Tipping Point?
Big Publisher E-Book Sales Surge Past Hardcovers
Scott Turow: Why We Sued HathiTrust and Five Universities
Authors Guild Honors Fresh Air’s Terry Gross
Symposium: The Wild World of Multimedia Rights
LETTERS TO THE EDITOR

I read Scott Turow's Letter from the President in the Spring Bulletin with great interest. While I agree with everything he said, I also believe the "tipping" point is not related to the copyright issue per se, but to the digital format itself. The record industry died because of the MP3 format. Given the opportunity to get something for free, a great many people will grab it, and in the case of the MP3, enough did so to compromise an entire industry. It was MP3 file-sharing that killed the record business, not the lack of copyright enforcement, although weak enforcement certainly hastened its demise. The problem was simply too big and too overwhelming for a few file-sharing lawsuits to contain.

The Guild encourages members to write to the Bulletin. Letters should be sent to "Letters to the Editor," The Authors Guild, 31 East 32nd Street, 7th Floor, New York, NY 10016. They can also be faxed to (212) 564-5363, or sent via e-mail to staff@authorsguild.org (type "Letters to the Editor" in the subject line). Letters may be edited for length, grammar and clarity.

I have always viewed the e-book with great trepidation for this very reason. How long will working professionals like Stephen King—or you—continue to work hard to produce the works we all love when the publishing industry starts hemorrhaging money the way the record industry did? Musicians at least can go out on tour and perform their music for an adoring public. Is anyone going to pay an author to read his or her entire book to them? I doubt that.

Brand name authors might be able to go out on their own after the publishing industry implodes, because their names and

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ALONG PUBLISHERS ROW

BY CAMPBELL GEESLIN

"There is a Wild West quality to the book business these days," wrote Julie Bosman in her New York Times coverage of BookExpo, the annual publishing trade show in Manhattan at the end of May.

"E-books have exploded, surpassing print sales for some new releases. The struggle for many brick-and-mortar bookstores has deepened as their customers began downloading books onto their e-readers from home rather than heading to stores."

While e-book sales are impressive, especially in romance, mysteries and thrillers, they are not yet much in children books, reference books and many nonfiction categories.

Included in the coverage of the trade show was the news that Amazon had hired Laurence J. Kirshbaum to head its new imprint of general-interest titles. Amazon will bring out thriller author Barry Eisler's next novel. He abandoned a six-figure contract with a publisher to go with Amazon.

But Steve Bercu, owner of BookPeople, a store in Austin, said that 2010 had been its best year ever. He joked that people in Texas "don't even know e-books are happening."

THE E-SALES BUMP: In March, the Association of American Publishers reported that e-book sales jumped 115.8 percent in early 2011. In January, revenues from e-book sales were ahead of both adult hardcovers and mass market paperback sales.

SUMMER FARE: Janet Maslin of The New York Times did her annual round-up of books for summer reading. She wrote, "The beach book has undergone a makeover for 2011. As the season's traditional big names and story lines run out of gas, new variations on old formulas have emerged. . . .

"Even if you wanted retreads of the same old stories, they would be hard to find. Chick lit? So over. Police procedurals? Done to death. Sweet little cottages on Nantucket? They need renovating. . . . It's time to find new favorites."

ADULTS ONLY? C. W. Smith recently retired from teaching creative writing at Southern Methodist University. His latest novel, Steplings, was published in June. PW reported that he and his publicist June Taylor had an exchange about a subject that has been mentioned in this column: When is a novel about kids so adult in subject matter that it's unfit for teens to read?

Smith wrote to Taylor, "the two main characters [in Steplings] are a 17-year-old boy and his 11-year-old

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Overheard

"We’re seeing a resurgence, and we’re seeing it across all markets—trade, academic, professional. . . . The printed word is alive and well whether it takes a paper delivery or digital delivery.”

From the President

BY SCOTT TUROW

In September, the Authors Guild filed a suit against HathiTrust, the University of Michigan, and four other universities over their unauthorized digitization, storage and proposed use of millions of copyright-protected books. Google digitized most of the books at issue as part of its library-scanning project. While most libraries involved in the project permitted Google to scan only public domain works, Michigan, along with the University of California, the University of Wisconsin, and Cornell permitted Google to digitize copyright-protected books. As Google scanned the books, it made an extra copy for the participating universities. The universities then made additional copies of the digitized books and provided them to HathiTrust, a repository organized by Michigan. Michigan has put the HathiTrust repository on servers connected to the Internet, and provided an additional unauthorized set of digital books to Indiana University, which hosts a mirror site for HathiTrust.

This summer, Michigan announced an “orphan works” project to begin making some of these copyright-protected books available for downloading as digital pdf files, readable on any computer or tablet device, to students and faculty members at participating universities. According to Michigan, it would conduct a search for the owners of the rights in some of the books following a procedure it had developed. If Michigan failed to find the owner through that process, it would list the book as an “orphan work candidate” at its HathiTrust website. If the rights owner did not come forward in 90 days, Michigan would treat the book as an “orphan,” and the downloading could commence.

In July, Michigan released its initial list of 27 “orphan work candidates” that would be released by October 13. In August, other schools joined the project, and the list of “candidates” grew five-fold, to about 165 copyright-protected books. The student and faculty population that would be able to download unencrypted, digitized books released under the program had swelled to far more than 250,000. Even more schools began to express interest in the program.

Two days after we filed our lawsuit, we posted HathiTrust’s list of orphan works candidates on our blog, calling it “Orphan Row.” Many of you pitched in to help find leads to the owners of the literary properties on the list, and within two days, leads to 50 of the 165 rights owners were identified, many of them quite strong. At least four of the books had living authors, including J.R. Salamanca, a professor emeritus at the University of Maryland, who had just entered into an e-book contract for one of his books. Two of the authors had won Pulitzer Prizes: James Gould Cozzens (Harvard has his literary estate) and Walter Lippmann. At least three of the books listed as orphans were still in print. Identifying the surviving spouse or children of many of the authors of the books was accomplished through a simple online search.

Four days after we filed our lawsuit, Michigan announced that it was suspending its orphan works project, but pledged to improve its processes and re-launch it. This is unacceptable. The problem with the project wasn’t simply Michigan’s execution; it was the concept of treating literary property as abandoned without due process of law.

This lawsuit is not just about the orphan works project; it’s about the security of those seven million digitized books. If Michigan isn’t diligent enough to find authors who are signing e-book agreements and the literary estates of Pulitzer Prize winners, how diligent can it be about the security of those online servers hosting all of those digitized books? How are the backup tapes being handled? How close are we to having the bulk of the world’s valuable literary property released for file-sharing online?

The Guild was not eager to sue five major universities, but as our board viewed it, we had no choice. In recent years, many seem to have forgotten that literary property rights are genuine property rights, and that our founders deemed those rights so important that they wrote a copyright clause into the Constitution. Literary property is a vital part of our culture and economy; it should not be deemed abandoned because a search, no matter how diligent, fails to turn up the rights owner. And copyright-protected books should not be put at digital risk without the consent of the author.

Thank you for your help in identifying the rights owners of the books on Orphan Row. You’ll be hearing much more about this lawsuit in the coming months.

It’s not just about “orphan works;” it’s also about the security of seven million digitized books.
E-Books Pass Hardcovers, Gain on Trade Paperbacks

By Karen Holt

For years, the publishing industry looked ahead to a tipping point moment, when e-books would move from the futuristic fringe to dead center of the market. Sometime in the last six to nine months—triggered by record holiday sales of e-readers and a boom in e-book sales that crested in spring—they did. Fundamental issues, from royalty structures to the pricing and timing of hardcover, paper and digital releases remain subjects of heated debate and anxious experimentation in a business changing at disorienting speed.

"Every day you wake up to new news about the industry and the game is changing so much and so fast that what I thought was not possible a year ago is possible now," said veteran agent Nat Sobel.

The subtext of all these questions: How do we survive in the digital age?

Recent numbers give that question new urgency. Year over year sales of e-books increased 160 percent, to $389.7 million, in the first five months of 2011, according to Association of American Publishers statistics. At the same time, adult hardcover sales fell 23.4 percent, to $386.2 million, and adult trade paperback sales fell nearly 18 percent, to $473.1 million. With e-books now outselling hardcovers (at least for the largest publishers) and gaining fast on trade paperbacks, many fear that those pricier print formats may be headed the way of the moribund mass market paperback.

Underdog Nook Proves a Contender

In June, the Book Industry Study Group (BISG) reported that 25 percent of book buyers now read titles digitally—up from just 5 percent in October 2010.

That’s dramatic growth, but not surprising considering the huge increase in the number of people carrying e-reading devices around. Amazon reported a blockbuster Christmas 2010 for its Kindle 3. But the bigger boost to e-reading was likely Amazon’s failure to prevent major publishers from adopting the agency model, in which publishers, not the retailer, set the price of an e-book. The agency model loosened Amazon’s stranglehold on the digital market (which depended on the online giant’s willingness to sell titles at a loss leader $9.99), and broke the competition wide open to rivals including Sony, Kobo, Pandigital and the Google-integrated iRiver HD Story.

Barnes & Noble has emerged as an unexpectedly strong contender, thanks in part to the popularity of its Nook Color and Amazon’s insistence on pursuing a unique platform for a color Kindle, a decision that has cost it dearly in the marketplace. By June, with no Kindle color in sight, B&N had captured about 27 percent of the e-book market. On BN.com, digital books now outsell all forms of printed books combined by a margin of three to one.

Meanwhile, having sold an estimated 25 million iPads as of June, Apple has greatly expanded the number of readers who can download a title anywhere at any time.

The ubiquity, variety and continual improvements to digital readers has ignited the hope—bordering on belief—that device makers are not just fighting for a share of a finite market, but actually increasing overall sales by making buying and reading books more convenient.

"Some people are reading more as a result of these digital devices," says HarperCollins’ Dawn Davis, publisher of Amistad and executive editor of Ecco. "If they maybe read eight books in a year, they’re now reading fourteen books a year. So I do get the sense that people who already had a reading culture and like their reading device are reading more."

Davis stressed that she was speaking anecdotally. That’s typical when talking about e-books, a segment of business still informed more by observation and speculation than hard data. For all the recent sales growth, e-book-related discussions today often sound strikingly similar to those of five or even ten years ago, flavored by the same uncertainty over the same issues.

The Author’s Cut

None of those issues is more contentious than author royalties. The current industry standard of 25 percent of net receipts for e-books—which, as previously detailed in the Bulletin, means authors make less on digital versions while their publishers make more—appears to be weakening, as major houses face increasing pressure to give authors a more equitable deal.

"I think that it’s a case-by-case basis, and depending on the author and how long the book has been in

Karen Holt is a freelance writer and editor. She lives in Stamford, Connecticut.
print, there seems to be some flexibility at this point,” says agent Scott Waxman. “And I think that over the long haul [the current standard] won’t hold up.”

E-book-only publishers and some independent traditional houses are already offering alternative royalty structures; authors typically accept low or no advance in exchange for a fifty-fifty split of net revenues. Waxman uses the profit-sharing model for his own digital publishing company, Diversion Books, which he launched last year. Jane Friedman’s Open Road Integrated Media offers a similar deal as it continues to scoop up digital rights to backlist books. But it was the announcement this spring that Amazon had snagged veteran publishing insider Larry Kirshbaum to head its new digital publishing venture that signaled the biggest challenge yet to traditional houses. The hiring of Kirshbaum, former head of the Time-Warner Book Group and a literary agent in recent years, signaled Amazon’s determination to expand its own imprint, and potentially reset the standard for terms.

“If Larry is successful, then I think that he will be putting an enormous pressure on the publishers to change how they split e-book income,” Sobel said. Kirshbaum’s first trophy announced in August, was bestselling shortcut to success author Tim Ferriss, a hyper savvy media operator in his own right, who brings with him some 270,000 Twitter followers and a reputation as one of the best self-promoters in the business. According to The New York Times, Ferriss, whose The 4-Hour Workweek and The 4-Hour Body were both published by Crown, a division of Random House, approached Amazon directly and did not stick around for a counter offer from his old publisher. “The opportunity to partner with a technology company that is embracing publishing is very different than partnering with a publisher embracing technology,” Ferriss told the Times. Amazon will bring out the 34-year-old Ferriss’s The 4-Hour Chef in the spring of 2012 in three forms: as an e-book, an audio book and a hardcover—one many brick and mortar bookstore owners have hinted they are not likely to be stocking. No details on the Ferriss royalty split—for any of the three forms—were announced.

How Low Will They Go?
If royalty structures change, that still leaves the matter of whether e-books will be priced so low that authors are simply getting a bigger cut of a tiny amount. Current e-book prices vary widely—generally topping off at $14.99. And publishers continue to grapple with the question: What should an e-book cost, anyway?

“We think that the digital in most instances should be the lowest price version available,” said Neil De Young, executive director of digital media at Hachette. “The reality is that digital does provide efficiency and the customer does expect a price break for that.”

At independent publisher Agate Books, owner and president Doug Seibold said e-books should be priced below mass market versions. He’s experimenting to see just how far below. “I’m very interested in finding out what the sweet spot is going to be for Agate e-books,” he says. Under Agate’s royalty structure, the publisher and the author split net sales. But super-low prices for e-books don’t have to mean minuscule royalty checks, Seibold said.

“It’s all about the net, and if we can get more readers, even if we’re getting them at a lower price, we’ll make more,” he said.

The Price of Free
So far, e-book buyers do appear to be highly cost-sensitive. Consumers cited low prices and free samples as the most influential factors leading to an e-book purchase in a study earlier this year by the BISG. Publishers who’ve experimented with offering free and nominally priced downloads say the promotions pay off in the short-term—but that they’re concerned about long-term effects.

This summer, Random House’s Spiegel & Grau imprint offered e-book versions of The Big Machine, by Victor Lavalle, for 99 cents and saw a 500 percent spike in downloads. Co-publisher Julie Grau said that in her experience with e-books, “the cheaper they are, the more they move.”

Still, she added, “You don’t want to lead expectations in the direction that a book should cost 99 cents.”

Sourcebooks CEO Dominique Racah said she’s backed away from using free downloads to boost interest in a title because, “I was really worried that I was devaluing the brand.”

For now, though, publishers of all types and sizes continue to exploit the lure of free and almost free to build readership and spark buzz on social networking sites. Kensington began experimenting with free downloads two years ago and continues to use the strategy. Alexandra Nicolaijen, digital content marketing manager, said the promotions are short and highly targeted.

“We’re not going to give away something that is already selling a lot of copies in e-books,” she said. “This is something that might jumpstart interest or help break out an author.”
Timing Is Everything
In late 2009, Sobel wrote an open letter to publishers urging them to delay releasing the electronic version of books to give hardcovers time alone in the market. He concluded by warning, “The future of hardcover publishing is at stake. You don’t have a lot of time left to save it.”

A year and a half and double-digit declines in hardcover sales later, Sobel said in an interview, “It’s given me no pleasure to see that what I thought was going to happen is happening.”

Clearly e-books are eroding print sales. But it’s hard to say just what the overall effect is on publishing. Consider what happened in July, when first-day sales of Jaycee Dugard’s memoir, A Stolen Life, took its publisher, Simon & Schuster by surprise. It wasn’t just the impressive volume, but the fact that more than 100,000 of the 175,000 copies sold were e-books.

That event raises a number of questions: How many consumers would have bought the hardcover with a list price of $24.99 (it was selling for less than $14 online) if the $11.99 e-book weren’t available? How many consumers would have waited for a cheaper version? How many would have ended up forgetting about the title altogether if they couldn’t get it instantly and for under $12?

Back in 2009, Raccoh stoked the debate over e-book timing when she held back the digital version of Bran Hambric for six months after the hardcover release. That tactic wouldn’t make sense in today’s market, she said. But she is thinking about experimenting with shorter delays, and wondering if there could be a way to make the e-book version temporarily more expensive when the title is first released. Aside from the occasional experiment, though, publishers show little enthusiasm for delaying e-books.

Faster, Better?
Some publishers are, in fact, going in the opposite direction—releasing e-books at a speed too fast for print. In May, Random House released its first “instant” e-book, a collection of essays about Osama bin Laden, one week after the terrorist leader’s death. Random House is also teaming up with website Politico to publish four instant books about the 2012 presidential campaign, the first of which will be published this fall.

These titles will be published only in digital form, taking the concept of instant e-books even further than previous efforts by publishers—including Perseus and

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Authors Guild Honors Terry Gross of “Fresh Air”
In a departure from our usual house-written account of the Guild’s Annual Benefit, held this year on May 23 in support of the Authors Guild Foundation and the Authors League Fund, we asked The New Yorker for permission to reprint a piece that appeared on the magazine’s Book Bench blog on May 27, got all the facts right and was a pleasure to read.

