re told, “I can see what’s going on here. You guys are all on your periods!”—and more time on the “sexy girl time” scenes in which the women are shown lounging together in lingerie, counting the days since the last time they had sex with their men, lasciviously accepting Communion wafers placed on their tongues by the town priest, and group groping a bare-chested Christian Slater.

So what’s the moral here? Did the icy hand of censorship transgress or the overeaten hand of PR?

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Orphans Hiding in Plain Sight

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published in the year 2001 alone, including works published that year in Australia, Austria, Brazil, Canada, China, Egypt, France, Germany, India, Indonesia, Israel, Italy, Japan, Lebanon, Mexico, The Netherlands, The Philippines, Russia, South Korea, Spain, Switzerland, Thailand, Turkey, the United Kingdom and Vietnam.

Immediately before the lawsuit was filed, the Authors Guild spot-checked the HathiTrust Orphan Works Project list to see if the owners of copyright on any of the works were indeed findable. Given that the research undertaken by the Orphan Works Project had been carried out by university research librarians, and that our own search was cursory and brief, we didn’t expect to come up with any significant results. As we reported at our website on September 14, it took us all of two steps and two and a half minutes to locate at least one copyright owner of a supposedly orphan work, J. R. Salamanca, best-selling author of The Lost Country and professor emeritus of the University of Maryland. We kept going, and you can read all about our search at www.authorsguild.org/advocacy/articles/found-one—we-re-unite-an.html


Cozzens left his literary estate to Harvard University, information easily obtained from U.S. Copyright Office records or from the well-known WATCH database (Writers Artists and Their Copyright Holders) maintained by the Harry Ransom Center at the University of Texas and the University of Reading (http://tyler.hrc.utexas.edu). Many visitors to the Authors Guild blog chimed in with dozens of reports from their own off-the-cuff knowledge or simple research about easily obtained leads for contacting other authors on the HathiTrust list (see http://blog.authorsguild.org).

By September 16, four days after the lawsuit was filed and only two days after the Guild began posting information about the ease with which contact information could be, and was, obtained for the authors of 50 works designated as orphans by the HathiTrust, the University of Michigan announced the suspension of the Orphan Works Project. However, the storm has not passed. After acknowledging “a number of errors, some of them serious” in the “flawed” process, Michigan nevertheless refused to disband the program. Instead, the university said, it would create a “more robust, transparent, and fully documented process” and continue the project. Michigan did not, however, outline the measures that would be taken in an attempt to get things right in any future iteration of these activities. Therefore, attention must continue to be paid. “Even if it weren’t for this preposterous, ad hoc initiative,” said Authors Guild president Scott Turow, “we’d have a major problem with the digital repository. Authors shouldn’t have to trust their works to a group that’s making up the rules as it goes along.”

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Along Publishers Row

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doesn’t fit what their existing publisher is looking for.”

Tim Knowlton of the Curtis Brown agency said this was an appealing option for authors whose books had gone out of print or books for which the author held the electronic rights. He said, “For any book that has potential for significant sales, it’s going to be a good opportunity to explore.”

FREE AT LAST: Amazon has opened its Kindle to library e-books. Library e-books are also available to be read on the Nook, the Sony Reader, smart phones, laptops and other devices.

The New York Times said, “The publishing industry has been reluctant to criticize libraries and their e-book systems because of the cherished status libraries hold in communities.” But the development is troubling to publishers. They worry that e-book buyers will become e-book borrowers. As of this moment, Simon & Schuster and Macmillan do not make their e-books available to libraries.

Adam Rothenberg of S&S said, “Our e-books are not currently available in libraries because we haven’t yet found a business model with which we are comfortable and that we feel properly addresses the long-term interests of our authors.”

PLUS MUSIC: And next: your prose with music.

E-books with background music are leaking onto the market. The first was The Power of Six, a young-adult novel by Pittacus Lore. This was followed by The Adventures of Huckleberry Finn, Jane Eyre, Romeo and Juliet and The Three Musketeers.

Paul Cameron is Booktrack’s 35-year-old cofounder. He told The New York Times, “It makes a new and engaging way to read... enhances the experience and... your imagination and keeps you in the story longer.”

In September and October, Booktracks scheduled two new editions of short stories: Solace by Jay McInerney and In the South by Salman Rushdie.

Booktrack editions can be purchased at Apple’s App Store and read on an iPad or iPhone, and they are expected to be made compatible with Android devices.


A SIGH: The headline on the editorial page of The New York Times said, “A Book at the Beach.” The essay was a complaint about “the new challenge of beach reading on an electronic apparatus.” One has to be careful of salt, sand spray and suntan lotion.

The writer said, “We loved the old mass-market paperbacks. They were cheap, dispensable, and at the beach they swelled up like the pulp they were. When dried, they never regained their shape. They looked forever like beach reading.”

The solution: “Our approach is to... go looking through the attic for an old Mickey Spillane.”

NEW JOB: Skywriter Media and Entertainment group signed children’s author/illustrator Leslie McGuirk to be the resident author for its mobile app development platform.

McGuirk is the author of If Rocks Could Sing, Lucky Tucker, Small Boy and many other titles. She will create original interactive e-book titles for the iPad, in addition to adapting her own titles into interactive digital works for the iOS platform.

THREE IN ONE: Nicholas Delbanco’s Sherbrooke trilogy was published 30 years ago. Now the three novels have been published as one 800-page volume. Delbanco told PW, “I thought I would like a chance to do what I always kind of wanted to do, which is turn it into one novel.”

Delbanco was 33 and 34 when he wrote the novels. He said, “I was kind of impressed by how much that kid knew. But I was also appalled by—let me put it this way. The good news is I’m a better writer now than I was then. The bad news is the same. I thought, how did they let me publish them?”

HEMINGWAY CHURCH: Paula McLain is a poet and author of the best-selling The Paris Wife. She is the author of a memoir, Like Family, and a novel, A Ticket to Ride.

The Paris Wife is a fictional account of Ernest Hemingway’s first wife Hadley Richardson.

McLain was interviewed for the Internet by Allie Baker and said she did some of her research in the Hemingway room at the John F. Kennedy Memorial Library in Cambridge.

McLain said, “It’s like the church of Hemingway there, a lovely small room with some of his furniture, an animal skin rug, some art and personal effects... I went there expressly to read Hadley’s letters to him during their courtship, and they are amazing. Her voice is incredible—charming, candid, funny, romantic. She’s so open, and also creative. That was a surprise to me—what a good writer she is!”

HARD WORK: The Stranger’s Child is Alan Hollinghurst’s fifth novel. He told The Guardian that when he writes now he has “to isolate myself for long periods. It’s all become much more of a challenge. I find writing novels gets harder and harder, which is not what I thought would happen. I thought you’d learn how to do it.”
SWEDE WINS: Tomas Tranströmer, a Swedish poet, won the Nobel Prize in Literature. The Swedish Academy said that “through his condensed, translucent images, he gives us fresh access to reality.”

BUY A TICKET: Some independent bookstores around the U.S. have begun selling tickets or requiring a book purchase by customers who attend author readings and signings.

Sarah McNally, owner of McNally Jackson Books in Manhattan, told The New York Times, “There’s no one right now who’s not considering it. The entire independent bookstore model is based on selling books, but that model is changing because so many book sales are going online.”

The Boulder Book Store in Colorado charges $5 a person to attend events. Kepler’s Books in Menlo Park, Calif., charges customers a $10 gift card, which admits two people to each author appearance. Customers also can buy the book in exchange for admission.

JOBS BIO: Steve Jobs died in early October, and Walter Isaacson’s biography of the much-praised Apple CEO shot to No. 1 on Amazon’s bestseller list—several days before its release date. Booksellers expected the book to make their Christmas merry.

Patricia Bostelman, marketing vice president at Barnes & Noble, predicted in The New York Times, “We think it’s the biggest adult non-fiction book of the year.”

FANS HELP: Escape, Barbara Delinsky’s latest bestselling, got its start back in 2009 when the author asked the 16,000-plus fans on her Facebook page where they would go if they were to just pick up and “get away from it all.” PW said the response was “overwhelming,” and “an ‘escapist’ bestseller was born.”

The author, who said she was kicked out of Honors English because she couldn’t keep up, has written 19 bestsellers with 30 million copies in print.


Now he’s considering going back to self-publishing. He told The Guardian, “I’m a real advocate of self-publishing. With the number of authors out there, I’m just one of many midlist authors. I’m not a celebrity, and book sales are pretty bad at the moment. [But] with self-publishing, it’s a case of if it’s good, people will buy it, and with the Internet you can get people to notice it.”

Taylor is selling more e-books than paperbacks by six to one. He said, “What’s the point of going to a publisher for them to cream off the profit? You can put an e-book up in a week.”

David Moody, who writes horror novels, published by Thomas Dunne Books, told The Guardian, “I’m actually a little miffed I’m not self-publishing right now. . . . This new route to market is, in my opinion, becoming a viable alternative to the old submission and rejection merry-go-round. . . . Sites like Lulu and Amazon’s CreateSpace allow [writers] to produce print editions of their books without the hassle of setting up a publishing business and dealing directly with print-on-demand publishers.”

MEMOIR PLUS: Emanuel Litvinoff, 96, died September 24 in London. The English poet was the author of a memoir, Journey Through a Small Planet (1972), several novels, including The Untried Soldier (1942) and several collections of poems, including A Crown for Cain (1948). In 1951, after T. S. Eliot, whom Litvinoff greatly admired, chose to reprint several early poems containing anti-Semitic sentiments, Litvinoff delivered a public rebuke in the form of a poem that began “Eminence becomes you . . .” and ended with the lines: “Let your words/tread lightly on this earth of Europe/lest my people’s bones protest.” The reading was met with a chorus of disapproval from the audience, but Eliot, who was also present, was heard to say, “It’s a good poem. It’s a very good poem.”

CURRENT TREND: A headline in PW: “Everything’s Coming Up Aliens.”

The article began, “Several publishers say reader interest is increasing only for works dealing with the ever-present subject of alien visitations and abductions, UFOs and related phenomena.”

Might as well stick that memoir in your desk drawer.

MESSAGE MAN: Toni Ungerer, 80, is the author of about 150 books for children and adults. He is also their prize-winning illustrator. Many of his books are being reissued, and The New York Times conducted an interview.

Ungerer described a message that his books provide. “Every human being has something the others don’t have. That makes him an individual. You should be aware of your differences and exploit them. This is why I often use animals that everyone hates—a snake, a vulture, a bat—in my books. All those animals are redeemed by the fact that they had appendages or qualities the others didn’t have. In the end they become the heroes.”