The Entirely Calculable Impact of Terry Gross
By Eileen Reynolds
It is always a treat to see writers, an often disheveled group, dolled up in their various approximations of black tie. The literary set looked appropriately festive Monday night in the dim light of the swank Edison Ballroom, where authors, editors and agents gathered to celebrate Terry Gross, that remarkably disarming radio host who has interviewed, in her deft and yet unassuming way, authors of every possible stripe.

John Lithgow, immaculate in his tux, was the emcee for the evening, and he spoke eloquently about the differences between writing one’s own words and performing those written by somebody else—somebody like, say, Newt Gingrich’s spokesman. (If you missed Lithgow’s recent dramatic reading of Gingrich’s statement on “The Colbert Report,” you should hurry and watch the clip now.) After confessing that acting comes more easily to him than writing, Lithgow then bravely read from the forthcoming “Drama: An Actor’s Education,” his first book for adults.

With a radio personality as the honoree, the room was filled with people known, like Lithgow, not just for their words, but also for their voices. Garrison Keillor held forth at a table at the front of the room, and David Rakoff, his voice instantly recognizable from “This American Life,” gave a lovely tribute to Terry Gross. He noted that, although Gross has an uncanny ability to coax from her interview subjects their innermost thoughts and feelings, she rarely meets them face-to-face; the “Fresh Air” interviews are conducted with Gross in Philadelphia, and the guest in another studio, often in a distant city. (One shudders to think about what an esteemed author might wear
on such an occasion. Not black tie, I’m guessing.) Tellingly, Rakoff, who has appeared on the show twice, said that he remembers both interviews having taken place in person, though in fact neither did.

After a brief montage of clips from Gross’s most notable “Fresh Air” interviews since 1975—from Philip Roth to Joan Didion to Jonathan Franzen and on and on—it suddenly seemed difficult to think of a well-known author who hadn’t once squirmed in response to Gross’s penetrating questions. (Had I been thinking, I’d have polled the crowd.)

And then Gross, trim and neat in a pink jacket with polka-dot cuffs, finally took the stage. She started with a joke about the rapture—“I didn’t expect to be here!”—and went on to talk about her job, not just as an interviewer, but as a reader of a great many books. When she reads on vacation, she said, she hopes the book will go on forever; when she’s reading the night before an interview, it feels as though the book will never end. (“Write shorter books!” she begged.) As she spoke, I realized that reading—I mean really reading—is what sets Gross, with her little round glasses, apart from other interviewers. What can you glean from a writer’s eyes that you can’t find in her prose? Give everything you’ve written to someone who reads the way Gross does, and you find that you have very few secrets left.

At the end of the night—as I teetered out onto the street clutching my party favor, a collection of “Fresh Air” interviews on CD—I kept thinking about something David Rakoff said. “I started to say that Terry Gross’s impact is incalculable,” he began, “before I realized that I mean just the opposite. You can go to a book’s page on Amazon and clearly see the difference in sales between before ‘Fresh Air’ and after ‘Fresh Air.’”

I’m sure that he is right. Who hasn’t at one point or another listened to “Fresh Air” and then rushed to the bookstore to buy whatever was being discussed? Terry Gross encourages authors to be their fascinating, conflicted, emotional, charming, difficult, brilliant selves. And, in the process, she makes us want to buy their books. That’s a miracle! Or, at least, a very good reason for us all to raise a glass. ✪
Annual Meeting

The Authors Guild held its annual meeting on March 16, 2011 at the Library of the General Society of Mechanics and Tradesmen in New York City. Guild President Scott Turow called the meeting to order and asked for and received approval of the minutes of the 2010 annual meeting.

The first order of business was the election of new Guild council members. Director of Legal Services Anita Fore and Staff Attorney Michael Gross served as tellers and inspectors for the balloting. Mr. Turow then asked Executive Director Paul Aiken to give his report on recent Guild developments and activities.

Mr. Aiken reported that membership in the Guild held steady over the past year but could use improvement. The Guild is working to become more involved with social media. We have launched a Facebook page, a blog and a Twitter account. Mr. Aiken concluded by saying that he would be speaking at length later in the meeting on legal issues.

Jan Constantine, General Counsel, reported on a range of legal matters. The Guild’s legal staff was exceptionally busy on many fronts over the last year. In a concerted effort to increase the Guild’s presence in Washington, we have retained a lobbyist, and Ms. Constantine and Mr. Aiken have both spent a large portion of their time advocating for authors in the capital. Notable legal updates included:

- The Federal Shield Law, which would allow journalists to protect their confidential sources, and which the Guild has supported for several years, is essentially dead in the water in the wake of the Wikileaks scandal of 2011. The Guild has not given up, however, and the Media Coalition, of which the Guild is a member, will continue to actively work with the bill’s congressional sponsors.
- A new Artist Museum Partnership bill, which would allow authors and artists to take a fair market value tax deduction for works they donate to museums or other nonprofits, will be introduced in the House by Representatives John Lewis and Todd Platt. Under current law, authors are permitted deductions only for the cost of the materials used to create a manuscript—paper, ink, mailing costs, etc.—not the appraised value of the manuscript. If an author donates the work to a collector, that person can deduct its fair market value upon donating.

In response to a question from a member, Ms. Constantine said a crucial question yet to be resolved is the impact on heirs after an author’s death.

She added that the legal staff has also been working hard on book piracy issues, which Mr. Aiken would address later in the meeting.

Ms. Constantine also reported on the New York State “Dead Celebrities Bill,” which the Guild has opposed since it was first introduced four years ago. The bill, which is still alive, would give celebrities’ heirs a sweeping posthumous right of publicity over the unauthorized use in advertising and trade of the “name, portrait, voice signature or picture of anyone who died after January 1, 1938.” The Guild is hopeful that it will once again help prevent the bill from passing in the coming year.

Ms. Constantine also noted that, eleven years after the original suit was filed, the freelance electronic database case awaits approval of a settlement in the Second Circuit.

Anita Fore, Director of Legal Services, reported that the department handled 1,267 member issues in the past year, including 475 contract matters. Reflecting a changing market, electronic cases reached a new high of 157.

Mr. Aiken summarized the financial report submitted by Guild treasurer Peter Petre, who was unable to attend the meeting, reporting that the Guild’s annual revenues of just over two million dollars slightly exceeded expenses for the year.

Sidney Offit, President of the Authors Guild Foundation, gave a brief report on the Foundation, which was preparing to honor Terry Gross at the Authors Guild Benefit on May 23, with John Lithgow as host, and thanked the Guild staff for the work it had done over the previous year on many fronts.

Mr. Turow, with a reference to the promise and challenges presented by the flourishing e-book market, turned the meeting over to Mr. Aiken for a more extended report on the Guild’s concerns and activities, unchecked online piracy chief among them.

Mr. Aiken reviewed the 1999 Digital Millennium Copyright Act, which has largely defined the online environment for the last 12 years, and whose rules are being exploited with increasing ingenuity and boldness. For example, if someone loads something onto a server that infringes a copyright, and the service provider is notified of the fact, it must act to take down the offending bit of copyright within a reasonable amount of time. If the server does so, it cannot be sued for copyright infringement. But in the last decade, many businesses have thrived by exploiting that loophole, and a giant infrastructure of people stealing other people’s property has been created online. [See Scott Turow’s column, Spring 2011.] Since the advent of Napster in 1999, Mr. Aiken noted, the music indus-
try has lost 60 percent of its market, with no signs that legitimate digital music sales will help close the gap.

A Guild member in attendance suggested that one of the largest problems with e-book piracy is that there is a culture of people who believe that online theft is permissible, and it needs to be broadcast that, in fact, this is nothing more than stealing. A second audience member asked why traditional penalties are not working. Mr. Aiken explained that most of the companies involved are offshore, and beyond U.S. jurisdiction.

Mr. Aiken discussed legislation to combat online infringement currently under consideration by Congress, pointing out the many possible loopholes that could be exploited under the existing proposals, including the creation of new IP addresses to redirect pirated content. The Guild is pushing for legislation that will penalize those who run sites that allow users to access pirated content.

Mr. Turow, reflecting on his February 16 testimony at a Senate Judiciary Committee hearing on online piracy, noted that there is indeed a bipartisan consensus that something must be done, and broad recognition that the American economy turns more and more on innovation and intellectual products being distributed to the world. If we allow piracy to flourish, we are undermining our economic future. At the same time, many have concerns over interfering with the relative openness of the Internet, including companies like Google that are among the largest and most powerful economic entities in the world. Google had been invited to attend the hearing, but no one showed up, in an act of arrogance that Mr. Turow called “jaw-dropping” and that infuriated the senators. Google understated the clout of its lobbyists, Mr. Turow added, and notwithstanding how angry some senators are, Google clearly believes it can undermine any efforts to limit its interests. Google and other search engines make money from ads when people go to pirate websites, and they and other powerful institutions are active in watering down the effect of any legislation.

Compounding the difficulty of shutting down rogue sites is the fact that technology changes so quickly that no matter what new legislation is passed, determined pirates will find their way around it within days. Mr. Turow noted there is widespread suspicion that foreign governments are involved in or turn a blind eye to piracy, while the existence of the Digital Millennium Copyright Act makes it possible for people to ignore what is going on.

Mr. Aiken then spoke about the legitimate e-book market and the agency model. A year into the successful launch of the iPad, with something like 15 million iPads sold and the iPad 2 recently launched, the Apple device has brought big changes to the book industry. In January 2010, Amazon claimed roughly 90 percent of the e-book trade market in the U.S. Barnes & Noble had only just released the Nook; Apple had not yet announced the iPad. E-books were being uniformly sold under a model similar to how physical books have always been sold, where the publisher sells to the bookseller or a wholesaler at a wholesale rate, roughly 50 percent of the cover price, and then the retailer sells at whatever price it chooses. What Amazon had been doing since the introduction of the Kindle was to buy books at the wholesale price of roughly $13 or $14 from the publisher and, in many cases, sell them for $9.99. They were losing money, but building market share. In the Guild’s view, Amazon was successfully building a digital version of the traditional book club.

The next big development, Mr. Aiken, explained, occurred when Apple began meeting with the Big Six publishers, five of which agreed to the agency model arrangement that Apple proposed in advance of the iPad launch. Under that arrangement, Apple receives a 30 percent cut of the suggested retail price, and the publisher keeps 70 percent. Random House, the only one of the Big Six not to sign into Apple’s agency model originally, made the move on in March 2011, with the announcement of the iPad 2. As of March, Apple’s market share remains much smaller than Amazon’s or Barnes & Noble’s, but the fact that Random House has now agreed to the agency model, and Google e-books are now being sold directly from the company, means that there is finally genuine competition in the market.

Acknowledging the Guild’s “love-hate” relationship with Google, Mr. Aiken stressed that Google Editions is good for both authors and independent booksellers, who are now in the e-book game. As of mid-March, 150 booksellers had Google Editions for sale at their websites. Asked why Random House reversed its Apple decision, he cited the enormous influence of Apple.

Mr. Aiken continued by emphasizing the Guild’s continuing work in calling attention to the fact that current e-book royalty rates are unfair for authors and go against longstanding publishing practices. Royalty rates for e-books published by the Big Six are 25 percent of net receipts, compared to the traditional 50–50 split of net proceeds. In the Guild’s view, the e-royalty rate doesn’t make sense, and has led to distortions that are harmful to the interests of authors. The incentive is now great for publishers to push e-books over physical books across the board; they make more money per each e-book, while authors make less. He also said that in the long run publishers will have to increase their

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The Authors Guild Interview

Register of Copyrights
Maria A. Pallante

BY ISABEL HOWE

On June 1, 2011, Maria A. Pallante was appointed 12th Register of Copyrights of the United States Copyright Office by Librarian of Congress James H. Billington. Ms. Pallante has a distinguished background in the field, having served in three positions at the Copyright Office since 1996. Prior to those appointments, she served as intellectual property counsel and director of the licensing group for the Guggenheim Museums; Executive Director of the National Writers Union, and from 1991 to 1993, Assistant Director of the Authors Guild and a staff attorney. Ms. Pallante’s tenure at the Guild overlapped a period when the organization was absorbed in several copyright-related issues.

In 1992, the Guild was instrumental in winning passage of the famous “fair-use bill,” an amendment of the Copyright Law that removed language prohibiting the citation of even small amounts of unpublished material without the permission of authors or their heirs, thereby easing existing strictures on nonfiction book authors and magazine writers.

Ms. Pallante and the Authors Guild also actively supported the “Press Shield Law” passed in a U.S. District Court in Arizona in 1992. The ruling confirmed that under the First Amendment, book authors were entitled to the same protection from undue disclosure of their materials and sources as journalists. With Ms. Pallante as counsel, the Guild joined several other writers’ organizations in filing an amicus brief.

Ms. Pallante will now head the Copyright Office, which was founded in 1870 with a mandate to “promote[] creativity by administering and sustaining an effective national copyright system.” The urgency of the Copyright Office’s mission has grown in the digital age, which poses a constant stream of fresh questions about the nature and role of U.S. copyright law in a globally connected world. We spoke to Ms. Pallante about her new role in July.

What do you do on a daily basis?

No day is the same. First and foremost, the Register is really the chief executive officer of the Copyright Office, and oversees the copyright registration program. In addition to registration, we are an office of public record for copyright documents: We record licenses and assignments. Of my staff of five hundred, the overwhelming majority of work is in the registration division.

Separate from that, we have policy functions that are prescribed in the Copyright Act, both domestic and international. Our primary client is Congress. We are part of the legislative branch and reside in the Library of Congress. At an operational level, I report to the Librarian of Congress; on a policy level I report to the Judiciary Committees of the House and the Senate.

Our office also provides information and technical advice to Executive Branch agencies that are involved in intellectual property. I distinguish between the two terms: We advise Congress, but we provide technical information and expertise to the others. That’s because of the constitutional separation of powers.

We work closely with the Department of Justice, the State Department and with the new IPEC (the Intellectual Property Enforcement Coordinator) in the White House. It’s a brand-new position. We also work with the Patent and Trademark Office, the Department of Commerce, the Department of Education and other federal agencies.

In addition, we have an education role. The Register is a public official, the highest-ranking public official in the field of copyright law. With that comes a lot of responsibility and opportunities to educate people about copyright. What the law says, what the law doesn’t say, how to use it in your life, how to make it work. Education is something that I intend to be quite proactive about. Copyright law is pervasive. It affects people’s lives in a way that it never did before. It’s almost a life skill, like reading a map. Most people need to know something about copyright. If you’re in the performing arts, or you’re a writer, for example, then you probably should know quite a bit about copyright. If you are someone that uses copyrighted materials—say you’re a student or a librarian, or you’re an editor or a producer—then you probably should know even more.

By the way, the Copyright Office operates a fantastic public office. Our team answers questions from around the world all day long by phone and e-mail, and in multiple languages.
What are the three most significant copyright issues that authors should be aware of right now?

That’s easy. They need to be aware of how to protect their rights. That means understanding enforcement and taking advantage of it, and being actively involved in discussions relating to it.

First, let’s take enforcement of copyright on the Internet. The Authors Guild recently stepped in, appropriately, to the important discussions on Internet piracy in Washington, and it’s been fantastic to see that. It’s essential for the Guild to be in those discussions.

Second, exceptions and limitations to copyright. There is a pretty large, growing focus in policy circles related to exceptions and limitations. Generally, the discussion is, we need more of them. That is not always a pleasant discussion, because it sometimes reads as though we need exceptions and limitations because copyright’s just “too hard” to deal with. So the Copyright Office and copyright owners need to have a very nuanced discussion in response. Just as enforcement needs to be periodically updated—in order to make sure we have a law that makes sense and is responsive to changing conditions—we also have to update exceptions and limitations, as appropriate, to make sure that they still work.

Authors need to be part of those discussions and they need to be intelligent about what the appropriate answers are. The answer to “we need more exceptions and limitations” or “we need more updated exceptions and limitations” can’t be “we need no exceptions and limitations,” because authors need those too. They rely on fair use, for example.

That brings me to the third issue: business models and more effective licensing. We need to develop an appropriate, cost-effective means of finding authors, talking with them and negotiating with them, and incorporating meta-data in licensing terms so that people can easily access them. The more authors participate in creating new business models for licensing, the better. That’s part of what the proposed Google Book Settlement would have done, and that component was cited by the United States government in our brief (of which I was a part) and by the judge, as a positive contribution. These are good ideas and we need more of them.

Aside from educating themselves, what can authors do? How can they help you?

I have an open-door policy for all authors and all organizations that represent authors. Any author who wants to have a conversation with the Copyright Office is always going to be welcome in my office.

The reality is that we tend to deal with organizations that represent groups, because there are so many discussions going on, and so many different interests at the table. It’s important for authors to belong to an organization like the Guild, and be represented in those discussions and supportive of that part of the Guild’s mission. The message that individual authors benefit from copyright and rely on copyright sometimes gets lost in Washington. Having an actual author who’s making a living by writing appear before Congress, as [Authors Guild President] Scott Turow has done, really makes a difference, because a lot of people, unfortunately, only view copyright as something that belongs to multinational companies. Of course, that’s the licensing chain, and that is essential to both authors and the economy, but that’s not where copyright starts.