Later, he said: “If I write a book, I do it mostly for myself, for the child in me and for the adult in me. The criterion for my children’s books is: If I were a child, would I like it? That’s very egotistical, but it’s the same thing with my books for adults. I wouldn’t do a book if I didn’t want to partake and share.
With a book, I can do both. I give and I share.”

USED-UP WORDS: At a British poetry festival, poets were asked to name words and expressions that have become clichés and have lost all meaning. The Guardian reported a few, including: devastated, literally, awesome and “thinking outside the box.”

Guardian readers were inspired to add many more, including: fantastic, surely, hackneyed, unbelievable, absolutely (for yes), amazing, win-win situation, “the sky’s the limit” and “it’s a no-brainer par excellence.”

BUSY MAN: S. M. Stirling’s latest bestseller is The Tears of the Sun. He lives in New Mexico, and his bibliography on the Internet lists more than 70 novels (a few with shared bylines), plus short stories, introductions, etc.

Stirling is quoted in PW: “There is a technical term for someone who confuses the opinions of a character in a book with those of an author. That term is idiot.”

MOONLIGHTING: Archer Mayor lives in Vermont, where he has written 22 novels while serving as an investigator for Vermont’s medical examiner and 25 years as a firefighter and an EMT. His books are written in the voice of a fictional detective, Joe Gunther.

Mayor gives himself a year to write each novel. In a PW interview, Mayor said, “I would never put a real case in a book, but I can put the influences, the stresses, into these novels. And use novel-writing to cleanse my anxieties.”

THE FUN PART: Julie Salamon’s Wendy and the Lost Boys: A Bio of Wendy Wasserstein was a nonfiction bestseller. In one of the many interviews with Salamon that appeared on the Web, she said, “This was an unusual book for me because I like to come up with my own ideas. This one, however, was suggested by Ann Godoff, my editor at The Penguin Press, who has published five of my eight books. Ann told me she thought this would be an intriguing subject for me, and (as usual) she was right.”

Later in the interview, Salamon said, “My favorite part of writing a book is the moment when I can actually visualize the months and years of writing and research as a book. For me that tends to happen during the second draft. The first draft can be tough, even miserable labor. The second draft (or third) is, for me, when the fun begins.”

NEW SERIES: Terry Goodkind’s The Omen Machine topped PW’s hardcover bestseller list with 250,000 copies in print. The novel is the beginning of a new story for two of the characters from Goodkind’s 12-volume “Sword of Truth” series.

That series has been translated into 20 languages and has sold more than 25 million copies worldwide. PW said, “All this from a man who was initially dissuaded from writing because of his dyslexia.”


“All writers are mystery writers; we may not employ detectives in our work, but as seekers of guilty parties, we can identify with Nick Charles, Sam Spade, Lew Archer, Miss Marple and the rest. Like them, we muck about in a world studded with clues, neck-deep in motives. Like them, we falter in our investigations and follow wrong leads. We are foolhardy, preposterous, nosy, irritating. No one wants us around. We work alone, yet like Sam Spade, we operate within a tradition of our own, of which we are respectfully aware. Write and you are in the company of all who have written before you. Only when we have finished a piece of work do we know true shamus loneliness, realizing that the chase is over and that no one has been watching us but us.”

A BIG THREE: Truman Capote once recalled: “Of course no writers ever forget their first acceptance. . . . One fine day when I was seventeen, I had my first, second and third, all in the same morning’s mail. Oh, I’m here to tell you, dizzy with excitement is no mere phrase!”

TOUGH JOB: Rick Gekoski is the author of Tolkien’s Gown and Other Stories of Great Authors. He was born in America but lives and teaches in England.

He wrote in The Guardian: “When I am writing I wander in a fug all day, wake in the middle of the night—waking my wife Belinda as well—and stagger downstairs to record a thought or two. Leave the bed with my mind whirling with gorgeously formed sentences that are as evanescent as the smell of lily of the valley, and about as easy to recall. By the time I get to the keyboard their perfection (as it seems to me in my drowsy creative mode) has dissipated, and though I can catch something of what seemed a sensational formulation it is already, in that Platonic way, only an imitation of the ideal. I fiddle about, rewrite and reconsider, and go back to bed an hour later thoroughly stimulated, dissatisfied, and unable to sleep.”

BEWITCHED: Stephanie Plum, Janet Evanovich’s fictional detective, has some competition from a new Evanovich character. Lizzie Tucker, a Salem, Mass., baker, may be a witch in the best-selling Wicked Appetite. According to PW, the novel also has a one-eyed mind-reading cat. But no Stephanie Plum.
COMMENT: Robert McCrum is former literary editor of The Observer and author of several books including Globish: How English Became the World’s Language. He wrote an essay about the gigantic shift that is taking place in publishing and said,

“As omnivores, contemporary readers have become adept at switching from high to low culture at the click of a mouse, moving from codex to e-book to audio.” The only remaining question is, “How do we reconcile the gospel of ‘free’ with an obligation to reward the artist?”

He concludes, “It will be the creative community that enjoys the benefits. How that happens is probably the most fascinating question facing writers, booksellers and publishers today.”

GROWING OLD: J. A. Jance’s latest bestseller is Betrayal of Trust. Her protagonist, J. P. Beaumont, is taking his 20th case. Jance told The Wall Street Journal that she wouldn’t have let Beau age so much if she had known he’d last for 26 years. She said, “It’s too hard to put all that toothpaste back in the tube.”

DETAILS: The hot new genre is the Wall Street thriller. The New York Times business section described how the product placement must be right:

“In this genre, an office visitor never simply takes a drink of water; he sips Sanfaustino. A trader doesn’t get nervous when his picks aren’t hitting; he begins fiddling with his Hermes tie. Bankers aren’t well dressed; they are ‘suited in the battle rattle of Armani pinstripes and Gucci loafers.’”

The financial details, of course, have to be right too.

HOT: Kathryn Stockett’s The Help has sold more than three million copies, and the e-book version has sold two million. PW reported that the movie version had grossed $122 million by September, making it an official blockbuster.

A legal case against The Help, filed by Ablene Cooper, a maid for Stockett’s brother’s family, was thrown out by a Mississippi judge. Cooper had argued that a character in the book, Aibileen Clark, had been modeled after her without her permission. The judge ruled the suit was filed outside the one-year statute of limitations.

FROM OHIO: Donald Ray Pollock’s new novel is The Devil All the Time. He lives in Chillicothe, Ohio, and writes about a nearby town where he grew up, Knockemstiff, with a population of 400. The novel and his stories are violent and dark.

He was paid a visit by The New York Times’s Charles McGrath, who wrote that Pollock began teaching himself to write by typing stories by writers he admired: Hemingway, Cheever, Richard Yates. Pollock said, “I’d type one and sort of carry it around with me for a week, reading and rereading, and then I’d ditch that one and do another. I probably did that for 18 months. I’m not a close reader and typing those stories out gave me a chance to see this is how you make a transition, this is how you do dialogue. You don’t fill the page with blather. I knew that in the back of my head, but it helped to see it.”

A truck driver for a paper mill, he was middle-aged before he began to try and write. He took classes at Ohio State University and an editor of the campus literary journal convinced him to work on an M.F.A. Pollock said, “I’m probably the least cerebral guy you’re ever going to meet as a writer. . . . I just keep knocking away until something comes. I would like to write a book that wasn’t so violent and weird, but I just don’t think I can do that with my talent. I don’t think it would come off.”

HOT COPIES: Bookstores got a break in July with the publication of George R. R. Martin’s A Dance with Dragons. It’s the fifth in a series called “Song of Ice and Fire.”

The publisher said first-day sales topped 170,000 hardcovers and 110,000 e-books. The book has 1,016 pages and is priced at $35.


The first four volumes, available in paperback, have been selling briskly since January. Two more books in the series are expected, but fans waited five years for A Dance with Dragons.

NO RESEARCH: Suburbia is the background for all Tom Perrotta’s novels, including the most recent, The Leftovers.

He explained to PW: “It just so happened that for most of my life I’ve lived in the suburbs. I write about kids growing up, I write about schools and parents, and all of my experiences with those things have been suburban experiences.

“I always like the idea of the novel as a village. The small suburban town is the unit I think in.”

In The Leftovers, 100 people in the fictional Mapleton vanish. Perrotta described the book as “an alternative history novel, apocalyptic, sci-fi, dystopian.”

Perrotta told Gregory Cowles of The New York Times: “I don’t like big, formless novels. I run out of steam with them. When I’m writing I tend to read a lot of genre fiction, for its sense of movement. People want to pick up a book and not feel like it’s a chore. The novel is a popular form. It’s also competing for attention in a world where people’s attention has many, many destinations. I have definitely accepted that aesthetic principle, that you should be more interested toward the end of a book than you are in the beginning.
Which is not always the case in literary fiction.”

Perrotta gave an example of a novel that had him flipping ahead to the end to find out what happened: Colm Tóibín’s Brooklyn. Perrotta explained, “That kind of primal narrative engagement—I don’t know why literary novels should give that up.”

HABIT: T. S. Eliot wrote: “Writing everyday is a way of keeping the engine running, and then something good may come out of it.”

TIME OUT: As Esmeralda Santiago, 63, neared the end of writing her latest novel, Conquistadora, she suffered a stroke. An article about her in The New York Times said, “It ended up taking her about 18 months to relearn to read and write again in English. She is still struggling in Spanish, her first language.” She lives in Katonah, N.Y. The book was published in July.

Ten years of research and writing went into the book. She said, “I wanted to write a big book with lots of characters, and I wanted to explore what it meant and what it means to be Puerto Rican.”

The Times said, “Some have called Conquistadora a Puerto Rican Gone With The Wind.”

Santiago said, “I love where I came from more as a result of all that I learned. I felt about Puerto Rico the same way that you feel for somebody you love who has suffered a lot.”

INSPIRATION: Years ago, Catherine Coulter, unhappy with a novel she was reading, told her husband she could write a better book. He said do it. After finishing her first novel, she sent it to an editor at Signet and three days later they offered her a three-book contract.

That first book, The Autumn Countless, was published in 1978. PW said, after about 50 bestsellers, Coulter began her FBI Suspense thriller series.

Her current mass paperback bestseller, Whiplash, is the 15th in the FBI series. Split Second, published in July, is the 16th.

SOURCE: Joseph Slate of Silver Springs, Md., is an Authors Guild member whose most recent children’s book is I Want to Be Free. He said in a letter that the book was about “a slave who escapes but cannot remove an iron ring still locked on his ankle.”

Slate wrote, “Recently my wife and I attended—she reluctantly—the movie Cowboys and Aliens, and the lead character awakes in the desert with a mysterious metal bracelet on his wrist. Nothing will remove it, and it is the source of his many misadventures. I doubt the writers got the idea from me, but I don’t mind.”

Slate goes on to say he got the idea from Rudyard Kipling, and that Kipling got it from sacred literature about Buddha.

“The movie was long, and I may have dozed, because afterwards, had it not been for my wife, I still would not know how that bracelet finally came off.”

LOCATION: According to PW, the highest concentration of writers is to be found in the Midwest and the Northeast of the country. New York is the “unchallenged king of the U.S. when it comes to pumping out writers.”

Does the state of a writer’s birth certificate count for much? Does F. Scott Fitzgerald reflect Minnesota or Mark Twain Missouri? The Guardian commented: “The roots writers put down later in life often outweigh the accidents of birth.”

SPEED-UP: Paperback editions are following the hardback faster and faster. “Publishers say they have a new sense of urgency with the paperback, since the big simultaneous release of hardcover and electronic editions now garners a book the bulk of attention it is likely to receive,” The New York Times said.

There used to be a year between hardback and paperback. The trade paperback of Karen Russell’s Swamplandia! came out five months after the hardback. The Tiger’s Wife by Téa Obreht arrived seven months after the hardback.

Peter Aaron of the Elliott Bay Book Company in Seattle told the Times, “It’s definitely making the consumer happy to have the paperback available sooner. If there’s one form of printed book that will sur-
vive, if there was only one, it would be the trade paperback."

PRIZE PROSE: Sue Fondrie, a professor at the University of Wisconsin, won the 2011 Bulwer-Lytton bad-writing prize.

Her entry was the following “first sentence” of a novel: “Cheryl’s mind turned like the vanes of a wind-powered turbine, chomping her sparrow-like thoughts into bloody pieces that fell onto a growing pile of forgotten memories.”

Fondrie, who teaches writing, said on Twitter that one of her former students wrote her: “I knew you were awful, so it’s great that you’re finally getting recognized.”

Ali Kanreshema’s entry won the romance award: “As the dark and mysterious stranger approached, Angela bit her lip anxiously, hoping with every nerve, cell, and fiber of being that this would be the one man who would understand—who would take her away from all this—and who would not just squeeze her boob and make a loud honking noise, as all the others had.”

DURABLE SPY: David Silva’s 2000 The Kill Artist scored big time, PW said, and it introduced a new hero, Gabriel Allon, art restorer and sometime Israel secret agent who has been featured in 10 Silva mass-market bestsellers. The latest, Portrait of a Spy, came out in July.

SURF’S UP: In 1922, Agatha Christie and her first husband, Archie, went to South Africa and took up surfing. The Guardian said they must have been among the first British to try the sport.

In her autobiography, she wrote, “The surf boards in South Africa were made of light, thin wood, easy to carry, and one soon got the knack of coming in on the waves.

“It was occasionally painful as you took a nose dive down into the sand, but on the whole it was an easy sport and great fun. . . . I kept my balance and came right into shore standing upright on my board.”

Why didn’t Christie ever send Hercule Poirot or Miss Marple to solve the murder of a surfer?

NOT EASY: After Erin Stead’s A Sick Day for Amos McGee won the Caldecott Medal, the illustrator made an acceptance speech. The Sick Day text was written by Stead’s husband Philip. Her speech was reprinted in the Horn Book.

One comment: “It is hard to make books. It should be hard to make good ones. It all has to hang together so tightly—the words and pictures and everything in that universe held together by book boards. It is so easy to lose a child with just one wrong note.”

CUT BACK: After a series of protests, Scholastic, the largest publisher of children’s books, cut back its InSchool marketing division’s corporate-sponsored projects. The controversy was triggered by materials about the coal industry that promoted coal without any mention of toxic waste, mining and greenhouse gases.

Richard Robinson, president of Scholastic, told The New York Times, “We have to improve our standards and make sure there’s not a scintilla of anything that could be suggested to be biased.”

CENSORED: After a college professor at Missouri State University complained in a letter to a local newspaper, two books were removed from the school curriculum and library in Republic, Mo. Kurt Vonnegut’s Slaughterhouse-Five was cited for foul language and Sarah Ochler’s Twenty Boy Summer was accused of “glorifying drunken teen parties.”

Ochler’s blog was quoted in The New York Times: “You can ban my books from every damn district in the country—I’m still not going to write to send messages or make teens feel guilty because they’ve made choices that some people want to pretend do not exist. That’s my choice. And I’ll never be ashamed of my choice to write about real issues.”

Shortly after the ban was in the news, the Kurt Vonnegut Memorial Library gave away 150 copies of Slaughterhouse-Five to interested pupils who requested the book by e-mail. The library’s executive director said, “We’re not telling you to like the book . . . we just want you to read it and decide for yourself.”

SOLD: Elaine Kaufman died last December. Her restaurant, Elaine’s, was a popular hangout for many New York writers. Items from her restaurant and apartment were auctioned in September. These included books signed by Katharine Hepburn, Kirk Douglas and Truman Capote.

MORE BOOKS: As readers in the U.S. turned increasingly to e-books, a new survey of thousands of publishers, retailers and distributors showed that the book business had enjoyed a growth spurt. BookStats reported in August that in 2010, publishers had net revenues of $27.9 billion, a 5.6 percent increase over 2008. Juvenile and adult fiction contributed to that increase.

Tina Jordan, vice president of the Association of American Publishers, told The New York Times, “We’re seeing a resurgence, and we’re seeing it across all markets—trade, academic, professional. In each category we’re seeing growth. The printed word is alive and well whether it takes a paper delivery or digital delivery.

One of the strongest growth areas was adult fiction, which had a revenue increase of 8.8 percent over three years.
E-books were also a growth element because of the reduced cost of e-reading devices like Kindle and Nook and the rush by publishers to digitize older books. In 2008, e-books were 0.6 percent of the trade market. In 2010, of the 2.57 billion books sold in all formats, 114 million, or 6.4 percent, were e-books.

NEW VERSION: Ismet Pricic is the author of a debut novel, Shards. He was interviewed by PW and said, “I hate books that are safe. When you read a memoir, you know terrible things will happen to the author, but you also know the person survived and they’re writing about it. . . . I wanted to show what happens in the unsuccessful immigrant story.” Pricic is from Bosnia but now lives in Oregon. He said, “You live here, but your mind is over there.”

NEW LAUREATE: Philip Levine, 83, has succeeded W. S. Merwin as poet laureate. He is the author of 20 books of poetry and the winner of the 1995 Pulitzer Prize. He lives in Fresno, Calif.

Levine told The New York Times that he hoped to help resurrect what he called “the enormous number of forgotten poets out there.” “I know a great many poems that I love and that most people have never heard of. Some of them are quite magnificent.”

The day after the announcement, Levine’s books quickly sold out at many bookstores and online retail outlets. A spokesman for the publisher, Knopf, said they were rushing more copies of Levine’s book into print. At least one recent collection, News of the World, was available immediately by e-book.

SECOND CAREER: William Pisani is a 67-year-old retired civil engineer in White Plains, N.Y., who has written his second novel, An American Trilogy. His first was The Call of Distant Drums, written five years ago.

In an interview in the White Plains Journal News, Pisani said, “I’ve always loved storytelling. When I was little, my mother would tell me stories about coming here from Italy, and they really captured my imagination.

“I don’t just sit down and start writing. For months, I’ll write down bits and pieces of ideas and dialogue and construct an outline. Then I let the characters take over and I revise, revise, revise.”

SHAGGY: Susan Orlean was the author of the best-selling The Orchid Thief. Her new book is about a Hollywood star, a dog, Rin Tin Tin.

Orlean told PW that when she writes, “I always keep in mind my heroes: John McPhee, Joan Didion, Ian Frazier, Joseph Mitchell. When I tried to conjure early Hollywood, I thought about Didion a lot because she has written so masterfully about the more contemporary Hollywood. Otherwise, I looked to those other writers to remind and reassure myself that writing about history can be made to feel very much alive, and that writers who aren’t trained historians can do it well.”

REVISION: “E-books are giving authors the ability to dip into their completed work after publication, whether to correct mistakes or develop new plot lines,” wrote Julie Bosman in The New York Times.

The reporter explained the extensive revisions that Richard North Patterson made in his The Devil’s Light novel after Osama bin Laden was assassinated. Two days before publication in May, Patterson saw on TV that Bin Laden had been killed. In Patterson’s book a fictional Bin Laden had tried to drop a bomb on the U.S. to mark the 10th anniversary of 9/11.

Patterson said, “I’ve had 15 best-sellers in a row at this point, and I knew within a minute that this would not be one.” Patterson talked it over with his publisher and agent and decided to do something he had never done before: revise the novel and re-release it in e-book form. He changed the sections where characters were talking about Bin Laden as if he were alive. He added references to where Bin Laden was living in Abbottabad, Pakistan, and rewrote the book so that Bin Laden died the way he actually did. The new version was released in mid-August.

FIRST NOVEL: Since he moved to Spain in 1993, Jason Webster has written several nonfiction books about that country. His latest book, however, is his first novel. Its title is Or the Bull Kills You.

In a PW interview, Webster explained his shift to fiction. He said, “I aim to be a storyteller first and foremost, and so for me the differences between fiction and non-fiction are quite minor. Character, dialogue, an overriding theme, pace, narrative—these are all in my nonfiction books. Writing novels was a natural progression, which frees me up to experiment with different points of view and ways of seeing the world.”

The book introduces a fictional Chief Inspector Max Camara.

Webster plots his books on index cards that he lays out on a carpet. The rug “forms a grid pattern, with the stripes giving me chronology, and the various plot lines working vertically down the length of the carpet. That way I can easily see how they interact (thanks to the horizontal stripes) and get the timing right.”

SIGNING: William Paul Young, author of The Shack, has signed for a new novel with Hachette Book Group’s Nashville division. The Shack has sold 15 million copies.

NEW ROUTE: Timothy Ferriss, a best-selling author of self-help books for young men, has signed
with Amazon as his new publisher. He is the author of The 4-Hour Workweek, which has been on The New York Times Advice bestseller list for 84 weeks. His second book, The 4-Hour Body, has been a bestseller for 33 weeks.

Amazon will publish The 4-Hour Chef next spring. Ferriss told the Times, "The opportunity to partner with a technology company that is embracing publishing is very different from partnering with a publisher embracing technology."

"I don't feel like I’m giving up anything, financially or otherwise."

Shortly after Ferriss signed up with Amazon, John Locke, the first self-published author to sell one million e-books on Amazon.com, made a deal with Simon & Schuster for the sales and distribution of his print books. Locke told the Times he wanted readers to have "traditional access" to his books. His thrillers and westerns will be available in stores and through online retailers in February.