In your recent testimony before the House Subcommittee on Intellectual Property, Competition, and the Internet, you distinguished between older forms of online copyright infringement, which involved reproduction and distribution, and the newer, increasingly dominant form: streaming. You recommended that the Copyright Act be amended to make streaming a felony so prosecutors could pursue online pirates more effectively. Just how important is that change, and do you think it will be made?

I certainly hope so. To me that is a no-brainer issue. There are lots of complex discussions that we have in copyright, but that one is not so hard. The law has to keep up with technology; it has to stay as close as it can when it comes to enforcement.

When we talk about criminal enforcement, we’re talking about really egregious, willful behavior, none of which is done by accident and none of which will

1 See AG Bulletin, Spring 2011.
2 A transcript of Ms. Pallante’s testimony can be found at www.copyright.gov/docs/regstat031411.html. Her earlier testimony on illegal streaming is also available online, at www.copyright.gov/docs/regstat060111.html
ever fall within the parameter of an exception or a limitation like fair use.

But it’s a question of resources. If you can only get a misdemeanor conviction for egregious, willful, large-scale streaming, law enforcement is not going to pursue it; it doesn’t make any sense. The Judiciary Committee didn’t seem to feel there was a downside to making streaming a felony, so I’m hopeful the change will go through. Keep in mind that this is a parity issue with respect to key exclusive rights under copyright law: Illegal copying violates the right of reproduction and illegal dissemination of copies violates the right of reproduction, but both can be prosecuted as felonies under current law. By contrast, illegal streaming violates the right of public performance but can only be charged as a misdemeanor.

For book authors, I suppose the practical question is, to what degree is streaming the means of infringement? Probably not as great as for music and movies. However, to the extent that books are being made into interactive products or being licensed for movies, and authors have underlying rights, then it becomes a great concern.

You also testified before the House subcommittee on the subject of rogue websites dedicated to copyright piracy and selling counterfeit goods. These websites are frequently based offshore. What happens when another country becomes involved in your work in this way? How is that dealt with?

That’s why the rogue website issue is so difficult. It’s easy when you’ve got a website set up in the United States. The servers are here and everything that’s happening is happening in this country. It’s easy to reach them through our law enforcement. What’s not easy is if they’re set up offshore somewhere, outside of U.S. jurisdiction, and the only way you can get them into U.S. courts, at the moment, is to compel them to appear in the United States. Most criminals would say, Thank you for the invitation to come to the U.S. and appear in your courts, but I don’t have to. That’s the problem that we’re facing.

What we’re trying to focus on with Congress is, what are the practical ways to at least minimize this problem?

Of course if we can get the country that does have jurisdiction to act it would be ideal. But short of that, what we can do, possibly, is give the Department of Justice the ability to block access to such sites in the United States and block credit card payments for viewing of materials or purchase and download of materials to U.S. citizens. That’s the “follow the money” approach we recommended in our testimony. It’s outrageous to us that a criminal website would be using Visa and MasterCard, these good-faith brands that people rely on, to lure them to their sites and process payments.

Another question wrapped up in the problem is what’s the responsibility of a search engine? When you’re typing in “purchase books” or “bookstore,” most people want to go to a legitimate site. You don’t want to be sent to a criminal website selling infringing reproductions. So we have to ask, is it impossible for a search engine to vet the places they send people when they rank and order searches? Can they suppress some sites and not others?

None of us, least not authors, want to get into a free speech issue or overregulate the Internet. But, for example, search engines now have to deal with child pornography searches and they have to deal somewhat with gambling— is there an analogy in there that suggests they could take on some level of responsibility? Then the question becomes, is that role something that needs to be codified in law or is it something that can be a corporate practice and expectation? Is it something they can get some immunity for in return? How do you begin to craft the legislation?

Another question is the role of ISPs (Internet Service Providers) and what is their responsibility? Should they be blocking on their own, should they be cutting off access, and if so, when? Based on a court order? That’s easy. What about a notice from a copyright owner? Is it the top domain, the sub-domain? These are complex questions.

The next question is, should there be a private right of action or a limited private right of action for the copyright owners themselves? In criminal law, right now, it’s always the government that’s the actor when it comes to copyright. The copyright owner can always bring a civil case, but if it’s egregious enough, you expect the government to step in and help shut down that website. The Department of Justice working through International Copyright Enterprise has done a fantastic job. The question is, how much can they do going forward and will it ever make a dent? Could you also empower copyright owners, individually, to file charges and to get court orders to stop access to sites, or is that going too far?

What is your position on the private right of action against websites dedicated to copyright infringement?

I think it’s going to prove necessary but needs to be carefully crafted. The Department of Justice, as hardworking as it is, has the responsibility to enforce hundreds of different laws. We obviously hope that copyright will be a priority for them, but we can never guarantee that it will. Right now there is a fantastic staff at ICE devoted to shutting down rogue websites. But what if that changes? What if something happens
in the world that diverts the attention of DOJ, legitimately, and they just can’t?

On the other side, I do worry a little bit that, if there is a private right of action, then the shift will be complete. The Department of Justice might say, you know,

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**Enforcement is a major policy issue for individual[s]... book authors, journalists, songwriters, anybody that is the original and intended beneficiary of copyright law.**

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there’s a private right action, so you guys go ahead and handle that and we’re going to put our resources elsewhere, because we can’t do everything. I don’t want that, either, and I don’t think it’s in the interest of authors to have the government say you’re on your own now.

It’s hard to imagine a solution that everyone will agree on.

My job is to make sure that we have all the information we need in order to get to the right answer legally.

We start from the premise that copyright holders should have every tool possible. But if they’re not financially equipped to bring an action—if an individual author is never going to have the resources to shut down a website on his own—then we may need to be more creative still.

This gets back to the difference between multinational companies and individual authors. Hollywood producers, and possibly big publishers—though I think many publishers are also under the gun in terms of resources—have more financial clout and they can get into court quickly and take care of it themselves. So if the government is not looking like it’s going to act, they’ve got a tool they can use on their own. I’m just not sure that an individual author is going to act on his or her own, and in those cases I want to be sure we have an engaged government. It is also quite possible that the publisher will bring an action for the author, or maybe producers will shut down that site because it’s likely to have lots of infringing movies as well as books, and authors will benefit indirectly.

Enforcement is a major policy issue for individual authors, and I use that term broadly: book authors, journalists, songwriters, anybody that is the original and intended beneficiary of copyright law. Even with the prospect of statutory damages (made possible by timely registration with the Copyright Office), it’s harder and harder to imagine individual authors enforcing their rights against the kind of behavior we’re seeing, particularly online.

My team and I have been discussing possible remedies for some time, including, for example, small claims courts. That sounds good, and it would be great if we could have such a vehicle, but copyright is federal subject matter, which requires federal courts for disputes. Certain kinds of issues seem to be ripe for some kind of small claims proceeding: If you had a contract dispute or you weren’t getting paid, or your publisher was not disputing that you’re the rights owner but just not paying you on time—photographers have that issue a lot—situations where you’ve come to an agreement but nobody’s cut the check because you don’t have any bargaining power. It would have to be cost-effective—that is, not cost you more to enforce your contract than it’s worth.

Trying to separate out what would be appropriate for a system like that, versus what has to remain in federal court, is really, really hard. It’s not even necessarily a copyright discussion. It would probably include people from the bench, federal judges themselves, members of the bar, and academic experts. Authors have a vested interest in that discussion.

**Does online piracy have a precedent in scope and scale?**

It’s unprecedented in both the scope and the timing. You can publish an e-book and have it appear on a rogue website almost immediately. The damage is much more timely. Same thing with a movie. A movie comes out on a Thursday and by Thursday night it’s available all over the place. That’s the unprecedented part of it. This isn’t a ring of infringers working in a foreign country to copy books, slowly, and repack and reship them for sale on Canal Street.

**Plus, that would be one for every consumer. This is one for many consumers.**

Yes. The brick-and-mortar establishments that have always dealt in counterfeit products and infringing works are still around. But they don’t do nearly as much damage as the online infringers do.

**You said earlier that people who share copyrighted material do so for various reasons. Some do it for commercial gain, others out of a belief that “information wants to be free.” Many people who download materials, however, don’t always understand or consider the larger negative impact.**

**Continued on page 52**
Chief Justice Roberts Emerges as Strong Defender of the First Amendment

BY JONATHAN BLOOM

Among the notable aspects of the last two Supreme Court terms is the emergence of Chief Justice John Roberts as a strong and eloquent defender of the First Amendment. In cases involving dog-fighting videos and homophobic funeral protests, the Chief Justice, writing for the Court, used attempts to punish unpopular speech as occasions to remind the nation that—with very few, limited exceptions—the First Amendment protects speech without regard to its social value or its capacity to inflict pain. In crisp, compelling prose, the Chief Justice voiced a deep commitment to fundamental First Amendment values that are central to the mission of the Freedom to Read Foundation. In the Court’s recent landmark violent video games case, however, the Chief Justice refused to join Justice Scalia’s majority opinion and instead indicated his willingness to allow the government greater latitude in efforts to protect minors from the effects of increasingly vivid, interactive new media products.

In United States v. Stevens (2010), the Court addressed a First Amendment challenge to 18 U.S.C. § 48, a Clinton-era ban on depictions of animal cruelty. The Court struck the statute down as overly broad on the ground that, as drafted, it could be applied to mainstream materials such as hunting videos. But the Chief Justice began his opinion by squarely confronting—and demolishing—the government’s argument that depictions of extreme animal cruelty fall outside the First Amendment because they lack expressive value.

Whether a category of speech enjoys First Amendment protection, the government argued, “depends upon a categorical balancing of the value of the speech against its societal costs.” Rejecting that proposition as “startling and dangerous,” the Chief Justice emphasized that the First Amendment does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it.

Instead, the Chief Justice pointed out (quoting R.A. V. v. St. Paul (1992)), the First Amendment has allowed restrictions upon the content of speech “in a few limited areas,” such as obscenity, child pornography, defamation, and fighting words, and has never “include[d] a freedom to disregard these traditional limitations.” Under the First Amendment, he wrote, the government does not have “freewheeling authority to declare new categories of speech outside the scope of the First Amendment.”

Nor was the statute saved by exempting speech that could be shown to have “serious value.” A showing that speech has “serious value,” the Chief Justice wrote, cannot be a precondition of constitutional protection. “Most of what we say to one another lacks ‘religious, political, scientific, educational, journalistic, historical, or artistic value’ (let alone serious value), but it is still sheltered from government regulation.”

In Snyder v. Phelps (2011), the Court considered whether the First Amendment barred a claim for intentional infliction of emotional distress brought by the father of a dead marine against the Westboro Baptist Church based on a virulently homophobic protest the church mounted outside (but out of sight of) his son’s funeral. Refusing to accord any constitutional weight to the merit (or lack thereof) of the church’s speech, the Chief Justice emphasized that although the church’s speech might “fall short of refined social or political commentary,” it nevertheless addressed “matters of public import,” including homosexuality in the military, which lie “at the heart of the First Amendment’s protection.”

The Chief Justice further noted that the church enjoyed the highest level of First Amendment protection because it was “picketing peacefully on matters of public concern at a public place adjacent to a public street”—i.e., engaging in political speech in a traditional public forum. Therefore, the Chief Justice observed, any liability would have to be based on the content of the church’s speech. But the First Amendment prevents the government from “prohibit[ing] the expression of an idea simply because society finds the
idea itself offensive or disagreeable.” Therefore, even a showing that the church’s speech was “outrageous,” as Mr. Snyder’s tort claim required, could not overcome the speech’s First Amendment protection. This was true, the Chief Justice concluded, despite the “anguish” the speech added to Mr. Snyder’s “already in-calculable” grief: “As a Nation,” he wrote, “we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”

Stevens and Phelps reflect a conservative/libertarian view of the First Amendment that adheres firmly to the traditional categories of unprotected speech and rejects open-ended balancing tests and vague tort law standards as justifications for additional content-based restrictions. It is a view that, while recognizing the elevated constitutional status of speech on public issues, also recognizes that speech need not have any articulable value to merit constitutional protection.

However, in Brown v. Entertainment Merchants Association (2011), the violent video game case, the Chief Justice revealed a more modestly libertarian view of the First Amendment than that of fellow conservatives Justice Scalia (who wrote the majority opinion striking down California’s law) or Justice Kennedy (who joined it). Instead of joining the majority, the Chief Justice signed Justice Alito’s concurring opinion, in which Justice Alito concluded that California’s effort to expand the Court’s “harmful to minors” obscenity standard to violent content was unconstitutionally vague. But unlike the majority, which rejected California’s paternalistic approach as inconsistent with the First Amendment, Justice Alito stated that it was legitimate, in theory, for the government to seek to “reinforce parental decisionmaking” and that there was “certainly a reasonable basis for thinking that the experience of playing a video game may be quite different from the experience of reading a book, listening to a radio or viewing a movie.”

By assigning the Stevens and Phelps opinions to himself, the Chief Justice made clear that bolstering the First Amendment is one way he wishes to leave his stamp on the Court. His vote in Brown—finding California’s video game law unconstitutional but on narrower grounds than the majority—reveals limits to the Chief Justice’s expansive view of the First Amendment, even as it further indicates the high bar he believes the government must surmount in censoring speech to address social problems.

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**Annual Meeting 2011**

*Continued from page 10*

royalties to a 50 percent split, in the hardcover tradition, or risk losing business to start-ups. For now, the principal leverage big publishers have is their ability to pay advances.

Mr. Aiken noted that library lending of e-books is another issue that still needs to be studied, in order to find a solution that balanced the interests of authors and libraries.

Mr. Turow called for the voting results from the tellers and inspectors. The proposed slate of council members was returned, with 1057 votes being cast. Three new council members were elected: Annette Gordon-Reed, Cathleen Schine and Monique Truong.

Ms. Gordon-Reed, a professor at Harvard and a MacArthur Fellow, is the author of *The Hemingses of Monticello: An American Family*, for which she was awarded the Pulitzer Prize in History and the National Book Award. She is also the author of *Thomas Jefferson and Sally Hemings: An American Controversy*; the co-author, with Vernon E. Jordan, Jr., of *Vernon Can Read!*; and the editor of *Race on Trial: Law and Justice in American History*.


After asking if there was any new business, Mr. Turow adjourned the meeting.
Download Blues

F.B.T. Productions LLC v. Aftermath Records
U.S. Court of Appeals for the Ninth Circuit

In 1995, F.B.T. Productions LLC signed recording artist Eminem, gaining exclusive rights to his recordings. In 1998 F.B.T. signed an agreement transferring its exclusive rights to Eminem’s recording services to Aftermath Records. The 1998 agreement contained a “Records Sold” provision, which stipulated that F.B.T. was to receive between 12 percent and 20 percent of the adjusted retail price of all “full price records sold in the US... through normal retail channels.” The 1998 agreement further provided that “notwithstanding the foregoing,” FBT was to receive 50 percent of Aftermath’s net receipts “on masters licensed by us... to others for their manufacture and sale of records or for any other uses.” (Both parties referred to this latter provision as the “Masters Licensed” provision.)

In 2002, Aftermath’s parent, UMG Recordings Inc., executed an agreement with Apple Computer Inc. that enabled UMG’s sound recordings, including the Eminem master recordings, to be sold through Apple’s iTunes store as permanent downloads, which are digital copies of recordings that, once downloaded, remain on an end user’s computer or other device until deleted. Since 2003, Aftermath has entered into contracts with a number of major cellphone carriers to sell sound recordings as mastertones, short clips of a song that signal an incoming call, commonly known as “ring tones.”

In 2003, F.B.T. and Aftermath entered into a new contract that terminated the 1998 agreement. The 2003 agreement increased some royalty rates but incorporated the “Records Sold” and “Masters Licensed” provisions from the 1998 agreement in identical language. In 2004, the parties amended the 2003 agreement to provide that “sales of Albums by way of permanent download shall be treated as [US Normal Retail Channel] Net Sales for the purposes of (royalty) escalations.”

Between 2003 and 2006, Aftermath had been applying the Records Sold provision when paying royalties to F.B.T. for sales of Eminem’s recordings in the form of permanent downloads and mastertones. However, after conducting an audit of Aftermath’s records, F.B.T. brought a lawsuit arguing that the Masters Licensed provision, which required Aftermath to pay F.B.T. 50 percent of its net receipts, rather than the Record Sold provision, which required Aftermath to pay F.B.T. between 12 and 20 percent of the adjusted retail price, should be applied to Aftermath’s sale of Eminem’s downloaded sound recordings (full-length songs) and mastertones (ringtones).

Before trial, F.B.T. moved for summary judgment, alleging that the Masters Licensed provision unambiguously applied to the sales of the downloaded sound recordings and ringtones. Aftermath also made a cross motion for summary judgment arguing that the 2004 amendment showed that the parties intended the Records Sold provision to apply to permanent downloads of sound recordings and ringtones. The district court denied both motions, finding that either party’s claim was reasonable.