TOP EARNER: Forbes magazine said that James Patterson was the world's best-paid author. He earned $84 million from April 2010 to April 2011. Danielle Steel was a distant second with $35 million.

Last year, Patterson's name on the cover sold more than 10 million books. Professor John Deighton of Harvard Business School was quoted in The Guardian. After hearing Patterson speak, Deighton said, "I was like listening to a can of Coca-Cola describe how it would like to be marketed."

READING LIST: What did President Barack Obama read for pleasure on his Martha's Vineyard vacation? The Los Angeles Times said the only non-fiction book was Isabel Wilkerson's The Warmth of Other Sons.

Fiction included The Bayou Trilogy by Daniel Woodrell, Rodin's Debutante by Ward Just, To the End of the Land by David Grossman and Cutting for Stone by Abraham Verghese.

NO MORE BOOZE: Tobias Wolff, 66, teaches at Stanford and was a star attraction at the Edinburgh International Book Festival. His books include This Boy's Life, Old School and In Pharaoh's Army.

In a Guardian interview Wolff said that he had honed his craft by imitating other writers. "Well," he said, "imitation is always the first step to achievement. You learn to walk by watching people walk."

He's thinking about writing a book about the writer's place in 21st century America. Asked about interesting comparisons to writers from earlier generations and different cultures, he said, "Well, there's less alcohol than there was in Dublin, that's for sure. In fact, that's been one of the big changes during my time as a writer. We all grew up inspired by men like Hemingway, Faulkner, Fitzgerald and Robert Lowell—all these great authors who drank too much and led these troubled lives. But then over a period of about four or five years, the whole culture shifted and the drinking just stopped. So writers in America today are very different. . . . It's all extreme health with them. It's about energy drinks and running programs."

CLOSED: Described as "a book-loving city" by The New York Times, Seattle closed its library the first week in September. This saved about $650,000 from the system's $50 million budget. The library has 26 branches, and this is the third year that they shut down at the end of summer to save money.

NO TALKING: Television talk show host Ellen DeGeneres told PW that she reads aloud when writing her TV show and her stand-up comic routines. But she said she wrote her best-selling book, Seriously . . . I'm Kidding, at the public library “and the people were like ‘Shhh, we’re trying to read,’ and I was like, ‘You shhh, I’m trying to write.’ I’ve got to get a computer at home.”

WINNER: What kind of book becomes No. 1 on the nonfiction paperback and e-book lists for more than six months? The title of one such book is Heaven Is for Real, and the authors are Todd Burpo and Lynn Vincent. The New York Times described the content: “A pastor’s four-year-old son talks with his great-grandfather and meets Jesus during a near-death experience.” All that happened during an emergency appendectomy.

PROBLEM: “American poetry criticism faces a major problem, one that has nothing to do with poetry, or readers, or anything remotely literary.” These words are from a New York Times op-ed essay by David Orr, the author of Beautiful and Pointless: A Guide to Modern Poetry. He continued, “The problem is that a critic who wants to quote a poem in a book has to face a permissions regime that ranges from unpredictable to plain crazy, as I discovered while working on a guidebook to modern poetry for general readers. The permissions took months to compile, and the initial estimate was nearly $20,000.”

Orr wound up: “As things stand, poets and critics are at the mercy of an incoherent system . . . . The current generation of younger critics is one of the strongest in decades, and poets, publishers and readers would benefit greatly if those writers were relieved of confusion over copyright. As Wallace Stevens once wrote . . . actually, on second thought, maybe it would be safer to leave that to your imagination.”
DREAM FULFILLED: Brad Thor is the author of 10 international thrillers. His current bestseller is Full Black.

He said in an interview on the Internet: “All of my novels involve real life scenarios that many people have no idea are actually taking place within the United States. Once they realize these things are happening, the novel takes on an even greater weight.”

Later, he said, “Each day when I go to my computer it’s an adventure. I might think I know what will happen next, but I never know how it will happen. Even when you couple that with reliving the exotic locations I have traveled to in researching the novel’s setting, you come up with a mix that makes writing a dream come true.”

NEW BUNNY TALE: After more than 100 years, Peter Rabbit is going to have a sequel. British actress Emma Thompson has been asked to write The Further Tale of Peter Rabbit. The book is planned for publication next September.

Thompson was quoted in The New York Times: “I’ve always loved Beatrix Potter, as a child and then as a mother and all the years in between as well. When Mr. Rabbit invited me to write a further tale, I was more honored than I can say. I hope I don’t let him or his extraordinary creator down.”

An illustrator wasn’t mentioned. Potter created the original pictures as well as the story.

RATINGS: Poets & Writers magazine published a list of the best MFA programs in creative writing: the University of Iowa at the top, followed by Michigan, Wisconsin, Brown and Cornell.

According to The Guardian, the ranking upset a number of authors who have taught at other universities. They protested that the results were “bad methodologically, specious in the extreme and quite misleading.”

TOUR: In a new development, an eight-city book tour for Leymah Gbowee, author of Mighty Be Our Powers, was paid for not by the publisher but Barnes & Noble.

B&N chief Leonard Riggio, according to The New York Times, “was sufficiently dazzled by Ms. Gbowee during a lunch in June at the Barnes & Noble headquarters in Manhattan that he volunteered to help.”

The book is a memoir describing the author’s life as a peace activist in war-torn Liberia.

SEQUEL: P.D. James’s new mystery is a sequel to Jane Austen’s Pride and Prejudice. A murder is committed in Death Comes to Pemberley.

James was quoted in The Guardian: “It’s been a joy to revisit Pride and Prejudice and to discover, as one always does, new delights and fresh insights. I have to apologize to Jane Austen for involving her beloved Elizabeth in a murder investigation, but this fusion of my two enthusiasms—the novels of Jane Austen and for writing detective stories—has given me great pleasure which I hope will be shared by my readers.”

FAMILY MAN: Kevin Wilson is a 33-year-old who lives with his wife and son in Sewanee, Tenn. His first book was a collection of short stories entitled Tunneling to the Center of the Earth. His first novel, The Family Fang, about a dysfunctional family, was published this summer to favorable notices.

Wilson is an assistant professor in the English department at the University of the South. He did a 12-city tour in August.

The adjective most used by reviewers about the fictional Fang family is “weird.” Wilson told The New York Times, “I'm most interested in the way that people are put together and told that they're connected and how they make peace with that and make a life together. I think I'll write about family forever.”

LIKE MOBY: Chad Harbach’s first novel is titled The Art of Fielding and it made a quick appearance on best-seller lists.

Harbach is editor of n+1, a thrice-yearly literary journal. In an interview that appeared in The Paris Review online, the author said of his book:

“The Art of Fielding is in large part a book about the varieties of male friendship, from the antagonistic and the competitive to the deeply affectionate and the frankly sexual, and so Moby-Dick, taking place as it does in a world of very intense men, seemed like the ideal analogue. A baseball team is a lot like a whaling ship: in each case, a group of men who might otherwise have little in common spend an inordinate amount of time in close and not-so-comfortable quarters, excluding the world, in pursuit of a common goal.”

ABOUT TYPE: Just My Type is the title of a best-selling nonfiction book by Simon Garfield. The author is a British journalist and author of more than a dozen books. A description of Just My Type reads: “A history of typefaces, from Gutenberg to digital fonts, that also asks, “What does your favorite font say about you?”

The author wrote: “People think that somehow type descends from the ether. I’ve tried to show in the book . . . not only that people know so much about type and the shape of letters, but also how much love and work goes into creating a particular typeface.”

Garfield summed up: “Computers have rendered us all gods of type, a privilege we could never have anticipated in the age of the typewriter.” The late Steve Jobs.
loved typefaces and thought they were things of beauty.

CARRY ON: Michael Brandman is the author of the best-selling Robert B. Parker’s Killing the Blues. Brandman had worked with the late Parker on TV films and was selected by Putnam and the Parker estate to continue the Jesse Stone books.

Also on the PW bestseller list was Robert Parker’s 38th novel starring Spenser, the Boston private investigator with the sharpest dialogue in the genre. The new one is entitled Painted Ladies and it was published posthumously. Parker died in 2010.

NEW EDITORS: Kelli Martin, a former editor at Harlequin, has been hired by Amazon Publishing in Seattle as senior acquisitions editor at its Montlake Romance imprint. PW also reported that Ed Park has been hired by Amazon to acquire general fiction.

SHIFT: Which sells more books: reviews in prestige publications or the chatter about a book on the Internet?

Ed Finn, a University Innovation Fellow at Arizona State University, wrote in a Stanford Literary Lab publication: “networks of conversation . . . are transforming the relationships between writers and their readers, between the art of fiction and the market for books.”

Finn, according to Patricia Cohen in The New York Times, compared the published reviews of David Foster Wallace’s work in national newspapers and magazines with consumer reviews, recommendations and purchases of his books on Amazon.com. Finn found that traditional reviews “come with limited shelf lives [whereas] thousands might continue to browse consumer reviews of Infinite Jest on Amazon, where the cultural logic of relevance” is determined by the community, not timeliness.

FILMS VS. NOVELS: John Sayles makes movies (Lone Star, Eight Men Out) and writes novels. His most recent book is A Moment in the Sun.

He compared movies and novels in The New York Times Book Review: “A script is to a movie as a blueprint is to a building. So many of the things that will later be major, visceral aspects of the storytelling—cinematography, music, sound effects, costume, performance, the rhythm of the edit—are only just indicated or assumed, and will be realized by a team of talented collaborators. The fiction writer has to serve all those functions alone, with his prose, selecting information so a handful of notes lets readers hear the symphony. A screenwriter creates potential—a novelist has to fulfill it.”

QUESTION: The Guardian asked: “Should we mourn the death of chick-lit?” There has been a 10 percent decline in the sales of chick-lit books.

The article said, “The idea that men and women like different books has gained a depressing currency . . . although ‘chick-lit’ has been seamlessly assimilated into our language, there is no male equivalent. Men, you see, don’t need their own category. They have serious literature, not ‘dick-lit.’ ”

The main complaint was about the label and packaging; some good books may have been damaged because they had pink covers. The point of the article: Don’t cry for chick-lit even if it fades away completely.

AUDIO: Erin Morgenstern’s The Night Circus made a quick leap onto the bestseller list. The novel was described: “Two young rivals at a magical circus become collaborators as they fall in love.” Her Web page gave a slightly breathless account of the events in her book’s launching.

These included a visit to New York to hear Jim Dale (who did the Harry Potter audiobooks) read from page 97 to page 113 of The Night Circus for an audiotyping. Morgenstern wrote: “I thought beforehand it was going to sound more strange to my ears than it did. It ended up being this wonderful amalgamation of the way it sounds in my head with its own distinct sound layered over top, and the result is delightful. Jim truly has the perfect storyteller voice.”