After a trial was held, a jury returned a verdict in favor of Aftermath. F.B.T. appealed the final judgment.

The U.S. Court of Appeals for the Ninth Circuit noted that the Records Sold provision established a royalty rate for “full price records sold in the US... through normal retail channels.” The court also pointed out that the agreements stipulated that “notwithstanding” the Records Sold provision, F.B.T. was to receive 50 percent royalty on “masters licensed by [Aftermath]... to others for their manufacture and sale of records or for any other uses.” The court concluded that the parties meant to emphasize the use of the word “notwithstanding” to plainly indicate that even if a transaction fell within the scope of the Records Sold provision, F.B.T. would still receive a 50 percent royalty if Aftermath “licensed” an Eminem master to a third party for any use. The court held this language was clear and unambiguous. Therefore, to determine whether the Masters Licensed provision applied, the court had to decide whether Aftermath actually licensed the Eminem masters to third parties.

The court noted that a “license” is defined by Webster’s dictionary as “permission to act.” The court pointed out that Aftermath didn’t dispute that it entered into agreements that allowed Apple to use the sound recordings and ringtones. The court found that those agreements with third parties constituted a license under the common meaning of “permission to act.”

The court also noted that federal copyright law supported the conclusion that Aftermath’s actions constituted a license after pointing out that under the Copyright Act, the terms “license” and “sale” have very distinct meanings. The court stated that both the Supreme Court and the Copyright Act defined a “sale”
of a work as either a transfer in title of an individual copy of a work or a sale of all exclusive intellectual property rights in a work. In contrast, the court found that the term “license,” as used in Section 114 (F) of the Copyright Act, described the statutory authorization for a third party to exercise public performance rights that otherwise remained the exclusive right of a copyright holder. Likewise, Section 115 of the Copyright Act referred directly to the statutory authorization for artists to exercise a copyright owner’s right to make and distribute phonorecord “covers” (also known as cover songs) as a license, but again makes it clear that legal title of the song remains with the copyright owner.

In this case, the court found that there was no dispute that Aftermath was at all times the owner of the copyrights in the Eminem recordings at issue, having obtained those rights through recording contracts in exchange for the promise of rendering royalty payments. However, pursuant to its agreements with Apple and various cellphone providers, Aftermath didn’t “sell” anything to the download distributors. They merely licensed the master recordings to the download distributors, since the download distributors never obtained title to the digital files and ownership of such always remained with Aftermath, which had the right to regain possession of the Eminem recordings at any time.

The court also found that case law supported the theory that where a copyright owner transfers a copy of copyright protected material; retains title in said copyright protected material; limits the uses to which the copyright protected material may be put; and is compensated periodically based on the transferee’s exploitation of the copyright protected material, the transaction is considered a “license.” The court stated that a “license” is an authorization by the copyright owner to enable another party to engage in behavior that would otherwise be the exclusive right of the copyright owner without transferring title in those rights.

Ultimately, the court found that Aftermath’s agreements with third-party vendors were clearly and unambiguously licenses to use Eminem master recordings without transferring copyright in said recordings for specific purposes authorized by the agreements, which included the right to create and distribute, via download, permanent mastertones and sound recordings, in exchange for periodic payments based on the volume of downloads. The court of appeals further held that the district court erred in allowing the case to go to trial, and erred in denying F.B.T.’s summary judgment motion to dismiss. As such, the court of appeals concluded that F.B.T. was entitled to a 50 percent of net royalty under the Masters Licensed provision.

—Michael Gross, 
Staff Attorney

### Legal Services Scorecard

From May 28 through August 19, 2011, the Authors Guild Legal Service Department handled 313 legal inquiries. Included were:

- 41 book contract reviews
- 6 agency contract reviews
- 23 reversion of rights inquiries
- 36 inquiries on copyright law, including infringement, registration, duration and fair use
- 12 inquiries regarding securing permissions and privacy releases
- 49 electronic rights inquiries
- 5 First Amendment inquiries
- 141 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)

### Just Sounding Off

**David McKee M.D. v. Dennis Laurion**  
**District Court, Sixth Judicial District**

On April 20, 2010, Ken Laurion was recovering in St. Luke’s Hospital in Duluth, Minn., after suffering a hemorrhagic stroke. He was moved that day from the ICU to a standard hospital room. While his family was with him in the room, Dr. David McKee, a neurologist, came to check on him and performed a neurological exam. Laurion’s son, Dennis Laurion, was very unhappy with Dr. McKee’s exam of his father, and subsequently made eleven different statements, on Internet ratings sites where doctors are rated by the public and by letter to several individuals and organizations. Dr. McKee believed the statements were defamatory.

Within a month, Dr. McKee sued Dennis Laurion for defamation. Laurion subsequently sought a sum-

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CONTRACTS Q&A

BY MARK L. LEVINE

Q. I'm okay with the provision in my new contract giving the publisher 60 days to tell me if it's interested in publishing my next (as yet unwritten) book. I'm not sure, however, when it's appropriate for this 60-day option period to start. What do you suggest?

A. Many (if not most) publishers' standard contracts provide that the option period begins when 1) the author has submitted a complete manuscript of the new book to the publisher for its consideration, and 2) the book covered by the current contract has been published and on sale for a specified period, often a month or two.

Both criteria overreach. Authors should change them as follows:

1. Instead of a full manuscript, you are only required to submit an outline and one chapter (or two).

2. Instead of having to wait until the book has been published, change this to x weeks (four is reasonable) after your current manuscript is accepted by the publisher. (Those contracts which say that the manuscript is considered accepted if the publisher hasn't rejected it or given comments, suggesting how it should be revised, within a specified time period should add "(or deemed accepted") after "accepted.")

Most publishers will readily agree to these changes.

Your publisher shouldn't have to wait until it sees how reviewers and the marketplace receive the book covered by the contract to decide whether you're a good writer or not; it should rely on its own judgment. Besides, how the marketplace receives the book is dependent to a large extent on how the publisher markets your book, and we all know how good most publishers are at that. And the book's publication date is essentially in the publisher's control, not yours. You have to eat in the meantime, and I'm betting that whatever advance the publisher gave you did not cover your living expenses during the time you wrote the first book, let alone the year or so after you submitted the manuscript that it generally takes for the publisher to ready the book for publication.

Since most publishers will make these suggested changes if the author or agent simply knows enough to ask, it's disappointing that so many persist in retaining these criteria in their standard form. It simply means that the authors principally subject to these stringent conditions are the uninformed or the naive. While the editors and even the business people at publishing companies are not the kind of people who would place stones in a blind person's path, I often think the same cannot also be said of their corporate employers.

Note that these recommended changes are only two of many that should be made in the typical option clause; others will be discussed in future columns.

Q. The contract for my new nonfiction book has a revision clause that says that if I don't revise the book, the publisher can choose the reviser and pay the person from amounts that would otherwise be paid to me under my contract. This seems pretty broad since it means the reviser can get everything and I could get nothing. What changes do you suggest I ask for in this section?

A. The best thing to do is substitute language saying that the book can't be revised unless both you and the publisher agree. That way, you don't have to worry about the issue or spend time negotiating the clause until the situation arises.

Some publishers of certain nonfiction books, especially textbooks, won't agree to this. In that case, there are at least four changes you should make in the clause (and which most publishers are amenable to):

1. Provide that if you are unable to do the revision (or simply don't want to), you will have the right to choose the reviser (subject to the publisher's consent, not to be unreasonably withheld) and determine the amount to be paid to that person. Also provide that if you are dead, your estate will have that right. This should ensure that the monies paid to the person doing the revision are reasonable and commensurate with the amount of work the person is required to do.

2. Provide that if neither you nor the estate exercises this right, the fee paid to the reviser has to be negotiated on an arms-length basis. This could lessen the possibility that particularly favorable terms are given to a friend of the editor or publisher or to a company employee. It will


Continued on page 54
Library Leaflet Ban Undone in California Court. In late June, a northern California county judge issued an injunction against enforcement of a municipal ban on pamphleteering around a local public library and, in doing so, managed to please both the American Civil Liberties Union and a regional Tea Party group. Shasta County Superior Court Judge Monica Marlow ruled that a city ordinance seeking to restrict, among other things, the distribution of leaflets and “offensively coarse utterance, gesture or display” in and around the Redding Municipal Library, was both too restrictive and too broad, and therefore an impermissible exercise of governmental restriction on free expression. According to Judge Marlow, although many people might find leafleting behavior to be a nuisance, “annoyance and inconvenience are a small price to pay for preservation of our most cherished right.”

In September 2010, the Bostonian Tea Party planned to distribute pocket-size copies of the Constitution, quotes from the Founding Fathers and other materials to patrons coming and going from the entrance of the Redding public library to celebrate Constitution Week. According to one report posted on a website run by MAD 4 Shasta (an organization that appears to be a Redding-specific Tea Party group), the Bostonian Tea Party sought permission from local officials but was first informed that approval of this request would be contingent upon the library’s review and approval of the materials to be distributed. MAD 4 Shasta reports that the city then reversed its position and gave the Bostonian Tea Party permission to distribute the materials at the library entrance, promising that although pamphleteering guidelines would be drawn up, the group’s attorney would be permitted to chime in on those guidelines. Other sources report only that the Bostonian Tea Party executed its plan to engage in leafleting around the library during that week. The Record Searchlight, a local paper, reports that although the library opened in 2007, no other organization had requested permission from the city to distribute literature to patrons prior to the September event. However, the Record Searchlight did not indicate whether any individual or organization had actually distributed literature around the library prior to that date.

Constitutions in hand, the Bostonian Tea Party set up shop in front of the Redding library. The next day the local chapter of Daughters of the American Revo-

ulation showed up to distribute similar materials to library comers and goers, part of a long-standing DAR tradition. When city officials tried to get the DAR to share space with the Tea Party group by consolidating tables on one side of the library entrance, the Bostonian Tea Party objected. The result of this public celebration of a holiday most Americans don’t know exists was that the Redding City Council drafted and on April 18 passed, by a vote of 4 to 1, a law to restrict the distribution of literature and the exercise of certain activities around the public library. The rule sought to corral pamphleteers into a 66-square-foot area just off the main entrance. The space would be made available to one group at a time by reservation. Windshield flyers, soliciting of donations and commercial advertising would be prohibited. The library director would have been empowered to issue warnings against any harassment, abusive behavior and “offensively coarse” language or gestures displayed by anyone attempting to press materials on library patrons. Violators could have been assessed fines of up to $500.

Both the ACLU and another Tea Party group, the North State Tea Party Alliance, filed actions seeking to keep the Redding municipal ban from being enforced until a ruling could be made on its constitutionality. The efforts of those organizations were successful. A suspension order was imposed in early May, and the late June ruling will keep the new law from being enforced as currently written.

Judge Marlow based her decision on the fact that a public library entrance and parking lot should be treated as a “traditional public forum” like a park or a plaza under California free speech laws, not a “limited public forum”—that is, an area where the government is acknowledged to have a compelling interest in the regulation of the manner, place and time in which people can exercise their right of free speech. Attention must be paid to the balance of interests between an individual’s right to be left alone and her neighbor’s right to distribute literature. “If the city’s goal is to protect passers-by from harassment, the restriction is not narrowly tailored to serve that purpose,” said Judge Marlow. “The reasonable expectation is that citizens entering the library are doing so for the primary purpose of being exposed to information which will add to their base of knowledge and ideas. [T]he library is an area dedicated to the free exchange of ideas.”
S Y M P O S I U M

Selling Multimedia Rights: A Walk Through the Process

The two-part discussion on apps sponsored by the Authors Guild and the Association of Authors Representatives that began with a wide-ranging primer on January 20 [AG Bulletin, Spring 2011] resumed on February 7 at Scandinavia House in New York with a new cast of characters prepared to tackle the thorny issue of digital rights. Joining moderator Jeff Kleinman, co-founder of Folio Literary Management, who moderated Apps I, were Eric Brown, an entertainment lawyer with the law firm Franklin, Weinrib, Rudell & Vassallo; Rick Joyce, chief marketing officer at Perseus Books; Charles Stack, an early online bookseller and founder and CEO of Sideways, the digital publisher and app developer; and Seymour Simon, whom Jeff Kleinman introduced as “sort of all of the above: author, creator of the very successful app “Science Fun to Go,” and founder and head of Seymour Science, a new media publisher.

SEYMOUR SIMON: I’m here primarily as an author, but I’m also a publisher and I’ve been learning different things from those two different points of view.

About nine months ago, I relaunched my website and made it a great deal more kid- and parent- and teacher-friendly. My partner, Liz Nalon, has overseen big websites, like the Peabody and Emmy award-winning Sesame Street website, so she knew a lot about these things. Between us we encompassed a lot of the skills that are necessary for digital publishing.

I have something like 70 or 75 books still in print. But I also have a lot of books that are out of print but to which I own the rights and I wanted to figure out how to make those books digital. So Liz and I decided to create a mobile app as a vehicle to market and sell digital books.

The mobile app is called “Science Fun To Go.” Virtually every kid has access to a computer these days, and that personal computer is called a smartphone.

I recently spent an entire week speaking at schools in Texas, and I always asked my audience, “How many of you have either an iPhone or an iPad or an Android phone?” Regardless of how old they are, a huge majority of the kids raise their hands. And if they don’t have that smartphone, somebody in their family has that smartphone, or they plan on getting this smartphone.

JEFF KLEINMAN: Thank you. Charlie Stack is going to talk about Sideways, which is another app developer, and talk about what he is working on.

CHARLES STACK: Never follow puppies. That’s one of the rules.

It’s still all about stories, no matter what else you do. So a good title is key, and What Do Puppies Do? is a good title if there ever was one. I love books. When I had a job for fifty dollars a week up in Woodstock in the seventies, I used to hitchhike down to New Paltz and spend every dime I had at booksellers. This is why I am qualified to answer your questions. I started the first online bookstore in 1992, books.com, sold it, went
to the L.A. Book Show, and told everyone it was going to be a big deal. Nobody listened. I sold the company in 1996 for about the same amount of money that Jeff Bezos raised to start Amazon—and that’s the story of how we killed the bookstore.

But despite the technology, it is still all about storytelling, whether it’s on a cave wall or an iPad. I talk to publishers all the time, and they’re concerned about the loss of profit, loss of revenue. The space we are entering in the digital realm is larger than the one we’re coming from, which is why it’s so attractive to the movie and television industries. There’s lots of opportunity to tell stories in different ways. One of the things we’ve done is introduce “Buddy reading,” which is remote reading. I have an iPad and an iPhone, and I can read to my children from a thousand miles away. You flip the page on the iPad you are reading from and it turns the page on the tablet device [at home]. Very cool.

Multimedia: this includes high-resolution images, video, audio, calendar and map navigation, all of which can be used to tell stories, like The 19th Century Explorer, which will be out in a couple of weeks.

The book is changing: It’s no longer about a fixed element in time. You can return to every single word in the text, or forward as the book builds a community. And that presents new opportunities for storytelling. Until, of course, your battery dies.

There are also new issues of disruption and responsibility that come with this and that need to be addressed. For example, in Egypt on January 27, the government turned off the Cloud. Imagine if all your books were in the Cloud. In the event of an electromagnetic pulse—unlikely these days—but in the event of one, all of your books would be erased. Not unlike what Orwell envisioned in 1984. Don’t forget the story of Amazon, which pulled 1984 from people’s Kindles involuntarily a year and a half ago. That won’t be the last time that happens.

KLEINMAN: Rick?

RICK JOYCE: We’ve done four kinds of advanced e-books and apps over the last two years. We’ve done a whole bunch of travel apps for Rick Steves for the iPad and the iPhone. They are walking tours of Paris and London. The very first interactive app we did was not for the iPad, but for the iPhone, a narrative app called “Cathy’s Book.” It was based on a YA novel about a young girl’s diary, in which she also had phone numbers for her friends and websites for things she was searching. All those phone calls, and all those websites, were in the narrative, and finally the actual book. We made an app out of it so that instead of having the book, your cellphone, and a mouse, it was all on the same device.

Then we did an app called “JFK: 50 Days,” a tie-in to a physical book called JFK Day-by-day. It went to number 15 in the App Store, and number one in the app bookstore. Our most recent project is “Roots,” which takes Alex Haley’s Roots and adds archival NBC news interviews between Tom Brokaw and Alex Haley, never-before-heard audio interviews with Alex Haley, photos from his family archive and all sorts of other material. We’ve worked with several app developers—Sideways, we’ve got to do something together—but as a publisher we come from a very traditional base, with some very traditional books. So as you’re thinking about different types of projects, fiction, nonfiction, you’ll have a sense of where my answers come from.

KLEINMAN: Here’s the secret that I’m now letting you in on. I’m a literary agent, and I don’t understand this app space at all. So this is actually a fact-finding mission for me. I wanted to come at this in as logical a way as I possibly could, because I really feel like this is a cool thing. It feels also like everyone is going in twelve different directions, and I don’t quite know the directions.