DEATHS

Sidney H. Asch, 92, died September 1 in North Carolina. Asch was a New York justice who wrote eight books, including The Supreme Court and Its Great Justices (1972).

Derrick Bell, 80, died October 5 in Manhattan. The Harvard law professor was the author of Faces at the Bottom of the Well: The Permanence of Racism (1992) and a memoir, Ethical Ambition (2002).

Henry Carlisle, 84, died July 11 in San Francisco. He was the author of a half dozen novels, including The Contract (1968), Voyage to the First of December (1972) and The Jonah Man (1984). He also translated works by Aleksandr Solzhenitsyn.

Edmund Carpenter, 88, died July 1 in Southampton, N.Y. An archaeologist and anthropologist, he was the author of several books on the Inuit including Time/Space Concepts of the Aivilik (1955), Anerca (1959) and Eskimo (1959).

Diane Cilento, 78, died October 6 in Queensland Australia. The international film actress (Tom Jones,
Hombre, The Agony and the Ecstasy) was the author of two novels: The Manipulator (1967) and Hybrid (1971).

Peter Gent, 69, died September 30 in Bangor, Mich. The pro football player was the author of North Dallas Forty (1973) and a memoir, The Last Magic Summer (1996).

Oscar Handlin, 95, died September 20 in Cambridge, Mass. The historian and Harvard professor was the author of The Uprooted: The Epic Story of the Great Migrations That Made the American People (1952), which won the Pulitzer Prize for history. He also wrote Boston’s Immigrants: 1790–1880 (1941).

Sakyo Komatsu, 80, died July 26 in Osaka, Japan. The best-selling fiction writer was the author of Peace on Earth (1961), Japan Sinks (1973) and Nihilistic Corridor (1999).

Anne LaBastille, 75, died July 1 in Pittsburgh, N.Y. The wilderness advocate was author of 16 books, including a four-volume autobiography, Woodswoman (1976), and Mama Poe (1990).

Warren Leslie, 84, died July 6 in Chicago. He was the author of The Best Thing That Ever Happened (1952), Dallas Public and Private: Aspects of an American City (1964), Kennedy (1965) and The Stars of Texas (1978).

Samuel Menashe, 85, died August 22 in Manhattan. The poet was the author of The Many Named Beloved (1961), No Jerusalem But This (1971), and Fringe of Fire (1973).

Fred Newman, 76, died July 3 in Manhattan. He was the author of books on psychology and philosophy, but none of his titles were listed in his New York Times obituary, which described him as a “post-modern Marxist.”


John Stott, 90, died July 27 in Lingfield, Surrey in England. The evangelical reverend at Manhattan’s Trinity Church was the author of about 50 books, including Basic Christianity (1958), Christ the Controversialist (1970) and The Cross of Christ (1986).

Richard Turner, 79, died September 9 in Cape May Court House, N.J. He was the author of The Vision of Landscape in Renaissance Italy (1966), Inventing Leonardo (1993) and Renaissance Florence: The Invention of a New Art (1997).

BOOKS BY MEMBERS

Bradley: Jefferson's Sons; Larry Dane Brimmer: Black & White: The Confrontation Between Reverend Fred L. Shuttlesworth and Eugene "Bull" Connor; Peter Brosius (and Elissa Adams, Eds.): The Face of America; Joseph Bruchac: Wolf Mark; Anthony Bruno: In One Hand; Howard V. Burman: To Hate Like This Is to Hate Forever: When the Greatest Dodgers Played the Greatest Giants; Marilee Robin Burton: Tail Toes Eyes Ears Nose;

Ann Cameron (and Lauren Castillo, illus.): Spunky Tells All; Kathy Caple: Duck & Company Christmas; Emily Card (and Orson Scott Card; Honooel A. Ibardolaza, illus.): Laddertop; Anna Carey: Eve; Eric Carle: The Artist Who Painted a Blue Horse; Mary Carter: The Pub Across the Pond; Helen Marie Casey: My Dear Girl: The Art of Florence Hosmer; Nell Casey (Ed., and Spalding Gray): The Journals of Spalding Gray; Anna Harwell Celenza (and Don Tate, illus.): Duke Ellington's Nutcracker Suite; Bryan Chick: Riddles and Danger; Mary Higgins Clark (and Wendell Minor, illus.): The Magical Christmas Horse; Margaret Coel: The Perfect Suspect; Allan Cole: My Hollywood Misadventures; The Sten Cookbook; Ying Chang Compestine (and Yan Nascimbene, illus.): Crouching Tiger; Michael Connelly: The Drop; Susan Cooper: The Magic Maker; Judy Cox (and Jeffrey Ebbeler, illus.): Haunted House, Haunted Mouse; Doreen Cronin (and Laura Cornell, illus.): M.O.M. (Mom Operating Manual); Eliza Cross: 101 Things to Do with Bacon; Shutta Crum (and Patrice Barton, illus.): Mine!; Dan Cryer: Being Alive and Having to Die: The Spiritual Odyssey of Forrest Church; James Curtis: Spencer Tracy: A Life;

Edwidge Danticat (Ed.): The Best American Essays 2011; William deBuys: A Great Aridness: Climate Change and the Future of the American Southwest; Corinne Demas (and R. W. Alley, illus.): Halloween Surprise; Joan Didion: Blue Nights; Muriel Dimen: With Culture in Mind: Psychoanalytic Stories; Tom Dolby (and Drew Frist and Rudyard Kipling; Nigel Buchanan, illus.; Adapt.): The Jungle Book: The Story of Mowgli & Shere Khan; Christopher Drozd: Fitness, Straight-Up: How to Be a Better Athlete, or at Least Look Like One (Volume 1); Tony D'Souza: Mule: A Novel of Moving Weight; Larry Dubester: The Two-weeks; Olivier Dunrea: A Christmas Tree for Pyn; Patrick Duranton: La Philosophie Grecque Antique de Théophraste à Prodicos; L'Influence Philosophique dans l'oeuvre d'Antonio Machado; Judith Edwards: Invasion on the Mountain: Book One; Debby Dahl Edwardson: My Name Is Not Easy; Marc Eliot: Steve McQueen: A Biography; Ed Emberley (and Rebecca Emberley): The Lion and the Mice; Ten Little Beasts; Ian Falconer: Olivia Acts Out; Ralph Fletcher: Also Known as Rowan Poli; Charles Bracelen Flood: Grant's Last Battle; Elizabeth Foxwell (Ed.): E. X. Ferrars: A Companion to the Mystery Fiction; Valerie Frankel: It's Hard Not to Hate You: A Memoir; Mary Ann Fraser: Heebie-Jeebie Jamboree; Deborah Freedman: Blue Chicken; Catherine Friend: Barn Boot Blues;

Jack Santos: Dead End in Norvelt; Angela Gerst: A Crack in Everything; Amitav Ghosh: River of Smoke; Kate Gilmore: Rainbow Over a Dark Canal; Connie Goldsmith: USA Today Health Reports: Leukemia; Barbara Graham: Murder by Music: The Wedding Quilt; Stephanie Greene (and Stephanie Roth Sisson, illus.): Princess Posey and the Next-Door Dog; Kristiana Gregory: Cannons at Dawn; Nikki Grimes: Planet Middle School; Michael Gross: Unreal Estate: Money, Ambition, and the Lust for Land in Los Angeles; Michael Gurian: How Do I Help Him?: A Practitioner's Guide to Working with Boys and Men in Therapeutic Settings; Rashad Harrison: Our Man in the Dark; Mikaya Heart: The Ultimate Guide to Orgasm for Women: How to Become Orgasmic for a Lifetime; Nancy G. Heller (and co-editors Barbara Sparti and Judy Van Zile, and co-contributors Elsie Ivancich Dunin, Adrienne L. Kaeppler): Imagining Dance: Visual Representations of Dancers and Dancing; David Hellerstein: Heal Your Brain: How the New Neuropsychiatry Can Help You Go from Better to Well; Karyn Henley: Breath of Angel; Wendy Henrichs (and John Butler, illus.): When Anju Loved Being an Elephant; Debbie Herman (and Linda Sarah Goldman, illus.): From Pie Town to Yum Yum: Weird and Wacky Place Names Across the United States; Susan Leonard Hill: April Fool, Phyllis!; Can't Sleep Without Sheep; Valerie Hobbs (and Jennifer Thermes, illus.): Maggie & Oliver: or A Bone of One's Own; Alice Hoffmam: The Dovkeepers; Hal Holbrook: Harold: The Boy Who Became Mark Twain; Nancy Holder (and Debbie Vigué): Unleashed; Maureen Holtz: Allerton's Paradises; Patricia Hubbell (and Donald Wu, illus.): Shaggy Dogs, Waggy Dogs; Patricia Hubbell (and Joe Mathieu, illus.): Horses: Trotting, Prancing, Racing; Jim Ingraham: Sahara Dust; Maureen Johnson: The Name of the Star; Steven Johnson: The Innovator's Cookbook: Essentials for Inventing What is Next; Nils Johnson-Shelton: The Invisible Tower; Merry Jones: Summer Session; Hillary Jordan: When She Woke; Suzanne Trij Jurmain (and Larry Day, illus.): Worst of Friends: Thomas Jefferson, John Adams, and the True Story of an American Feud; Norton Juster, and Brian G. Karas, illus.: Neville; Norton Juster, and Jules Feiffer, illus., with an introduction by Leonard Marcus: The Annotated Phantom Tollbooth;

Larry Karp: A Perilous Conception; Frances Ruley Karttunen: Good Things from Nantucket's North Shore: A Culinary Memoir; Jon Katz: Going Home: Finding Peace When Pets Die; Brian Kellow: Pauline Kael: A Life in...
ing Changes: The Story of Evolution; Mary Jo Putney: Dark Passage;

Mary Quattlebaum (and Laura j. Bryant, illus.): Jo MacDonald Saw a Pond; Mary Quattlebaum (and Patricia Castelao, illus.): The Hungry Ghost of Rue Orleans;

Chris Raschka: Seriously, Norman!: Elizabeth Raum: Gift of Peace: The Jimmy Carter Story; Joan Reeves and Janelle Taylor (and Elaine Raco Chase and Cindy Wicklund): Hot Toddy Sizzlers; Dian Curtis Regan (and Doug Cushman, illus.): The Snow Blown Inn;

Dian Curtis Regan (and Stacy Curtis, illus.): The Dragon Stone; Monica Reinagel: Nutrition Diva’s Secrets for a Healthy Diet: What to Eat, What to Avoid, and What to Stop Worrying About; Suzanne Rhodenbaugh: The Whole Shebang; Richard Rhodes: Hedy’s Folly: The Life and Breakthrough Inventions of Hedy Lamarr, the Most Beautiful Woman in the World; Catherine C. Robbins: All Indians Do Not Live in Teepees (or Casinos); Barbara Robinson (and Laura Cornell, illus.): The Best Christmas Pageant Ever; Jacqueline O. Rogers: This Too Shall Pass; Phyllis Root (and Alison Friend, illus.): Scrammy Cat; Naomi C. Rose: Escape to Freedom: The Dangerous Trek of Tibetan Youth; Tashi and the Tibetan Flower Cure; Susan Roy: Bombboozled: How the U.S. Government Misled Itself and Its People into Believing They Could Survive a Nuclear Attack; S. J. Rozan: Ghost Hero; Gina Amaro Rudan: Practical Genius: The Real Smarts You Need to Get Your Talents and Passions Working for You; Krista Russell: Chasing the Nightbird; Marisabina Russo: I Will Come Back for You: A Family in Hiding During World War II;

Karen Sandler: Tankborn; Mark Scherzer (and Keith Fenimore): Hire Me, Hollywood!; Judith Schlesinger: The Insanity Hoax: Exposing the Myth of the Mad Genius; Monika Schröder: My Brother’s Shadow; Leda Schubert (and Bonnie Christensen, illus.): The Princess of Borscht; Paul Schullery: Nature and Culture at Fishing Bridge: A History of the Fishing Bridge Development in Yellowstone National Park; James Scully: Angel in Flames; Delia Sherman: The Freedom Maze; Denise Shull: Market Mind Games; Judy Sierra (and Pascale Constantin, illus.): Never Kick a Ghost and Other Silly Chillers; Julia Flynn Siler: Lost Kingdom: Hawaii’s Last Queen, the Sugar Kings, and America’s First Imperial Adventure; Erica Silverman (and Steven D’Amico, illus.): The Hanukkah Hop!; Seymour Simon: Butterflies; Alexandra Sij (and Dennis Kunkel, photog.): Bug Shots: The Good, the Bad, and the Bugly; Mike Slosberg: Seven Stories to Read Before They Become Movies; C. W. Smith: Steplings: Dominic Smith: Bright and Distant Shores; Keri Smith: Wreck This App; Richard Dean Smith: Pool; It’s Mental, It’s Physical, It’s Mystical; Roland Smith: Storm Runners: The Surge; Dennis Snelling: The Greatest Minor League: A History of the Pacific Coast League, 1903–1957; Donald J. Sobol (and James Bernardin, illus.): Encyclopedia Brown and the Case of the Carnival Crime; Eileen Spinelli (and Geraldo Valério, illus.): Do You Have a Dog?: Eileen Spinelli (and Jo Ann Adinolfi, illus.): The Perfect Christmas; Kelly Starling-Lyons: Ellen’s Broom; Joe Samuel Starnes: Fall Line; David Ezra Stein: Love, Moussarella; David O. Stewart: American Emperor: Aaron Burr’s Challenge to Jefferson’s America; Terese Svoboda: Bohemian Girl;

Nancy Tafuri: All Kinds of Kisses; Sonia Taitz: In the King’s Arms; Janelle Taylor: How the Zebra Got Its Stripes; Kiss of the Christmas Wind; Ronald Tierney: Good to the Last Kiss; Nancy Tillman: The Crown on Your Head; Sergio Troncoso: Crossing Borders: Personal Essays; From This Wicked Patch of Dust: A Novel; Lily Tuck: I Married You for Happiness; Peg Tyre: The Good School: How Smart Parents Get Their Kids the Education They Deserve;

Linda Urban: Hound Dog True;

David Vann: Last Day on Earth: A Portrait of the NIU School Shooter; Hal Vaughan: Sleeping with the Enemy: Coco Chanel’s Secret War;

Ginger Wadsworth: First Girl Scout: The Life of Juliette Gordon Low; Wendy Walker: My Man and Other Critical Fictions; Carla Wallach: The Company of Originals; Lee Wardlaw: 101 Ways to Bug Your Friends and Enemies; Allan Wargon: David; Nia; Showbiz, and More; Sally Warner (and Jamie Harper, illus.): Elray Jakks Is a Rock Star!

Eric Wassermann: Celluloid Strangers; Wendy Watson: Bedtime Bunnies; Sheila Kelly Welch: Waiting to Forget; Rosemary Wells: Love Waves; Scott Westerfield (and Keith Thompson, illus.): Goliath; Debra Weyermann: Answer Them Nothing: Bringing Down the Polygonam Empire of Warren Jeffs; Gloria Whelan (and Beth Peck, illus.): Megan’s Year: An Irish Traveler’s Story; Gloria Whelan (and Steve Adams, illus.): The Boy Who Wanted to Cook; Jan Whitaker: The World of Department Stores; Barbara Harris Whitfield (and Wendy Murphy and Charles Whitfield): Casey Anthony: What Really Happened to Caylee and Why Truth Matters; Ben H. Winters: Bedbugs!: The Mystery of the Missing Everything; Hilma Wolitzer: An Available Man; Meg Wolitzer: The Fingertips of Duncan Dorfman; Stuart Woods: Son of Stone; Arthur Wooton: Birthday Pie; Fruit Cocktail; On Picking Fruit;


Gabrielle Zevin: All These Things I’ve Done.
Awards, Fellowships, and Residencies

The Jan Michalski Foundation for Writing and Literature in Switzerland is offering residencies for the fall 2012 semester. Residents will be given housing, some meals, access to the foundation's library and other resources, and, in some cases, financial support. Deadline: March 30, 2012. Visit foundation-janmichalski.com for details. Contact: Ann Bandle, Director, Jan Michalski Foundation, + 41 (021) 864 01 01; ann.bandle@foundation-janmichalski.ch.

Poetry Contests

Ahsahta Press is offering its annual Sawtooth Poetry Prize for a book of poems. The winner will receive $1,500 and publication, as well as 25 copies of the published book. Entry fee: $25. Submission timeline: January 1 to March 1, 2012. Visit ahsahtapress.boise state.edu/contest.htm for guidelines. Contact: Sawtooth Poetry Prize, Ahsahta Press, MS1525, 1910 University Drive, Boise State University, Boise, ID 83725. (208) 426-3134. ahsahta@boisestate.edu.

Lotus Press is offering the Naomi Long Madgett Poetry Award for African American poets. The winner will receive $500 and publication by Lotus Press. Submission timeline: January 2 to March 31, 2012. Visit lotuspress.org for complete guidelines, including manuscript formatting and mailing requirements, and a list of past winners. Contact: Lotus Press, Inc., Attn: Constance Withers, PO Box 21607, Detroit, MI 48221. (313) 861-1280. lotuspress@comcast.net.

Multiple Genres

The Salem College Center for Women Writers is holding its International Literary Awards for unpublished works: the Reynolds Price Short Fiction Award for a single short story; the Rita Dove Poetry Award for a poem; and the Penelope Niven Creative Nonfiction Award for a single piece of creative nonfiction, including personal essay and memoir. The winner in each genre will receive $1,200. Two runners-up in each genre will receive $150. Entry fee: $15. Deadline: February 10, 2012. For more information, visit salem.edu/go/cww. Contact: Amy Knox Brown, Salem College Center for Women Writers, 601 South Church Street, Winston-Salem, NC 27101. (336) 721-2739. cww@salem.edu.

The Association of Writers & Writing Programs (AWP) sponsors annual competitions for book-length works: the Donald Hall Prize for Poetry and the Grace Paley Prize for Short Fiction, both of which award the winners with $5,000 and publication, as well as awards for novels and creative nonfiction, the winners of which will receive $2,500 and publication. Entry fee: $15 for AWP members, $30 for nonmembers. Submission timeline: January 1 to February 29, 2012. Visit awp writer.org/contests/series.htm for guidelines, eligibility requirements, entry forms, and a list of publishers involved. AWP Award Series in (specify genre), The Association of Writers & Writing Programs, Carty House, Mail Stop 1E3, George Mason University, Fairfax, VA 22030-4444. chronicle@awpwriter.org.

Arts & Letters, a journal of contemporary culture published by Georgia College & State University, will accept submissions for its 2012 contests in fiction (short story), poetry, drama (one-act play), and creative nonfiction (essay). Winners receive $1,000 and publication in the journal, and are honored at celebrations on the campus in Milledgeville. Entry fee: $15 per submission ($17 online). Submission timeline: February 1 to March 15, 2012. For manuscript formatting and other guidelines, visit al.gcsu.edu/prizes.htm. Contact: Arts & Letters Prizes, Campus Box 89, Georgia College & State University, Milledgeville, GA 31061. (478) 445-1289. al@gcsu.edu.

Prairie Schooner, the journal of the University of Nebraska-Lincoln, will award $3,000 and publication through the University of Nebraska Press to one fiction manuscript and one poetry manuscript. Entry fee: $30. Submission timeline: January 15 to March 15, 2012. Visit prairieschooner.unl.edu/prizes/index.html for full guidelines. Contact: Prairie Schooner Prize Series, Attn: Fiction or Poetry, 123 Andrews Hall, Lincoln, NE 68588-0334. prairieschooner@unl.edu.

The Passaic County Community College Poetry Center offers four awards with deadlines this winter and spring: the Paterson Poetry Prize, the Paterson Prize for Books for Young People, the Allen Ginsberg Poetry Awards (first, second and third place), and the Paterson Fiction Prize for a novel or collection of short fiction. Cash prizes range from $200 to $1,000. The deadlines range from February 1, 2012 to April 1, 2012. Visit pccc.edu/home/cultural-affairs/poetry-center/prizes for more information, including application guidelines for each prize. Contact: Maria Mazzotti Gillan, Executive Director, Poetry Center, One College Boulevard, Paterson, NJ 07505. (973) 684-6555, mgillan@pccc.edu.
Fiction Contests

The Susan B. Anthony Institute for Gender and Women’s Studies at the University of Rochester is offering its annual Janet Heidinger Kafka prize for fiction by an American woman. Winner will receive a cash prize of $5,000. Deadline: February 1, 2012. For submission guidelines, visit rochester.edu/college/WST/SBAJ/kafka.html. Contact: University of Rochester, Janet Heidinger Kafka Prize, Susan B. Anthony Institute, 538 Lattimore Hall, University of Rochester, Rochester, NY 14627. (585) 275-8318. sbai@mail.rochester.edu.