So the first thing I want to talk about is clearing the rights. I have this thing called a book. I’m not quite sure what that even means anymore. But it’s this thing, and there are these publishers—I’m not quite sure who they are either—who want to license the rights to that book. They want to license certain rights, but not other rights. So the first thing I really want to understand is what those rights are.

In my contract, in tiny print, I have definitions of multimedia rights. So I’m going to start my understanding from a legal perspective of what the definition of a multimedia right is. Eric?

ERIC BROWN: To start, the definition of a multimedia right is whatever the contract defines it to be. It has
no intrinsic meaning in and of itself; it’s a creature of language. So we can look at all of those definitions and each of them defines a multimedia right in terms of a particular relationship between a particular author and a particular publisher, and the question becomes, does that language reflect what the author intended to grant the publisher and what the publisher intended to acquire from the author.

KLEINMAN: Let me be clearer. We have multimedia rights, and then we have these weird things called enhanced e-books. Now people are distinguishing between the two. So here we’re talking multimedia as opposed to enhanced e-books, right?

BROWN: From a legal perspective, it is whatever the contract says it is. There’s nothing mystical about it; it doesn’t have any meaning in and of itself, so if you were to walk into my office or somebody were to call or a publisher were to give me this agreement, I would say, let’s look at this, let’s see what it is that the publisher can do with these rights, and to the author, Is that what you intended the publisher to be able to do?

JOYCE: We haven’t seen a lot of separation between enhanced e-book and multimedia yet, but when the conversation goes to the publisher it goes like this: “What rights do we have on this book, ‘cause there’s some cool stuff we could do.” And that could be the publisher, it could be the editor, somebody in marketing, somebody in sales . . . somebody has an idea, or somebody comes to the author directly and says, “Have you ever thought of doing an enhanced e-book or a multimedia version of Roots, this thing you have on JFK, some other book?” And the very next thing is someone says, “Let’s see what rights we have!”

So then a call is made to the publisher to get the contract, and usually you see one of three things: that you have very clearly defined electronic rights, and you own them; that there are very clearly defined electronic rights and you don’t own them; or there’s some gray area because back when this contract was written, it wasn’t specified yet. So in the cases where you have the rights, the conversation goes, “Let’s call them up and tell them we want to do this and make sure our stance on this are the same.”

In the case where you don’t have them, like our JFK app, you see if you can go get them. We didn’t have the multimedia rights to do an app around JFK, so we called the author and the agent to ask, “Would you mind if we did this, we’ll cut you in on it, was anyone else clamoring for this?” and they’re like “That’d be fantastic.” So we went and got it.

In the third case, in the Haley Roots case, where it just wasn’t clear what rights were available, we had to have a negotiation, and they said, definitely not film, because those rights were already owned, but “What are you intending to do? How much multimedia, and what is it?” What it really comes down to now is a negotiation.

KLEINMAN: I want to know the difference between an enhanced e-book and an app. Or are they the same thing?

BROWN: Does your author have a published book, or is this unpublished work?

KLEINMAN: I’d say it’s unpublished.

BROWN: If it’s unpublished, and there is no publishing agreement, all the rights are clear. So now you have all the rights. And you’re going to go out and make a publishing deal. So the first person you’re going to approach, I would imagine, is a print publisher. Fair enough?


BROWN: But the question then is, if you go to Charlie first, he’s going to present you with rights he wants to acquire from you, which may fit into any one of those definitions. Then if you attempt to do a print deal, you’re going to have to go to your print publisher and say, I can’t give you this anymore, and will that be a turnoff to them? Will they say, “I don’t want this anymore because this is such a core part of our business that we expect to get the e-rights”?

Or do you go to your print publisher first, and does your print publisher say, as most tend to these days, “We want everything”? Part of the question is, how are you carving up your rights?

KLEINMAN: That doesn’t answer it completely, because last week I battled with a big publisher over on

“**The definition of a multimedia right is whatever the contract defines it to be . . . it’s a creature of language.”**

—Eric Brown, Franklin, Weinrib, Rudell & Vassallo
the Avenue of the Americas. They didn’t want multimedia rights, but they wanted enhanced e-book rights.

BROWN: And when they said that, how did they define them? They must have said something to you. They want to do something. In other words, Okay, you want enhanced e-book rights, tell me what that right is. And if that subsumes what you envision as an app, then you’re saying, well wait, I don’t want you doing that either.

So from a legal perspective, it’s a question of what the contract says.

SIMON: I’ve had this conversation with lots of people in the industry. My understanding is that an enhanced e-book is something that could be sold in the Barnes & Noble or Amazon bookstores, and an app is something that would be sold in the iTunes or Android or App Store. It’s beyond an enhanced e-book, in that it has lots more capabilities, and stands by itself. You wouldn’t be able to buy it and read it, for example, in the Nook Color Reader. I have the same titles available as both e-books and apps.

“‘I don’t think anyone should be embarrassed to ask the question, ‘What do you think you’re going to be doing with my work?’’”

—Seymour Simon, Author

KLEINMAN: I want to talk about issues in the publishing contract. This is probably mostly for Rick and Eric. We now have a publishing agreement, we’re negotiating, and I want to know, as an agent, are there certain buzzwords that I have to be thinking about? I’ll flag two: one is time limits—how long you have the rights to make whatever this multimedia device is, that is, you have an option to exploit it within X amount of time; the second is, what are the issues of a publishing contract when I’m dealing with these types of clauses. Eric, you’re on.

BROWN: There’s a series of issues: first, realize that the traditional publishing relationship is, author brings a book to publisher, publisher says we’ll publish this book. We want certain promises from you, certain delivery dates, certain representations and warranties, and certain accountabilities, and acceptance of liabilities. Now all of a sudden, the publisher’s adding material to the book, so that raises issues about approvals from authors: Do I want this stuff on this book, is that the right thing? What if it turns out the publisher didn’t clear the rights properly? And by clearing, I mean securing the rights, whether it’s a copyright or a privacy right or any other right. Has all that been done, and is the publisher going to assume responsibility?

Then there’s delivery dates. In our publishing agreements we say we want the book published by X date, and failing that, we go through a series of remedies. What if this multimedia product, to use that term, isn’t published on time? What happens? Do the rights come back to the author? Can I take them elsewhere? What happens with ownership? You’re going about securing rights, or if you’re creating materials like Charlie is—who owns that? Is it the app developer, or the enhanced e-book publisher, or whoever the other party is, or is that transferred to the author?

One of the things we spend a huge amount of time dealing with in our practice is book-to-film deals. I don’t think anybody on this panel is looking to equate multimedia rights—what we’re calling enhanced e-book rights—with motion picture rights, but we need to be very, very careful that these definitions don’t start overlapping with each other.

If an app is the first exploitation, if the app is somehow the first visual rendering of a work, does that create an environment, does that establish what people expect this fantasy novel to look like, so that a studio is now going to come in and say, “Wait a second, that’s not what we envisioned, we don’t picture the hero looking like this, we pictured the hero looking like this.” And what impact does that have on the deal?

JOYCE: The other thing I hear about when talking to rights holders, is that they want to license for a much shorter period of time than traditional publishers— you know, we have the right to publish and it’s going to revert to twenty years or whatever. The app time is much shorter.

KLEINMAN: Can you explain?

JOYCE: For example, I might have full rights and multimedia rights on a book for ten years, but I want to license art and the agent is saying you can have it, but you can only have it for five years. Or we want to license some other material and they say, Well, you can have it, but you can only have it for four years. So now the expiration date on the milk in your cake is shorter than some other ingredients. So when you mention...
time, one of the first things that jumps to mind is that if we think we’re making products for the ages, that’s an issue. So we do have to be aware that the spoil date on some of these products is the date of the shortest expiration element.

KLEINMAN: So here I am, this poor starving agent, trying to sell books for my poor starving author, and these publishers want everything! So what do I do? Should I really try saying, “You have the right to make this multimedia for five years, or six months, or three and a half hours?” Is there any kind of leverage in that? Are people doing that or is it not even an option?

JOYCE: For us it’s about trying to have a conversation, where we have a shared idea of what we’re trying to do with it. Are we trying to publish a political book that might influence the debate in an upcoming election cycle, but with the idea that two years hence it’s not going to matter so much? For Roots, which has lived for 30 years and is going to live for another 30 or 300, maybe we ought to share our interests for some period of time.

BROWN: But I also think you need to look at the facts and at what you’re looking for. If you as a publisher control the rights, it’s a question of what rights you have and what happens if the rights lapse. If the multimedia rights lapse in a shorter time, and you say you know what, we’re only going to do a seven-year deal, or a five-year deal or a ten-year deal, and the other side agrees, what are you left with at the end? Can you take it somewhere else, or are you still in that stalemate where it’s unclear whether you control electronic or not? Are you setting yourself up by saying “We’ll renegotiate at some point in the future,” or do you say “Look, I’ll do a seven-year deal with you and when it’s over I’m gonna walk somewhere else and I will resell these rights”?

It also begs the question of what you are selling. At that point, do you have to go to another developer and start over, or can you take the product as a whole and just transport it across the street.

KLEINMAN: So, back to the dark ages of 2009. Do you remember doing deals back then? When we could sell books for money? We didn’t have multimedia being an issue at all. Now all of a sudden the books are about to come to press and publishers are hysterically trying to work out all the rights again. I’m joking, by the way, when I talk about greedy publishers. But now we’re dealing with it. And it seems to me you can split the rights, or do you sell the rights to the publisher? I want to get Rick, Charlie and Seymour in on this. What do you do when the rights are silent and how do we step in? Where do we go from here?

JOYCE: We have a little acquisition question, which is, is there some obvious, organic, interesting reason why this might be the next book? We’re doing a series of books with Participant Films, like Food Inc. and Waiting for Superman, and it seems like there might be footage and material there that didn’t make the movie but that would make for an interesting app. So we ask ourselves, is there some reason this is something we might ask for, and we have a couple of questions, and if at the end we can see why there might be some reason to ask for it beyond having a specific plan in mind, we make a play for it. If we don’t we’re kind of silent on it because we don’t get paid superhigh wages to produce this stuff and each of these products is very, very hard. We’re trying to get smart. So every project we do, we do not just for that project itself, but for what it might teach us about how we should do this.

So we actually don’t gobble them all up. And there have been very few cases where the author and the agent tried to push those rights on us, like “You take these multimedia rights!” We have a couple of authors, or projects, where someone has come to the table with an idea not just for a book, but for something broader, so that’s one of the things we’re doing. But it’s not like there is a big tug of war going on—yet—with our titles. It’s still more a case of “if you see an opportunity, go try and get it.”

STACK: About a third of our projects are with publishers, a third are with authors, a third we’re just doing ourselves. So I have had to have contracts for all those different things, and I have literally spent more in legal fees in the last nine months than in the previous nine years. That’s a huge challenge, because each one of those scenarios is different. In our publisher relationships, we would probably have twice as many projects were it not for the phrase “the rights issues are complicated.” I can’t tell you—well I could tell you—how many times I’ve heard that: a lot.

The stuff that we’re doing internally, to show off tools, techniques and creativity, use a lot of public domain materials for the multimedia. There are websites with public domain video, text, audio, all of which are available if you do it appropriately, which you can then mash up into interesting multimedia titles. Those are by far the most fun, because you don’t have to ask if you can use it.

KLEINMAN: Seymour?

SIMON: Anybody who is an author probably has a backlist and the backlist is not eagerly being sought by very rich companies that are going to turn it into a very expensive app. So what do you do about your backlist? It is possible to do your book in a simpler way,
perhaps an enhanced book—with audio, or something like that. There are ways that authors can promote their own books through their own apps. Not the kind of promotion that you’ll get when you’re going to spend fifty or a hundred thousand dollars developing that app, but something that an author can afford.

On the other hand, when your publisher has a book of yours in print and wants to do it as an e-book,

"There have been very few cases where the author and the agent tried to push those rights on us, like ‘you take these multimedia rights!’"

—Rick Joyce
Perseus Books

you can suddenly find out that you’re responsible for getting permissions for photos, which you got initially for print and which don’t extend. You had these long before there was such a thing as an enhanced book. In my case I have to go back to the photographers and the photographic agencies, and renegotiate with them, and that’s very difficult. In some cases, it will prevent the book from being published, because the agencies are asking for fees which neither the publisher nor the author is going to pay. So it’s possible to do your own books if they are not incredibly sought after, but it may be difficult.

KLEINMAN: The big thing a publisher did to me recently involved the non-compete clause. I’d like Eric and maybe Rick to talk about the non-compete issue.

BROWN: The non-compete clause is one of the most discussed and hotly contested issues in contracts because it raises the question of what the author is being restricted from doing. The problems with that clause are enhanced with this new technology. Depending on which house you’re at, the clause can be incredibly broad, from a work that competes directly with another to a work that impairs the value of an existing work. In this situation we’re looking at where the author has retained these multimedia rights. They’ve not been granted to the publisher, and now the author wants to go out and exploit them. But the publisher says “no you can’t,” not by questioning the fact that you control the rights, but by saying that they run afoul of this competitive works clause.

SIMON: I wish we were getting a lot of phone calls from people saying they had really interesting commercially viable ideas for exploiting this content. Because we can do one of three things: We can say, Hey, I’m listening, let’s figure out how to do it together—as long as we have contract amendments to make sure we participate in the process. Or we might decide not to participate, because we want to do it ourselves or because we don’t think what they are proposing is appropriate for the work. Unfortunately, we’re not seeing these kinds of overtures coming from publishers, at least not yet.

JOYCE: But if someone was calling and saying, I want to exercise this right I have, our answer would be, Well what is it? Maybe we should go out and see if we can’t do that together. We’re not squatting on multimedia territory right now, because we’re not getting that phone call. Maybe because our books are mostly non-fiction.

KLEINMAN: Let’s assume for a minute that you did get the phone call. Let’s assume then that the publisher wants to work with the author and create some kind of multimedia property. My question is, how does the money get split, who pays for it, who does the work, and how much of the original work gets used?

JOYCE: I can speak to that. The JFK project has a page for every day of JFK’s presidency. Which is just too much. We wanted to do a companion to it, and it was the 50th anniversary of JFK’s election, so we decided to do fifty specific days. We went back to the rights- holders and said we wanted to do an app but we did not have the rights. And we said, it’s not the whole work, it’s fifty of those days, and about an hour of archival NBC footage, and it’s going to sell for X. We’re going to use an app developer, and we’re going to split the rest. No money up front, all split revenue.

So we negotiated and negotiated, and we ended up with a split for the rightsholders, a split for NBC, and a split for us. Let me tell you, there is not a lot left over sometimes. But it was also because we were trying to figure out how to do such a deal. The alternative, what we’ve done in other projects, is to write a check, and bear risk, and not split the profits in any way.

KLEINMAN: Write a check to whom? The app developer?

JOYCE: Often the app developers. Because it’s a lot of work to create these apps, which are organic and interesting. That’s my way of not saying, “it depends,” but each of these projects is different. We’ve also done
it where we’ve used our own author as the app developer, and we write a check to the author. Most authors seem to want something like a royalty.

BROWN: I’ve seen deals in which rights are granted directly to a publisher who actually creates the app where there is a 50/50 split after Apple takes its cut.

JOYCE: Roots is 50/50.

BROWN: One interesting issue we’ve heard about is, even when a publisher is basically farming an app out to a developer, who is taking a piece, the publisher is saying, we’ll pay you on the net we receive from that app developer. So if you’re the author, you want to understand what the publisher is giving the app developer. The answer may be that the app developer and the publisher are splitting it 50/50. If you as the author are getting 50 percent of the publisher’s 50 percent, you are getting 25 percent net and your share has significantly diminished.

“The non-compete clause is one of the most discussed and hotly contested issues in contracts because it raises the question of what the author is being restricted from doing.”

—Eric Brown

STACK: It could be anything you could dream up or even stuff you haven’t thought of. We have rough share deals, we’ve had deals that we’ve done just to get paid, work for hire deals. We’ve done 3-way rough share, and a barter deal with the BEA last year—got a free booth for an app. You name it, we’ve done it. We have probably worked for beer.

KLEINMAN: So you work for pennies, and then . . .

STACK: I didn’t say pennies. I said beer.

KLEINMAN: All right. So we work for pennies and beer, and that’s how we get paid, but there are also all these expenses that get forked out. Who pays for these expenses? Is there any kind of correlation, like the guys who get 50 percent of the revenue pay 50 percent of expenses? Is there any kind of number you could give me?

JOYCE: You as the author are bringing the book. Are you, the publisher, paying me an advance? Because if you are, that levels the playing field—and might suggest you have a better right to deduct costs. If you’re not paying me an advance, then I can say look, I’m contributing my book, you’re contributing your costs, let’s make an app.

KLEINMAN: What’s the publisher contributing? That’s what I’m getting at. This client—the author—is still working with the publisher to exploit the rights. So the author has written this book, and the publisher has edited it. But they’re kind of done now. What are you bringing to the table?