The Center for Literary Publishing at Colorado State University will accept submissions for its annual Nelligan Prize for Short Fiction, awarding the author of the winning story $2,000 and publication in the fall/winter issue of Colorado Review. Entry fee: $15 ($17 online). Submission timeline: January 1 to March 10, 2012. Visit nelliganprize.colostate.edu for guidelines or to apply online. Contact: Nelligan Prize—Colorado Review, 9105 Campus Delivery, Department of English, Colorado State University, Fort Collins, CO 80523.

New Rivers Press offers the American Fiction Prize contest, awarding cash prizes and publication in the annual collection American Fiction: The Best Unpublished Short Stories by Emerging Writers. First place is $1,000, second place is $500, and third place is $250. Entry fee: $12. Submission timeline: February 1 to June 1, 2012. Visit newriverspress.com to read the submission guidelines and submit online. Contact: American Fiction Prize, 151 Glenwood Street, Manchester, CT 06040. americanfictionprize@gmail.com.

Leapfrog Press holds annual awards for unpublished novels, novellas, or story collections, including adult fiction as well as middle-grade and young adult fiction. Finalists receive $150 and critiques from a judge. Entry fee: $30. Submission timeline: January 15 to May 1, 2012. Visit leapfrogpress.com/contest.htm for guidelines and more information. Contact: Leapfrog 2012 Fiction Contest, PO Box 2110, Teaticket, MA 02536. leapfrog@leapfrogpress.com.

MEMBERS MAKE NEWS

The 2010 Bram Stoker Awards were presented at a banquet on June 18, during the Horror Writers Association conference in Long Island, NY. Peter Straub received the award for best novel for A Dark Matter. Haunted Legends, edited by Ellen Datlow and Nick Mamatas, was named best anthology. Ellen Datlow was also presented with a Lifetime Achievement Award. The award nominees included Lisa Manetti for Dissolution (Long Fiction) and 1926: A Fall River Halloween (Short Fiction), and Stephen King for Full Dark, No Stars (Collection).


John Ashbery received the Medal for Distinguished Contribution to American Letters.

Anthony Bruno received a City Proclamation from New York City and a New York State Recognition Award from State Senator Joseph P. Addabbo, Jr. for his service as a New York City police officer, his service in the U.S. Army, and his memoir, In One Hand.

Joan Druett received a Stout Centre Research Grant, sponsored by Copyright Licensing Ltd. and the New Zealand Society of Authors. This fellowship provides an office and a stipend to assist writers of proven merit in the researching of either a fiction or non-fiction project.

Crosswire, by Dotti Enderle, received the 2010 June Franklin Naylor Children’s Book Award for the Best Book for Children on Texas History, sponsored by the Daughters of the Republic of Texas. The award was announced at the group’s 120th annual convention on May 13.

Noël Riley Fitch received the 2011 Prix de la Tour Montparnasse for Sylvia Beach: Une Américaine à Paris, the French translation of Sylvia Beach and the Lost Generation. The award carries a 2500 euro stipend and was presented at a ceremony in Paris.
Joan Frank’s story collection, *In Envy Country*, received first place in the short story category of ForeWord Reviews’ 2010 Book of the Year Awards.

China Galland received the 2009-2010 Courage of Conscience Award from the Peace Abbey in Sherborn, MA.

*Ring of Fire: Selected Poems of Alessandra Gelmi*, by Alessandra Gelmi, won first place in the creative verse category of the 2009 National Federation of Press Women’s annual awards.

Linda M. Hasselstrom received the Distinguished Achievement in the Humanities Award from the South Dakota Humanities Council for her books on life in South Dakota. The award was presented as part of the 9th annual South Dakota Festival of Books, in Deadwood, at a ceremony on October 8.

*Not Yet, Rose*, by Susanna Leonard Hill, received a Mom’s Choice Award.

Frances Ruley Karttunen was named a Nantucket Historical Association Research Fellow at the organization’s recent annual meeting.

La Renaissance Française, a French cultural organization, awarded J. David Markham the Médaille d’or du Rayonnement Culturel—a Gold Medal for Cultural Influence—for his body of work over a quarter of a century, which has helped promote French history and culture. The medal was presented at a ceremony during the International Napoleonic Society’s 7th International Congress in Montreal in June 2009.


Christopher Merrill has been appointed a member of the National Council on the Humanities.

*Grandmother’s Whisper*, by Inette Miller, was named Book of the Year 2011 (Auto/biography) as part of the Visionary Awards, which are granted to the best spiritual writing at the International New Age Trade Show each year. This year’s ceremony took place on June 25 in Denver.

Monica Reinagel received recognition in the 2011 Apex Awards for Publication Excellence for her article “The Fun and Frugal Fashion of Home Canning,” which originally appeared in the *ADA Times*, the publication of the American Dietetic Association. The article received an Apex Award for Excellence in How-To Writing, and was a runner-up (bronze) for the Magnus Opus Award for Best How-To Article. The Apex Awards are sponsored by *Writing That Works*, a magazine for professionals who write, edit, and manage business communications.

Sherry Shahan received one of two inaugural Society of Children’s Book Writers & Illustrators’ Book Launch Awards for her marketing proposal for her middle grade novel, *Ice Island*. The award carries a cash prize of $2,000, which enables recipients to implement their marketing plans. Shahan will create an “IditaRead” initiative, where students compete in reading races in their classrooms.

Laura Silver received second place in the 2011 Religion Newswriters Association awards in the Religion Commentary of the Year category, for first-person articles originally published by CNN and The Huffington Post: “Christmas with Claude Lanzmann’s ‘Shoah,’” “On Veterans, Crosses and Shields” and “Custom Versus Costume.”

Janelle Taylor is featured in the “Local Legends Exhibition” at the Augusta Museum in Georgia. The exhibition opened on October 28 and includes stories about extraordinary individuals from the region.

Hans Wilhelm was presented with a Lifetime Achievement Award for Literature from the town of Westport, CT. The resident children’s book author and illustrator was honored at a ceremony on October 23.
Of Digital Parasites and Culture
Continued from page 14

was kind of crafty, when they stayed off the agency model until later, which let them make some more cash before shifting over. It’s hard to say, though. When you talk about the Big Six, I think it’s like the record companies. Your market share might not matter as much as the fate of the whole business. The fate of those Big Six publishers might depend less on how

“Right now we’re having a debate about what kind of laws should be enforced. What I find upsetting is that, instead of saying, ‘Hey, how about doing this?’, the answer is often, ‘Oh, you can’t regulate the Internet; copyright is over.’ That’s not a debate, that’s a tantrum.”

they do, in particular. For example, the lawsuit about the agency model amounting to price fixing could have a bigger effect on the future of the book business than anything any one of these publishers does. I’m not saying it will, but that’s a possibility.

Let me also say this. The tech business likes to say that all these businesses are broken. The music business is broken, the film business is broken, the book business is broken. The book business could do a lot of things better and more efficiently. But the reason the technology business thinks it’s broken is because they want to make more money from it. The things that the book business needs help doing are not the things that Amazon is going to help it with.

And it’s not like books are selling better since the advent of, say, Twitter or Facebook. Twitter helps you get the word out, which is important in the book business because there isn’t much money for marketing.

But at some point you have to stop promoting and start selling.

Amazon and Google treat what’s inside a book as “content.” Has that damaged the bookselling business?

They don’t have any interest in what they’re selling. But someone has to create that stuff before Google moves it around.

I didn’t get into this in the book, but there are a lot of things called “books” that are very different from each other. The “Shit My Dad Says” Twitter account that became a book? Any similarity between that book and mine is almost coincidental. We call them books because they’re packaged the same way. I’m not saying that’s bad; I read that one and I thought it was funny. But one is a collection of sound-texts in short bursts and the other is a researched, reported narrative about current events. Why do we call them both books? Because they’re packaged the same way. That’s not necessarily going to hold online.

In my case, it took fourteen months to write the book. I also had a researcher, a transcriber, and a few people who did research in other languages—reporters who spoke other languages and helped out a bit. All that, plus travel, was expensive. Doing a non-fiction book can take a lot of resources—and editing. It took a lot of work. And if we’re going to send someone to Iraq, for example, to do reporting, that’s not going to be funded through advertising. A book about Iraq and the Twitter book are both going to sell for $20, $30. But maybe the book about Iraq should be $50 and the Twitter book should be $10.

The fact that book sales are usually on a different scale than mass media could really help. A successful music album sells a million copies, maybe half a million, at this point. What does a successful book sell? It depends where you draw the line, but if you sell 50,000 copies, you did well. If you sell 100,000 copies, it’s a hit. We’ve always applied the economics of mass media to the book business, but maybe we will start to see other possibilities.

The idea of pricing an album that hardly anybody’s going to listen to at $20 might not be acceptable. But the idea of pricing a book at $50 may prove not as hard to swallow.

Do you think publishers should be doing a better job distinguishing between types of books?

I think the book business has always understood that, a bit, whereas the whole idea of modern pop music is flattening things out. George R.R. Martin’s “A Song of Ice and Fire” fantasy series, for instance, might be serialized on a monthly basis; that could be a great way to

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2 In August, a class-action lawsuit was launched in behalf of two reader-plaintiffs against Apple, HarperCollins, Hachette, Macmillan, Penguin, and Simon & Schuster, claiming that Apple and the publishers are guilty of illegal price fixing for e-books, via the agency model.
read epic fantasy. Every month it comes to your Kindle. That could be cool for that author. That wouldn’t have worked for my book. The whole value of my book is in having someone look back at the news and take a perspective on it.

The book business, more than a lot of other businesses, may end up bifurcating into a series of separate businesses, which in some ways it is already. When we think of the book business, we’re usually talking about trade publishing. But think about academic publishing: they’re doing a different thing for a different audience, and they have different needs. They might give more of their work away for free, for example, because their writing is also tied to their teaching careers. That might work well for them, but that’s not really the trade book business. So maybe they’ll go their own way in terms of a business model.

What’s your response to the argument floating around that authors should accept that books don’t make money and focus on speaking fees instead?

Some authors of nonfiction make a lot of money on speaking gigs. I don’t look down on that, it can be a good strategy, but I don’t think taking money from companies you cover is something serious journalists should get involved in.

If you want to give away your book to promote your speaking engagements, that’s fine, but it’s not a good idea for most people. Seth Godin found a way to structure that business. I think he’s written more books than he’s read. I think those are PowerPoint presentations bound in hardcover.

It’s not a model for an industry.

His business works for him. Good on him for making it work. Is it something authors should think about? Yeah, it’s worth thinking about. Is it something I think is going to work as an industry? Almost definitely not. Would I want to give up any of my rights under the law for the chance that something untested might work out? No friggin’ way.

You’re saying, “Will it work for the industry?” I would phrase it differently: Even if that would work, why would you want to give up your rights?

Are you optimistic about the future of the book industry?