JOYCE: That’s a very good question. It takes huge amounts of time, and thinking. Editing a book is funny, ‘cause while you edit it, it’ll hold still. I’d like to see you try to edit an app or an e-book. We have to think about the book at every font size. Because when you have embedded video and photos in an enhanced book, you up the font size. So you have to make the book work in every font size, and on every device

KLEINMAN: But the publisher has to be active in the process of actually creating the app.

JOYCE: We’re the general contractor. We’re going to build the house. We get plumbers and electricians and someone who is doing siding, and it always has to land on time. We’re responsible for a date. If we were trying to publish, for example, around JFK’s anniversary, that anniversary is not going to move because the app developer or the rightsholder or somebody was slow. So one of the things the publisher does is invest enormous amounts of time in an uncertain process. The amount of time Seymour thought it would take to get his app done, and what it actually took? There was no relationship. So what a publisher brings is a commitment to get it all done. Sometimes you don’t know what it’s going to take to do that. The other thing we do is find ways to publicize and exploit it.

None of these apps are worth a dime if nobody finds out about them. You can have the most beautiful app in the world, and we’ve built some of them, but if no one can find them, no one is aware they exist. So we have that commercial interest to try and make sure they have a publishing plan.

When you’re negotiating, that’s one of the questions to ask. It’s not what you do to create the project itself; it’s what are you going to do to commercialize it?

KLEINMAN: Let’s say I have this cookbook author. Let’s say she’s done a thousand recipes. And let’s say I go to a publisher over on Broadway, and say, “We want to use 25 percent of those recipes in an app.” And the
publisher says, “Oh my goodness, 25 percent, oh my god,” and they have like heart failure. Is there some kind of percentage you can give me that wouldn’t be competing against the book? That is not gutting the book itself?

JOYCE: What we used to do, back in the days when authors reserved some of the rights, was reserve electronic version rights, which that publisher would refer to as “text with added material.” If your cookbook author, for example, was talking about a product that is an abridgement of 25 recipes only, I would think a publisher wouldn’t have an issue with that—depending on what the contract said.

KLEINMAN: So now say we have some agreement with the publisher, or we don’t. We’re allowed to go make the app, or the publisher is going to make the app. I want to understand the process of dealing with the nice, warm, fuzzy app developer. The creative ones. The first question for me is contract provisions. I’d like to know, from Eric and Charlie, from the author/agent perspective, are there key clauses or are there key things we need to be thinking about when we are dealing with app developers.

STACK: The first thing you’ll see is almost always a new voice in the room. It’s not just text, and story, and maybe some video that is now software. Like any creative work it also has its own copyright issues that are just as painfully complex as the text-based ones are. The issues are identical to print: Who creates what, who has what for how long, geographic and platform limitations, it really doesn’t change.

KLEINMAN: Does anybody have any different rules?

BROWN: I don’t mean to oversimplify, but it’s the same set of issues.

JOYCE: For us it really comes down to who is contributing what, and is everybody’s role really clear?

KLEINMAN: Give an example.

JOYCE: Video selection. You might say we’re going to go to NBC and they’re going to let us select video, and we’re going to have the rights to do that. And the app developer is going to drop it in the app. The app developer then gets the video and realizes that it needs to be edited. It can’t just be dropped in; the file size is too big. “I thought you were going to do that,” etc. We’re like, “You mean you can’t just take these video assets and drop them?” No, you need a video editor. “You can pay us to do that or you can get a video editor.” So that’s an example where you really have to walk through the whole thing and say, that’s what we do, that’s what you do.

SIMON: One of the big problems is that it doesn’t make any difference what the contract says. You wind up working a lot harder on both ends than you originally thought. And a lot of things you’re doing you’re going to be doing because you want the work to be the best it can possibly be. If the developer is doing it in a way that you think sucks, you want to have something to say about it and do it in a way that you think is better. So even though it is going to take you an enormous amount of time and effort, you’re going to do it anyway.

BROWN: I have to respond to that. I think what’s helpful about the contract process is that it forces you to think through these issues.

KLEINMAN: Now I feel like I really got something out of this panel. Just now. Because I am doing another two or three of these deals, and now I can sit down with the author ahead of time, and figure out what the assets are that we are going to be incorporating. We need to really figure it out ahead of time before we do the contract. So that makes sense. Are there more things like that, just so I know?

BROWN: The contract should dictate the parties’ actions, but the most important part is that people have to talk. Figure out what the expectations are, who is doing what, what’s being delivered when, how the money’s flowing. The contract is not magic in any way. The contract is going to reflect what everybody has agreed on.

JOYCE: It’s going to give you good practical questions like, “Who is going to have photos? Is it going to have five photos, or a hundred photos? Thirty minutes of video, or an hour of video?” At a certain point it’s going to give you a file size for downloading. So really, those details of how much, and exactly how much, is very important stuff to have in the contract—not just in the design, because it really dictates relative value and a lot of work.

STACK: Our documents tend to be just a couple of pages—but a really big Exhibit A. Because Exhibit A says, the publisher is going to deliver 160 jpeg images with a resolution of 1024 x 768, and forget the contract part, that’s just business: What am I expecting, what are you going to deliver? It’s the same thing if you are writing something: You’re going to deliver 150,000 words over a 16-month period. You need to specify this stuff so expectations are settled. And it’s pretty detailed.

KLEINMAN: One big question I have is about conflicts. We had someone from Auryn here last time, who gave an amazing demonstration of a picture book.
come to life. But in Seymour’s example, and in all these things, you can imagine there are going to be conflicts. What kind of conflicts should you be thinking about ahead of time and trying to address, in these contracts and in general?

BROWN: What you want to define as narrowly as possible is what it is you’re giving. Because from an author’s perspective, that reserves the right for you to sell the rest to someone else in various pieces. So the more specific you get, the better off you are. A big concern from our point of view is motion picture rights. These definitions of apps that were in small print before are generally very broad, because people on both sides are trying to figure out exactly what they are getting. So they start out with a universe of everything and then you have to narrow it down. In their broadest sense, they absolutely can interfere with motion pictures or television.

JOYCE: Here is one that came up for us last week: the right to change price, and notification of that. We had a thing going with an app developer who was ultimately the publisher of the app. They put it up in the App Store; their name was on it. And they decided they wanted to experiment with pricing it much lower. Except we only found out because it showed up in the App Store, and since we’re sharing revenues we went back to the contract.

One of the things that is very different between this world and the book world is you put the price on it, and you hand it to the retailer, and you have no say on the retailer’s price. With the Apple model, the publisher or the store has the right to change it. It’s one of the most interesting things about this environment that is different than the traditional bookstore. So that is a conversation that I think is worth having. It’s also worth being flexible about, because you can really learn a sweet spot, and how to make the most money.

KLEINMAN: You made JFK $3.99, then changed it to $9.99?

JOYCE: It went from $6.99 to $13.99, or $12.99, and after that it rose to number 14 in the App Store, number 1 in the book category of the eBookstore for a week and a half, and then it settled to where we were selling the same number of copies every day, and then we thought, this thing is wildly underpriced, let’s look at other apps like it. We thought about this stuff all the time. And we upped it and we lost some sales, but we increased our margin significantly, and everybody is better off.

One of the things we’re all trying to figure out is, what is the market here? Pricing is a new lever, not one that we as publishers—after we figure out how to put a price on the jacket, and sell it at wholesale terms to Barnes & Noble—have very much to do with normally. We put out a new paperback, and we trade. But now we have to be in that game.

SIMON: You can actually change the price of an app for a promotion that you run yourself. You can change it for a month, for Christmas say, and then change it back. And you can see the results almost immediately. Everyone is playing with price because nobody really knows what these books should sell for. The publishers are doing exactly the same thing. One of my principal publishers, HarperCollins, released a couple of my books at an extraordinarily high price and they didn’t sell at all. Then they cut the price, really in half, and it began to sell. So they didn’t know what they were doing either.

KLEINMAN: So as the slimeball agent here, I should really be making sure that in my contracts with publishers, or app developers, they’re telling me on what basis—monthly, hourly—they’re selling the apps.

JOYCE: I think one of the nice things to know is not just sales, but price.

STACK: You should get a daily report. We give all of our authors and publishers a daily report of every single title.

KLEINMAN: Daily report, boys and girls.

STACK: One more thing about pricing. This is an enormous pet peeve of mine. It’s a digital product; nobody has any clue what it’s worth. As authors, we should really be charging a lot more because no one will know. When you’re at a cocktail party, and someone asks you, “How much is an e-book worth?”—well, 15 or 20 bucks is a better answer than four or five. And one of the most effective things we’ve ever done is put in the app description what the print version of an e-book costs. It completely eliminates anyone saying, “This should be 99 cents.”

JOYCE: The 900-page copy of Roots we publish as a paperback is $14.99, and the app is probably going to price out at $17.99 with 45 minutes of video in it. It’s very important that in that product description it says: $14.99 paperback, this gives you 45 minutes of video and an hour of audio and 50 photos; it doesn’t feel weird to spend three dollars more than that.

STACK: Because there is no intrinsic value.

KLEINMAN: My next question is about updating: I have five or six contracts with app developers and I was appalled to realize last week that several of them didn’t have clauses on updating. Can you tell me,
Charlie in particular, how apps are updated and how often?

STACK: No app developer would put it in unless they had to. It’s hugely expensive. Apple changes the damn software so often in order to keep things current that it’s a legitimate expense. But if you say that you want to get updates, expect a fee.

“Everyone is playing with price because nobody really knows what these books should sell for.”

—Seymour Simon

KLEINMAN: There is updating the software, because of Apple; there is updating because it turns out Alex Haley didn’t write the book, it was actually his secret sister, and you have to change the title; or, because it is Christmas we’re going to add Christmas and the Roots family, you’re going to have a big gathering, so there are multiple reasons for updating. Does that go in the contract?

STACK: Yes. But I was talking about updating the app so it still works.

KLEINMAN: So that’s a software thing. We need to have that in the contract! Is there anything else that I should be looking for?

STACK: If you’re expecting to change the content of the book, then you should definitely specify that.

SIMON: We’re also getting a flood of Android tablets coming out this year, and if you expect your app to work on the Androids, you may have to write different software, or at least modify it—and not just for Androids but other operating systems as well.

STACK: We’re dealing with those; we’re putting this up and saying this is for the iPad and we’re saying you have the right to do it on the Android, but we’re going to do an addendum because we’re waiting for that to come out. I will also say that the iBookstore is not an updating environment, so when you put that file out there, you’ve got to love it. A lot of people put stuff up in the App Store and say, “I’ll get it right, I’ll get it out, and then we’ll fix any bugs in an update.” That is fine for the App Store; it’s not fine for the iBookstore. They want those files and they want them to be done. When you submit an e-book for Kindle, you know, you’ve submitted that file. And they’re not going to be happy if a month later you send an update. When you talk about the difference between apps and the iBookstore, or Kindle, you should understand that that update is really part of the ethos of apps. It’s not part of the ethos of e-books.

SIMON: But a good way to tell the difference between an enhanced e-book and an app.

KLEINMAN: How is it best to market these things? Seymour?

SIMON: I think that every app developer also has to have some marketing plan: social media, like Facebook and Twitter, and all the other things that are going on. If you can’t market what you’ve done, then it’s just going to sink to the bottom of the pile. And the bottom of the pile, particularly in e-books, is huge, a bottomless pit. And any kind of free marketing that you can get. I did a book for the color Nook just before it was introduced, and they paid me for it and they’re going to use it as a promotion. The amount that they paid me couldn’t possibly cover the amount of work that I did for them, but because it’s such a huge promotion, if it gets handed out free with a million color Nooks, the color Nook app that goes on the iPad, I would have done it for nothing. I didn’t tell them that, but I would have done it for nothing.

KLEINMAN: So Charlie, shall I be asking you about contacts? To be sure that you are all going to promote my app?

STACK: You should certainly clarify what our role would be in promoting or not promoting your app. We have experimented the last nine months with what works and what doesn’t, and we have a big list. I can tell you that the first thing I would dissuade you from is thinking there’s a difference between an app and an e-book in terms of marketing. There are about a million of both, and they’ll both get lost if you don’t promote them. Just as an aside, Apple is a little schizophrenic, and the two divisions are entirely different. They don’t even seem to know the other one exists. It’s very, very strange. But the difference from your standpoint is that an e-book gives you a one-way conversation, a one-way communication with the reader; an app gives you a two-way.

KLEINMAN: I don’t understand. One-way or two-way?

STACK: When you publish an e-book it goes out, and unless you get an e-mail to show up at a signing,
you’re never going to hear from your readers again. An app enables you to have a two-way conversation as part of the publication. So inside the app itself you can put in your Facebook page, your Twitter feed, a calendar of your appearances, a link to your blog. The app itself can start a conversation between you and the reader, which can be enormously important from a branding/marketing standpoint, because that is how, as an author, you can become commercially successful: by building an audience that wants to read what you have to say. And the ability to do that in an app is a billion-fold more powerful than the previous publishing model.

JOYCE: Right now the big difference in marketing with the App Store or the iBookstore is there are 13 million iPads out there, and there’s a lot more coming. So there’s the device set. Right now, if you’re going to develop something that has a lot of video content, this is it. Whereas if you want something that has photos in it, you could be on the regular Kindle, you could be on other devices, the Sony device, the Nook. So one of the questions you have to ask yourself is how big of an audience does this thing need? Or do I really need the audiovisual interactivity impact of this device?

The other thing I would say in marketing is this stuff is too much work to do if you don’t believe that there is a powerful language to be discovered. The reason we did a couple of these projects was because NBC was going to give us incomparable airtime. Our JFK app was on the Today show. And in the hands of Meredith Viera and Bryan Gumbel. They talked about it for a minute, ran an ad 28 times in a week on MSNBC. We probably wouldn’t have done it if we hadn’t negotiated and they were not interested in promoting it.

I would say, as a publisher, that if you don’t have an idea as to how you’re going to plug a book, don’t publish it. If you don’t believe the author has a platform or the book can get reviewed, or it’s going to fire up a conversation, or it ties into the thirtieth anniversary of this, or there’s a deep audience for apps, just don’t do it. You better have an idea about how someone’s going to find it or it’s just too much work.

KLEINMAN: But a few minutes ago you were telling me that it makes sense for me to sell my rights to a publisher because they are going to be able to market this thing. This is your time to shine. Tell me how publishers are going to market something.

JOYCE: What we do is we try to make sure that we do the whole thing. What is the author platform? Can we get some appearances in? What’s our publicity strategy? For a lot of these sites there are communities, blogs, websites. You can do outreach. For a lot of these we sent a card, we had kind of a full spread and we treated it like it was a big publishing event. So while there is a lot of creativity involved, contractual wrinkles and a cool factor, the thing that I hope anybody is doing with a publisher or developer is saying, “What is our plan to make this thing matter?” So we did all the things for this that we would do for any book. And some things we wouldn’t.

KLEINMAN: Charlie and Seymour, do you want to chime in with anything?

SIMON: If you have the connections to do something like that, it’s obvious what you should do. The big problem is most of us don’t have connections like this. Everyone is really trying to experiment in ways to do it the best. I do a lot of speaking at schools around the country, and I’ve found that in school appearances, I promote these books and the app vigorously and that has produced more results. But I think you have to do the kinds of things that you can do, and I think you have to approach the publisher, when you’re talking about doing any kind of a digital book, and explain the kinds of things that you can do. You might have connections that would be fantastic that you haven’t even thought about.

KLEINMAN: With that, we’re going to open the discussion to questions from the audience.

AUDIENCE: Have you seen situations where the enhanced e-book and electronic media rights are poison pills for doing a motion picture deal?

BROWN: We’ve actually been involved in a situation where the film rights were granted, and the author was trying to authorize an app to be done, and that’s not working so well. I don’t know that I’ve seen the other direction. I’m concerned about it.
AUDIENCE: What do you do when studios contract a book, and a major publisher who will go unnamed but is on Fifth Avenue, says in their new boilerplate contract that they get the e-book rights as well as rights to derivative works? Would they then own the copyright? Do you give up major motion picture deals? Is this the back door way for book publishers to get brought on and get part of the producer fees, because in order to give those rights back to the author, and to do the movie deal, they’ll do it only if they get a piece of the movie?

KLEINMAN: Did the publisher say that?

AUDIENCE: We’re not at that stage yet.

BROWN: I think it wouldn’t be customary for the publisher to have motion picture rights, and again this is when we go back to what those words say, because those words are so broad that they arguably incorporate motion picture rights, whether that’s a land grab or whether that’s just poor drafting, I’m not quite sure.

But ultimately it doesn’t help either side to kill a film deal over rights that they’re not able to exploit. But there is the concern that those film rights are subsumed within that definition. And that needs to be addressed. The other question you have is when you do your film deal, a film company will typically ask for its ancillary rights, or merchandising rights, and those merchandising rights are going to very likely include electronic games, and things that will look, again, sort of coming back full circle, to what the publisher is saying they might be able to do. This is the language that makes everyone’s eyes glaze over, but it’s so important, because what you do is you’re taking a pie, and you’re carving it up. What you don’t want to do is grant the same rights to two different people, because then you’re in trouble.

AUDIENCE: I wonder if anyone’s doing anything with translation. Of course we always just think of English.

KLEINMAN: Charlie? Translations?

STACK: We have what we call an anagographic engine, which is for graphic novels, and one of the capabilities we’re just adding this month is the ability to separate the balloons from the image, so that we can just swipe out a whole new layer of languages without changing anything else on the graphic novel. Prior to this technology, the artist had to redo every panel. So we had to do this layered thing, and it’s hugely cost-saving.

SIMON: We’ve done some investigation about translation; there are programs which can do that as well.

SIMON: One of the things I am investigating right now is doing these enhanced e-books with a company as well as print books. Part of the contract is to pay for the time and effort that I will expend working with them on these enhanced products. That’s quite apart from the author contract.

AUDIENCE: Let’s say the publisher develops an enhanced e-book. Will they own the copyright?

BROWN: I think the question is whether there is a separate copyright in an enhanced e-book. The enhanced e-book may have a copyright in the compilation of the elements it includes. However, copyright in the individual elements would remain with the original owner unless expressly transferred. The publisher would own a copyright in the compilation—meaning these elements put together this way.

Even if the book itself goes out of print, unless you negotiate for some reversion of that copyright in the compilation the publisher would own it. I guess the value in trying to get that copyright would be, again, you take the product and you walk across the street. However, I would expect that there is software that is proprietary to the publisher and the app developer that makes that app work, and I suspect they are not going to license to you. That is their proprietary material.

KLEINMAN: So who owns the rights to that compilation then? If the book goes out of print, presumably the contract will say that it will have some sort of protection on the out-of-print provision, such as “only electronic books are available” and this would fit within that. Certain publishers might refer to it as a digital version, for example. So if only the digital version remains in print, certain criteria have to be met in order for the publisher to retain rights to the book as a whole. I don’t know that the electronic rights are separate and apart from print.

JOYCE: I don’t think it’s a big problem yet.

BROWN: But it’s an issue, and what you would be left with would be getting the rights back to your authors’ text, but not being able to use the whole new product—this enhanced product, this compilation—without making some deal with the publisher.

AUDIENCE: We’re asked by publishers for multimedia rights as a matter of course. I wonder if there is an argument for licensing the rights? If you’re a midlist fiction author, it’s not likely that the publisher would want to invest in an app. So is there a reason that we should hand those rights over?

BROWN: I hate to sound like a broken record but I would be very careful, when they say multimedia
rights, about what they mean. Is it an all-encompassing grant? From my perspective, the more rights you keep for yourself the better.

AUDIENCE: If you're in a situation where you don't think the app is going to be immediately developed and your author doesn't really have the desire to do it, can people license the rights with a specific reversion period? So if in 18 months or 24 months, it's not developed or in development, you get them back.

BROWN: This is all as new to the publishers as it is to everybody in this room—that somebody somewhere has decided this is the way our contract is going to read, these are the rights we absolutely have to have, because we cannot function without them, and nobody wants to make the decision to change that. So it seems like a very reasonable solution, one that could be proposed.

JOYCE: The classic response from a publisher is, "We're going to do all this work to put this book out in a certain form, and have it be found and discovered and loved," and if there is this thing called multimedia rights, and you get them, and you go to an app developer, slap a tiny bit of audio on it, call it a new book and sell it for two dollars, and this perfect substitute destroys the original book, it's really not in anybody's interest. What I'm saying is you have to have something for all parties. That's why you have to have real conversations about your intent to exploit.

One of the reasons we're doing this is because there are certain categories—in cooking and crafts, for example—where we feel multimedia is going to be incredibly important. We feel like we're going to have to get smart at that, and try to build the capability to do it for all of our titles, so we have to talk about that. Of course, you have the track record to exploit. In another category like fiction or something, I'd say what would the media be for this? We don't really have a track record of doing it, why would I leave that to you? So I don't think there is one market here, and one answer. But I do think it is worth asking people what your intentions are.

AUDIENCE: Charlie, what does an average app sell, as in ones that don't get picked as app of the week?

STACK: It's close to zero.

AUDIENCE: So if you have a book app for $3.99, what are your average price points for that?

STACK: A lot higher.

AUDIENCE: So basically it would have to be a best-selling app.

STACK: You have to look at this two ways. The first way is if you're not prominently featured in the App Store, you're not going to be selling anything. But it is a market that is growing tenfold a year. So do you want to be there? I think pretty soon you do.

SIMON: There are sources opening up that you're not even thinking about yet. For example, Title I schools, which are poor schools that are getting federal funding and that already have plans to do classroom sets of iPads. If that is adopted across the country in 120,000 elementary schools, and every school has a set of iPads, you're going to have to put something on them. Otherwise they are just pieces of junk.

So you just don't know where this market is going, but it is expanding enormously.

JOYCE: Also, what's success? How's that app doing? Terrible! We only sold 5,000 copies. Or, it's doing amazing, it sold 5,000 copies. Is 5,000 copies success or failure? I don't know! What did you spend on it? What were your expectations? Who is asking? So really, 5,000 copies could be a huge success or an abysmal failure. Spiderman has to sell a lot of tickets to make their money back. On the other hand, the theater next door that has five actors in it selling 99 of their 99 seats a night—that's an absolute smash.

STACK: If I wanted to project a little further out, I think this is going to look a little like the movie industry combined with a blog space. We're going to see a barbell effect where you have deeply niched products dedicated to core audiences and massive blockbusters that people spend millions to create.

AUDIENCE: There's a lot of exciting development in terms of nonfiction. Can you talk about what this could do for fiction?

STACK: That's my favorite topic, as might be obvious. There are so many opportunities for storytelling and the digital space is totally uncaptured: using the Facebook page as characters in a fictional novel, a combination of real and Internet time. The possibilities are unbelievable—to use this piece of glass to tell their stories. It's a new medium, and just like any new medium before it, there are new rules.

KLEINMAN: That's such a good concluding sentence that we should end here. Thank you all very much.
Along Publishers Row

Continued from page 2

stepsister, but the supporting characters are the troubled adults. . . . I don’t know where it fits! I was talking to my agent Elaine Markson back in 1998 about my novel Understanding Women. She kept saying that she thought it might be a YA book. I said that I thought that the fact that the boy who narrates the book launches into a long rhapsodic praise of cunnilingus would probably prevent that. Understanding Women was published as an adult book but Booklist ended its review with, “Teens will adore Jimbo’s awkward obsession with lust.”

Smith’s comment: “So who knows? Maybe Steplings also walks the line?”

CLIFF DIVE: Writing a short story, author Roxana Robinson wrote in an e-mail to The New York Times Book Review, is “incredibly exhilarating. It’s like doing a cliff dive, the kind that only works when the wave hits just right. You stand on top, poised and fearful, looking at what lies below: you must start your dive when the wave has withdrawn, and there’s nothing beneath but sand and stone. You take a deep breath and throw yourself over, hoping that, by the time you hit, the wave will be back, wild and churning, and full of boiling energy. It’s kind of terrifying. It’s unbelievable fun.”


Stead told The New York Times that he and Mrs. Stead thought up the project in 2006, when they were living in Brooklyn. They now live in Ann Arbor, Mich.

“We were a little concerned before the book came out that it was too quiet,” Stead said. “It is very simple. It has very muted colors. It’s a quiet story with a very simple story arc. In a weird way, maybe that was what made it stand out. Maybe people were ready for a story about kindness.”

GIFT: Eighty-five boxes of manuscript from a barn in Cornwall, the first part of a literary archive by John le Carre, has been given to the Bodleian library at Oxford.

Le Carre told The Guardian, “I am delighted to be able to do this. Oxford was [the fictional] Smiley’s spiritual home, as it is mine. And where I have the greatest respect for American universities, the Bodleian is where I shall most happily rest.”

Le Carre did not compose his prose on a computer, so these papers reveal how the author worked. A day’s writing in longhand was typed by his wife. Then tweaks, edits and rewrites were taped or stapled onto the original.


He began: “A moment of silence, please, for the lost art of shutting up. “There was a time when you had to earn the right to draft a memoir, by accomplishing something noteworthy or having an extremely unusual experience or being such a brilliant writer that you could turn relatively ordinary occurrences into a snapshot of a broader historical moment. Anyone who didn’t fit one of those categories was obliged to keep quiet. Unremarkable lives were unremarked upon, the way God intended.

“But then came our current age of oversharing, and all heck broke loose. These days, if you’re planning to browse the ‘memoir’ listings on Amazon, make sure you’re in a comfortable chair, because that search term produced about 40,000 hits or 60,000 or 100,000, depending on how you execute it.”

Three of the reviews that followed were negative. Genzlinger liked the fourth book because the author made herself “the least important character in it.”

MORE MEMOIR: No one explains it as well as Russell Baker in Inventing the Truth. Baker wrote: “Nobody understood better than [Mark] Twain that a memoir is not biography, but an art form.”

STILL MORE MEMOIR: Joyce Carol Oates, in The New York Review of Books, wrote: “Of literary genres none has so diversely and so wonderfully flourished in recent decades as the memoir . . . the highly individualized, often short, lyric memoir of crises, of which William Styron’s Darkness Visible (1990), Frank McCourt’s Angela’s Ashes (1996), and Joan Didion’s The Year of Magical Thinking (2005) are exemplary.”

MORE CRICHTON: A new novel, begun and outlined by the late Michael Crichton, has been written by a nonfiction author, Richard Preston. According to the Associated Press, Preston is best known for his book The Hot Zone, about the Ebola virus. Preston wrote in a press release, “Michael was writing at the top of his game, with a grand sense of adventure, into an eerie world that seems almost beyond imagination.”

Crichton’s Pirate Latitudes, a book the author finished before he died, was published in 2009.

GOOD OLD DAYS: In 1934, humor columnist Art Buchwald wrote, “There was a time, many years ago, when to be a writer all you had to do was write. Today if you want to be a writer you have to shoot a big-game animal. You’ve got to go to the
Dark Continent and prove you’re a lion among men, a killer of kudu, a butcher in the bush and a fearless fellow in the forest.”

THE VOICE: Flo Gibson, described as “the grande dame of audiobooks” by The New York Times, died in January. She recorded 1,134 titles. The former radio actress, who founded Audio Book Contractors in 1983, had a voice that was “deep and throaty, it evoked a firm but favorite schoolteacher and let her juggle men’s and women’s roles with ease.”

She loved Henry James but she often shook her fist and shouted at him, “Why don’t you punctuate? Why don’t you paragraph?” But she always forgave him and recorded much of his work.

At some point, James was no longer able to write and he began dictating his novels to a secretary. The result is prose that reads wonderfully well out loud. Just try a paragraph of Portrait of a Lady.

COMMENT: On a BBC program, The Guardian reported, novelist Martin Amis said, “People ask me if I ever thought about writing a children’s book. I say, ‘If I had a serious brain injury I might well write a children’s book,’ but otherwise the idea of being conscious of who you’re directing a story to is anathema to me, because, in my view, fiction is freedom and any restraints on that are intolerable.

“I would never write about someone that forced me to write at a lower register than I can.”

One indignant author of children’s books responded on the Web by calling Amis’s remarks “arrogant twaddle” with an “implicit insult to those who write children’s books.”

TIME TO TWEET? Judy Blume, author of Are You There God? It’s Me, Margaret and many other books for young adults, said in an e-mail interview (reported in The New York Times) that she finds Twitter time-consuming and distracting, “Some days I think, why am I doing this?”

But she likes it as a way to keep in touch with fans, take breaks from writing and keep up with people she admires, like the singer Roseanne Cash. “I’ve grown attached to some of the people I follow,” she said, “I think of them as friends.”

SOMETHING NEW? Has a new length been born—a piece of writing longer than a magazine article but shorter than a book?

The Atavist is a new digital publishing house that commissions and sells nonfiction articles written exclusively for distribution on smartphones, e-readers and tablet computers. The New York Times reported that “The Atavist is among the growing number of organizations that are cultivating a certain niche of writing—stories and articles that are longer than a typical magazine article but shorter than a novel—in the hope that they will find a comfortable home on the glassy screens of ever more prevalent mobile devices.”

Evan Ratliff, a cofounder of Atavist, explained, “Word counts are getting shorter in most magazines. On a mobile device we shouldn’t be bound by those constraints.” The problem lies elsewhere: “It’s the platform,” he says.

“Lifted,” a 12,000-word article about a $150 million Swedish bank robbery, costs a reader $3. It was written by Ratliff himself.

SHORT STUFF: Susan Orlean, author of The Orchid Thief and a book about Rin Tin Tin to be released later this year, has published an essay in e-book form with Amazon as one of its Kindle Singles, original long-form writing in both fiction and nonfiction. These run from 5,000 to 30,000 words and Animalish is priced at $1.99.

Orlean told The New York Times that she didn’t see the material as suitable for The New Yorker, where she has been a staff writer since 1992. On Twitter, Orlean has 137,000 followers. She and her husband and a collection of animals live in rural New York and she said, “If I lived in the city and went into an office and was around people all the time, and had that ongoing casual neighborhood relationship with people, would Twitter be as interesting? Maybe not as much.”

CLIMBING: Lisa Gardner’s Love You More was a hardcover bestseller in PW. In 2010, her The Neighbor won the International Thriller Writers’ best hardcover novel of the year award. Her previous 13 books have 16 million copies in print.

OBIT: In February, Margaret K. McElderry, editor and publisher, died in Manhattan at the age of 98. She was the first editor to have a children’s imprint named for her. The New York Times obit said, “Her faith in her taste was the cornerstone of her success. She trusted her first impressions of a work, saying the good ones almost compel readers to ask a single question: ‘What happens next?’”
DREAMERS: Tessa Hadley, a British novelist (The London Train) and short story writer (The New Yorker), told The Guardian, “We are all dreaming children as we read. And as we write.”

LAWSUIT: Kathryn Stockett, author of the best-selling novel The Help, was sued by a maid who believes she was portrayed as one of the characters. One of the main characters is Aibileen Clark. The maid, who worked for relatives of Stockett, is Ablene Cooper, 60.

“Ain’t too many Ablenes,” Cooper said in a Jackson, Miss., law office. The New York Times reported the lawsuit contends that Stockett was “asked not to use the name and likeness of Ablene” before the book was published, though it does not specify who asked. Cooper works for Stockett’s older brother, Robert, and sister-in-law, Carroll. Cooper said of them: “they told me to do what I got to do.”

HOW-TO: Elizabeth Royte is an environmental writer, author of Garbage Land and Bottlemania. She offered some advice in The New York Times Book Review: “Don’t wax abstract. Minimize interactions with policy wonks and lawyers. Try to put yourself in unusual places and situations. Ask dumb questions and hope that some readers may identify with your skepticism and confusion. Suspense is helpful; so are humor, dialog and visceral descriptions of skanky stuff.”

LOST AT SEA: Stephen King, quoted in The New York Times on the subject of books that are abandoned before completion: “Look, writing a novel is like paddling from Boston to London in a bathtub. Sometimes the damn tub sinks. It’s a wonder that most of them don’t.”

SATIRE: Carl Hiaasen’s 13th “comic thriller” gave The Guardian an excuse to publish an interview with the best-selling Florida author. His new novel is Star Island.

Hiaasen told The Guardian: “The hardest thing for me, for anybody who writes satire or any kind of contemporary fiction, is to invent a scenario that doesn’t eventually come true. Almost everything you write now, no matter how outrageous, comes true, and if you’re writing satire you don’t want to be behind the curve but ahead of it. Sarah Palin. You couldn’t have invented a plausible character in fiction as outrageous, unqualified and unintentionally comic as she is.”

BELLY ACHE: In The New York Times, Michael Chabon described how he felt when he was writing Fountain City, a novel he gave up on: “Often when I sat down to work, I would feel a cold hand take hold of something inside my belly and refuse to let go. It was the Hand of Dread. I ought to have heeded its grasp.”

He has now published the first four chapters of Fountain City in MsTweeney’s, the literary magazine.

VIDEO CHAT: The Wall Street Journal reported that Simon & Schuster has a new digital channel, “Ask the Author.” At YYou.com, S&S authors “engage in conversation with readers through videos posted in response to written questions.”

ABOUT NAMES: Ben Myers, author of Richard, a Novel, writes in The Guardian about the problem of selecting names for fictional characters. He said that “names are important. There’s a big difference between a Bruce and a Guido, a Penelope and a Latoyah. A name can set the tone.”

Myers cited Bret Easton Ellis characters—Clay, Rip, Spin—“one syllable names as slick and shallow as their lives.” But some fictional names take on a life outside the novel they inhabit: Atticus Finch, Holden Caulfield, Humbert Humbert.