The book business always sees the wolf at the door. I think it’s going to get tough, but there are reasons to be hopeful, especially if the agency model holds up. That will really keep things stable.

So far there has been less piracy for books than for other things. That’s a reason for optimism. Book piracy is a problem, but it hasn’t risen to the level of music or film. Maybe the Kindle isn’t widespread enough yet, I don’t know.

Even if you’re being optimistic, you should still be careful and prudent. It makes sense to challenge people when they try to usurp your rights—that’s one way to make sure you have something to be optimistic about. You want to be innovative, but you want to be careful. The balance of that is where you want to be.
Amazon Grabs Titles for Kindle “Library”

Continued from page 6

fee, however, interests can easily become misaligned, and opportunities for mischief abound.

For example, a publisher could cherry pick a selection of “loss leaders” to license for unlimited use in order to attract readers to the publisher’s other books. To avoid this conflict of interest, publishing contracts have for decades included an array of clauses intended to prevent a publisher from using cheap or free copies of one author’s books to promote another’s.

Under most (perhaps all) publishing contracts, a license to Amazon’s Lending Library is outside the bounds of the publisher’s licensing authority. This isn’t a minor matter—in order to protect the author’s interests, all publishers should be asking permission before entering into such a bulk licensing agreement, and most would need to seek a contract amendment to do so. For more on this, see the post of Simon Lipskar of Writers House at the AAR’s blog.

If your book is in the Lending Library without your approval, we recommend that you:

1. Get in touch with your publisher (or ask your agent to do so) and say that you object to your book’s inclusion in the program without your approval and that you do not consent to have your work in any such initiatives without your prior authorization. This is fundamental.

2. Ask your publisher why your book is in the program. The publisher may be using the program to introduce your books to Amazon Prime customers with the hope that they’ll then come back to buy your other titles. Other publishers may be seeking to give some life to quiescent titles. Once you’ve heard your publisher’s rationale (it may be well considered and in your favor), you’ll have to decide whether you’d like your book to remain in the program.

If it’s a major publisher, however, you may learn that Amazon chose to include your work in its lending program over your publisher’s objections. If so, we expect that you will be compensated for the uses. Amazon is paying its regular wholesale price for the e-books from these publishers, but this may still not be

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Why did it matter so much to Amazon?

It’s all about the Kindle Fire, and Amazon’s unexpected e-book device battle with Apple and Barnes & Noble.

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in your best interests: Amazon, for its own reasons, has chosen to override your publisher’s marketing plan.

No matter what you decide to do, please be in touch—one of our attorneys would be happy to discuss the matter with you.

So, are any of the more than 5,000 books legitimately in the program? Probably. Amazon published 138 of the titles in the lending program, according to Publishers Lunch. Other publishers may have gotten their authors’ permission, or may have unusual contracts that give them authority to enter into bulk licenses without their authors’ approval. If so, we’ve yet to learn of such arrangements.
Legal Watch
Continued from page 18

tract action before the plaintiff is entitled to statutory interest. Thus, without a verdict, judgment or decision in the state court action, the court found that Hodel’s right to pre-petition judgment statutory interest did not form part of the “claim” against Arcade’s estate.

Hodel also argued that recovery of interest under NY CPLR §5001 (a) does not require a “sum awarded,” because on a theory of equity, “the Debtor caused his state court action to be stayed and then consented to the principal portion of his proof of claim in the amount of $224,571.07.” The court also rejected this argument, noting that the plain language of NY CPLR §5001 (a) requires that there be a “sum awarded” to a plaintiff in order to recover interest for a breach of contract claim. The court said that case law, treaties and commentary to the New York statute all confirm the conclusion that a verdict or decision must first be rendered in order to recover interest. Since a verdict or decision was never rendered in Hodel’s state court action, he cannot collect pre-petition interest under §5001 (a).

Finally, Hodel asserted an equity argument that he be “deemed to have been awarded $224,571.07,” asserting that Arcade should not be entitled to argue that he had not been awarded a sum of money. In support of his argument, Hodel pointed to the fact that the state court action was stayed by bankruptcy and he was not able to proceed. Hodel added that Arcade initially scheduled his claim in the amount of $111,453 and then conceded, after a review of the claim, that it should be valued at $224,571.07. However, the court held that in the absence of a final state court judgment in Hodel’s favor, he is not entitled to Interest as part of his claim. The court stated that it did not have the ability to create rights for him that are not available under the law or under equity and also pointed out the large amount of interest that would be added to all unsecured claim arising from future breaches of contract for failure to pay that were never finally adjudicated. The court feared that ruling in Hodel’s favor would “distort” the quality of treatment of otherwise similarly situated creditors.

Ultimately, authors should strive to insert language into their contracts that would allow them to terminate the agreement unilaterally if a royalty statement and/or payment is 90 days late. This will surely be tough to negotiate, but if implemented, would provide a measure of protection against publishers who dodge their own authors when they don’t feel like paying them.

—Michael Gross,
Staff Attorney

Contracts Q&A
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7. If you publish under more than one name, specify that only books published under the name on the book under contract are covered by the section.

8. Provide that if the right to publish print-on-paper books reverts to you while the publisher retains e-book rights (or vice versa), then copies published in the reverted medium will not be considered competitive under the non-compete section. As mentioned in the answer to the previous question, this situation could occur if your contract has (as it should) separate out-of-print provisions for your e-book and print-on-paper editions.

One way to phrase this point contractually might be to say, “This Section [insert section number] does not apply to the exercise of any rights granted in this Agreement which revert to the Author in accordance with the provisions of this Agreement.”

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

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

BY JAMES MEEK

"F"or voters, feelings prevail over beliefs," Peter Mandelson writes in The Third Man. "People may be torn between their head and their heart, but ultimately it is their gut feeling that is decisive: they vote for the candidate who elicits the right feelings, not necessarily the one who presents the right arguments." This clear and succinct expression of the idea that emotion is the true currency of democratic politics stood out on the page, and I moved to underline it, only to realize someone had done so already. Oddly, the book was spit new. It wasn’t even on paper.

It was an e-book, a digital form of Mandelson’s masterwork that I’d downloaded from Amazon via the Kindle app on my iPad in the hope (futile, as it happened) of gleaning information about an obscure moment in recent British history. How could someone have been there before me? Each copy of each e-book, stored as bits of electronic data, is always new, the pages as white and the text as crisp as the day they were generated. I’d never looked at that page before. Yet there, under Mandelson’s bleak words, was a faint, dotted gray line. I touched the passage with my finger-tip, and the explanation appeared in a pale blue balloon: “Eight other people highlighted this part of the book.”

I’d become one with the metareader, locked in a cloud computing mind-meld with eight people I’ll never meet, whose concordance with my appetite for Mandelsonian aperçus I didn’t want to be told about. I can, I discovered, turn the function off, but I can’t abolish it. Once there were private libraries; then there were public libraries; now there is the ghost library, where poltergeistic fellow readers may not only be reading the same book as you at any moment but actually underlining the page of the book you are reading seconds before you get to it. They may be next door; they may be in Kamchatka; they may be anywhere, so long as they have Kindle and Wi-Fi.

Students are familiar with library textbooks that come pre-annotated with the marginalia of their predecessors, sometimes with abusive notes scrawled on notes, in a prefiguration of flame wars between anonymous website posters (it isn’t a coincidence that since the Internet became ubiquitous, toilet graffiti have almost disappeared). But with Kindle, the book is no longer a passive surface. It constantly checks in with all the other versions of itself and adjusts its surface according to the impressions the metareader has left on it.

If the metareader is populous enough, a much-noted passage will be recorded on Amazon’s “Most Highlighted Passages of All Time” chart. The number one and two spots, highlighted by 7,073 and 6,529 readers respectively, are held by eerily banal sentences from Suzanne Collins’s best-selling young adult science fiction trilogy The Hunger Games; the first line of Pride and Prejudice comes in at number three, with 6,026. These are big numbers, given what a fiddly business it is marking text on an e-reader. They reflect the take-up of the devices in the U.S., where more than half of what would once have been paperback sales are now digital books. Alongside the physical Kindle, Barnes & Noble’s Nook is selling well. The iPad and iPhone come with Apple’s iBooks app. During last week’s Frankfurt Book Fair W. H. Smith announced it was to distribute an e-book reader called the Kobo (not to be confused with the Obok or the Koob, or Stalin).

I don’t care for the feeling I had when I realized that the virtual book I bought and downloaded new for £3.99 was noting my annotations and reporting back to the Amazoverse: a syncing feeling. I am only grateful the e-book has no e-spine breakage to snitch about, or worse. “Eight other people threw this book in the recycling bin in disgust.” “Eight other people skimmed the first third of this book, looking for juice, then put it to one side, intending to look at it later, and though they never did, always spoke about it afterward as if they’d finished it.”

The lightness of the e-book medium, literally and figuratively, holds a terrible allure and an insidious threat to the heavily booked-up among us. How many

James Meek is a British writer and journalist. A former staff writer for The Guardian, he is the author of The People’s Act of Love (2005) and We Are Now Beginning Our Descent (2008). This essay first appeared as a Short Cuts column on November 3, 2011 in The London Review of Books, www.lrb.co.uk, and is reprinted with permission of the author and the LRB.

The virtual book I bought and downloaded new for £3.99 was noting my annotations and reporting back to the Amazoverse.
marriages, seemingly held firm by the impossibility of moving several hundredweight of vinyl or CDs out of a family-size home, have already foundered post the digitization of music? How many more will break if apparently inseparable and immovable matrimonial libraries become something that anyone can walk out with in their pocket?

Moving flats this weekend I was confronted with the objective reality of owning half a ton of paper books without having a mansion to put them in. In the first part of the move I helped a strong man from Romania to carry my books up two stories and put my back in agony for the next two days. Soon afterward, in the gym, the trainer I am paying to make my back strong added extra weights to my routine. Yet when it came to the second part of the move—many more boxes of books—I didn’t add more weight to my load. I added another Romanian. He told me of one intellectual who’d got him to carry 60 boxes of books, each weighing 40 kilograms, up to the fifth floor of a block of flats, without seeming to think she was asking him to do anything remarkable.

The feel, weight and smell of my own paper books in my hand, some of them old friends I haven’t seen for years, is a joy. As physical books I cannot only keep them and reread them but give them away, lend them to people, take them to secondhand booksellers. But there are lines I would rather not cross: walls of books on more than two sides, for instance, or a sound from the floorboards like the imminent fall of a sawn-out Redwood pine when I slot the last volume of Remembrance of Things Past into its place. The rise of the e-book offers the chance to be ruthless in the personal paper library without losing the ability to keep text. On the urban bookshelves of the crowded future world only the loved and the beautiful will survive.
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