Of his own trial while working on a novel, Meyers wrote, “‘Unnamed’ became so familiar to me, and the character so adrift in the world he inhabits, that that was the moniker I settled on (or rather he remained nameless as opposed to literally being called, say, Unnamed Johnson, which would just have been silly). Because characters don’t arrive fully formed in your head, they develop over time and after much thought; therefore it stands to reason that the name they may start life with will more than likely change as their personality develops on the page.”

Tao Lin, author of Shoplifting from American Apparel, said, “I chose names that would not cause the reader to feel like there was hidden meaning in them, or that the characters were symbolic or the story was an allegory.” But Lin called his recent novel Richard Yates and named the main characters after two more real people—himself and an ex-girlfriend.

ONLINE REVIEWER: Pamela Paul is children’s book editor at The New York Times Book Review. She is also doing an online-only review of a new picture book each week. It supplements the newspaper’s print coverage.

Paul said, “Children’s literature has entered what many believe to be a new golden age. One in which the artistry in picture books rivals the latest apps, even as the creativity of game designers influences illustration and pacing. Online is often the best place to showcase this work.”

CULT PLOT: Taylor Stevens’s The Informationist made the hardcover bestseller fiction list. The protagonist, Vanessa Munroe, has been compared to Stieg Larsson’s tattooed computer hack, Lisbeth Salander.
The plot involves a religious cult, but Stevens told The Fort Worth Star-Telegram, “I have no desire to make a political statement or to educate. It’s like, if you enjoy it, that’s awesome. That’s enough for me.”

THE END: The fictional Kurt Wallander, a sour Swedish cop, is working his last case in Henning Mankell’s 10th novel about him. Mankell has written 40 plays and nearly as many novels and books and for children. Thirty million copies of his books in 45 languages have been sold. The title of the new book is The Troubled Man.

Mankell, who lives in Antibes and is 63 years old, told The Guardian that he and his inspector “have certain things in common: we enjoy the same kind of music, we have a similarly conscientious approach to work. We wouldn’t be enemies if we knew each other, but he wouldn’t be a close friend. He’s not someone I’d invite to dinner.”

Mankell grew up in the remote Swedish village of Sveg, and his grandmother taught him to read and write. “I can still remember putting one word after another, for the first time, and making a sentence. And then another. And then making a story. I have never really thought of doing anything else. . . .”

“The powers of imagination are without limit, especially as a child.”

HAPPY ENDING: Tea Obreht is 25. She lived in Belgrade, then Cyprus and Cairo and went to English schools. She and her mother came to the U.S. in 1997 and she later got an M.F.A. from Cornell. Her first novel, The Tiger’s Wife, was the first book ever sold by her agent, Seth Fishman, 30, and the second book bought by her editor, Noah Baker, who was 26 when he acquired it for Random House.

Obreht told The New York Times, “We were all very new and we were excited to find each other.”

An excerpt from the book ran in The New Yorker, and it was reviewed on the cover of the Times Book Review. Critic Michiko Kakutani said it was “hugely ambitious, audaciously written.”

Obreht said, “When someone tells you a story, it’s a project. There’s a complex, deep undercurrent of vendettas and interesting narratives underlying even anything as simple as saying, ‘I went out to get milk.’”

Later in the interview, she said, “I sometimes think the writing process is a state of total denial about what you are doing or your motivations for doing it.”

About the book’s critical success, the author said, “I still haven’t taken it all in. It already seems like such a long time from the moment when I said to myself, ‘Somebody likes it, somebody bought it, and it’s going to have a cover!’”

IMAGINED SEX: Larissa Ione’s Eternal Rider is a mass paperback bestseller. She was asked on her website where she got the ideas for her sex scenes.

She replied, “Er, the same place Stephen King gets his ideas for horror scenes. My imagination, the news, movies, the real world around me. My sex scenes are no more a reflection of my life than are the bank robbing scenes in another author’s thriller.”

FAVORITES: Science fiction “is the #1 choice for young men,” said Connie Lefever of the Bay Books store in Coronado, Calif. The store is near several military bases.

PW explained, “Young men don’t change their reading habits when they join the military.”

Military women are fond of urban fantasy and paranormal romance.

REVIEWS COUNT: According to Jennifer Schuessler, who writes The New York Times Book Review’s column about bestsellers, “a researcher at Stanford Business School found that books by little-known authors got a sales bump of one-third after a review in The New York Times, regardless of whether the review was positive or negative. Established writers, by contrast, saw their sales drop 15 percent with bad reviews and soar 42 percent with favorable ones.”

WEBSITE HIT: Dr. Mike Moreno’s The 17-Day Diet started out self-published on the author’s website where it became an online hit. Then the Free Press took over, and it has had five printings of 312,000. TV promotion on Dr. Phil and other similar shows helped.

OH: Go the Fuck to Sleep is the title of a picture book by Adam Mansbach. It hit the top of Amazon’s bestseller chart a month before it was published in June. The Guardian described it as “cutesy rhymes with expletive-ridden pleas.”

The book is not intended for children, both author and publisher said. It’s for weary parents who struggle to get a child to fall asleep. Film rights have been optioned.

GOOD JOB: Harry Turtledove writes science fiction. Out in July was his The War That Came Early: The Big Switch.

Turtledove was asked by PW why he wrote. He replied that he couldn’t not do it. “Being able to do it well enough to make a living at it has its advantages. I set my own hours. I eat when I’m hungry and sleep when I’m sleepy. I work on projects that I want to work on when I want to work on them.

“If you’re lucky enough to be able to do it, writing beats the hell out of working for a living.”

NEW SENDAK: Maurice Sendak’s new book is due out in September. The title is Bumble-Ardy. The story is
about a pig, and Sendak, 82, who wrote the text and did the illustrations, was quoted in The Guardian saying that his pig was “funny, robust, sly, a sneak. He was all the things I like.”

NEXT? Is the paper flipback better than any of the new e-readers? A flipback is a bound book that fits in a pocket or in one hand. It’s the rage in Holland where it was introduced in 2009. It’s now available in France and Spain, and Great Britain got a dozen titles in June, including Stephen King’s Misery.

A book of nearly 370 pages became a flipback of more than 550 pages. But the paper is wafer-thin, The Guardian said, and unlike a paperback, it lies open because of a special spine. Best of all, it never needs to be recharged.

INFO: Geoffrey Nunberg, professor of linguistics at the University of California, Berkeley, told the editors of The New York Times Book Review: “Information is like taxis in New York: it seems to be all over the place, and then you can never find it when you need it. But the problem isn’t just the raw volume; we collapsed all these channels and categories that used to be distinct, so that nothing is where it’s supposed to be. It’s as if we’ve torn down the walls of the library, and now the reading room is full of street people.”

FIRE MAN: William Gurstelle, 55, of Minneapolis, turned a fascination with fire into a writing career. His first book was entitled Backyard Ballistics: Build Potato Canons, Paper Match Rockets, Cincinnati Fire Kits, Tennis Ball Mortars, and More Dynamite Devices. The book sold 300,000 copies.


CIA FICTION: Valerie Plame Wilson, a CIA agent who had her cover blown and career ended by political columnist Robert Novak, has signed a book deal to write a series of international suspense novels. A fictional spy agent, Vanessa Pearson, will star, and Wilson’s cowriter will be Sarah Lovett, a bestselling mystery author who also lives in Santa Fe. The New York Times said the novels will be vetted by the CIA.

Wilson’s memoir, Fair Game, along with her husband’s The Politics of Truth, were turned into a film with Naomi Watts and Sean Penn. Wilson’s husband is the former ambassador Joseph Wilson. Valerie Plame Wilson has been called Jane Bond.

STORIES vs. NOVELS: Beside the obvious—length—how are short stories and novels different? In an article in The Guardian, Nadine Gordimer is quoted: “I don’t think one should compare novels and stories. [The story] is a different thing.”

Deborah Eisenberg said that “the plot of a good story is likely to be a stranger, more volatile and more evanescent sort of thing than the plot of a novel.”

Vladimir Nabokov once said, “In relation to the typical novel, the short story represents a small Alpine, or Polar, form. It looks different but is . . . linked to it by intermediate climes.”

For Lorrie Moore, the short story is “a more magical form.”

J. G. Ballard sees short stories as “the loose change in the treasure of fiction, easily ignored beside the wealth of novels available, an over-valued currency that often turns out to be counterfeit.”

Richard Ford told The Paris Review: “Forms of literature don’t compete. They don’t have to compete. We can have it all.”

TEAMWORK: Daniel Abraham and Ty Franck wrote Leviathan Wakes, the first in a space opera series. They share a pseudonym: James S. A. Corey.

Asked by PW if working with another writer was a strain, Franck said, “We’re both pretty easygoing. I’d say the most important factor in doing this sort of project without conflict is making sure you have the same goal. We decided early on what kind of book we wanted, and whenever we hit a point where we disagreed, we just asked, ‘Which version is most like the book we originally intended to write?’”

OLD ADVICE: Back in 1898, The New York Times ran a series called “Author at Home.” No. 19 appeared on February 26 of that year and quoted William Dean Howells, author of The Rise of Silas Lapham. He said, “I don’t believe in inspiration nor do I wait for the mood. If we are writing as a business, we can’t afford to be idle while the mood delays its coming; and if we did wait, the mood might come at a time when we could not write. I find it a perfectly practicable thing to sit down at my desk and go to work as regularly as if I were in a mercantile or banking office. More, I think, can be accomplished this way than is possible by sporadic effort. I believe in the inspiration of hard work. If the thing is in you, you can work it out by patient and methodical application.”

A WAY OUT: Laura Hillenbrand wrote the best-selling Seabiscuit and Unbroken, both extensively researched nonfictions—the first about a horse and the second about Louis Zamperini, an Olympic athlete who became a war hero.

PW said that the author suffers from chronic fatigue syndrome. In a Washington Post interview, Hillenbrand explained, “I’m looking for a way out of here. I can’t have it physically, so I’m going to have it intel-
lectually. It was a beautiful thing to ride Seabiscuit in my imagination. And it’s just fantastic to be there alongside Louie as he’s breaking the NCAA mile record. People at these vigorous moments in their lives—it’s my way of living vicariously.”

ANTI E-BOOKS: Book Love, out in April, was co-edited by Bill Henderson. In a Soapbox essay for PW, Henderson complained about the negative impact of technology and what it will mean if e-books and other devices replace the paper book.

“What serious writer,” he asked, “would create exclusively for an e-reader? It’s like farting in the wind. Writers hope, mostly in vain, that their work will endure for a few years or even centuries, in handsome printed and bound volumes. Why bother at all if your words are to be digitized into instantly accessible and disposable battery-dependent gas?”

Henderson concluded his Soapbox essay with: “Books are our history and our future. If they survive, we will, too. Books, readers, writers—on this tripod we keep the faith.”

CRITIC: In a letter to a friend, Sigmund Freud wrote, “Whoever turns biographer commits himself to lies, to concealment, to hypocrisy, to embellishments, and even to dispelling his own lack of understanding. Biographical truth is not to be had, and, even if one had it, one could not use it.”

NEW IMPRINT: The Crown Publishing Group has formed Hogarth, a fiction imprint that focuses on “contemporary, voice-driven, character rich stories that entertain, inform, and move readers.” The plan is to publish eight or ten titles a year. An earlier Hogarth Press was founded by Leonard and Virginia Woolf in 1917. That press published the first UK edition of The Wasteland and was a pioneer publisher of psychoanalytic works. Originally a hand printing operation that the Woolfs ran themselves, Hogarth was taken over by Chatto & Windus in 1948.

BUSY MAN: Charles Ardai was described in an article in the Columbia College alumni magazine as an “author, publisher and Internet guru.”

He is reviving the pulp genre with Hard Case Crime, which publishes mystery novels ranging from memorable noir titles to new novels. He started the business in 2004.

Ardai has also published four novels of his own. Titles include Little Girl Lost and Songs of Innocence. Two other novels have been published under his pseudonym, Richard Aleas.

In the past six years, Hard Case Crime has averaged a release of one title every two weeks. Most are reprints, but the company takes on new manuscripts as well. They have published Stephen King and Lawrence Block. Block said, “Charles picks the books, selects and inspires the cover artists, puts the whole package together and generates brilliantly effective publicity for it all.”

Hard Case Crime has a co-founder, Max Phillips, and Ardai said, “We were both passionate about mystery novels, and we thought publishing would be an interesting challenge.”

RESEARCH: PW interviewed Sophie Littlefield on the publication of her third crime novel, A Bad Day for Scandal. The central character, Stella Hardesty, is a 50-year-old widow who runs a sewing shop and tracks down abusive spouses.

Asked where she got her eccentric supporting characters, Littlefield said, “I’m always on the lookout for strangers’ quirks and foibles. I’ve snapped surreptitious photos of strangers’ tattoos, noted waitress’s names, memorized whole dialogues between people who never even knew I was listening. When it comes time to create a new character, he or she just clammers out of this stew of stored details like Undine rising from the waters or like the Swamp Thing rising from the quagmire.”

For anyone who wants to see Littlefield herself in lots of photos, click on her blog.

HOW TO: Alain de Botton announced a series of new books that will provide “tips for 21st-century living.” The books will be written by lecturers at Botton’s School of Life center (a bookstore in London). The best-selling author (How Proust Can Change Your Life) explained to The Guardian, “We need self-help books more than ever before. In this age of moral and practical confusions, the self-help book is crying out to be redesigned and rehabilitated.”

The series will make its first appearance in Spring 2012 with How to Improve Your Self-Esteem by Cambridge philosopher Simon Blackborn. Other subjects listed: How to Worry Less About Money, How to Stay Sane and How to Find Fulfilling Work.

De Botton himself is working on How to Think About Sex.

SELF-SELLING: PW published an article entitled “Booksellers Reveal Secrets to Self-Published Success.” It begins, “If there ever was a stigma about selling self-published books, independent booksellers in the Midwest and Rocky Mountain states have long since gotten over it.”

It’s successful when the author is an active promoter.

Stanley West, who lived in Bozeman at the time, couldn’t find a publisher for his first novel, Blind Your Ponies, about a high school basketball team. So in 1997, he published it himself. He placed the book in every bookstore in Montana and then it was picked up by independents and chains. Last year Algonquin bought Blind Your Ponies after West, with a
little help from store salesmen, had sold 40,000 copies on his own.

GETTING HELP: Amanda Hocking, 26, of Minnesota, self-published nine books that sold more than a million copies, nearly all of them in e-book form, earning her almost $2 million for her work.

In March, she sold a four-book series in the YA paranormal genre to St. Martin’s Press. She told The New York Times, “I’ve done as much with self-publishing as any person can do. People have bad things to say about publishers, but I think they still have services, and I want to see what they are. And if they end up not being any good, I don’t have to keep using them. But I do think they have something to offer.”

Matthew Shear of St. Martin’s said that a publisher “has the marketers, we have the art directors, we have the publicists, we have the sales force. And they can go out and get Amanda’s books to a much, much bigger readership than she was able to get to before.”

Hocking said she made her decision after months of hearing from readers, annoyed that they couldn’t find her books in stores. She said she was tired of spending time formatting her books, designing covers and hiring freelance editors.

A couple of days after the article above appeared, the Times reported that Hocking had sold the film rights to her Trylle Trilogy book series. Media Rights Capital plans to make two movies from three Hocking novels: Switched, Torn and Ascend. The heroine, Wendy Everly, is a high school girl who realizes that she may not be human.

SHAKESPEARE’S WAY: In A Year in the Life of William Shakespeare, James Shapiro, a Columbia professor, wrote that what little we know about how Shakespeare felt about writing comes indirectly from his plays and poems.

For Shakespeare, writes Shapiro, the writing process “is not so much writing as intense revision. This fits what we know about how he tended to work, which was by reworking rather than inventing stories.”

The bard’s approach “includes a healthy share of blotting, a rush of thoughts trying to force their way through at once, and a ruthless insistence on getting it right.”

NO ARMOR: The late novelist Kurt Vonnegut said, “I have long felt that any reviewer who expresses rage and loathing for a novel is preposterous. He or she is like a person who has put on full armor and attacked a hot fudge sundae or banana split.”

OPENING GAMBITS: How important are first lines? In the Beginning: Great First Lines from Your Favorite Books, a collection by Hans Bauer, was published in 1991. Here are a few of the shortest opening sentences. Do any of them make you want to read on?

“And—and—what comes next?”
—Thomas Mann’s Buddenbrooks

“I am not mad, only old.”
—May Sarton’s As We Are Now

“Now what I want is facts.”
—Charles Dickens’s Hard Times

“That is New York.”
—Gore Vidal’s 1876

“All beginnings are hard.”
—Chaim Potok’s In the Beginning

“Nobody could sleep.”
—Norman Mailer’s The Naked and the Dead

“Who is John Galt?”
—Ayn Rand’s Atlas Shrugged

“He believed he was safe.”
—Toni Morrison’s Tar Baby

“They’re out there.”
—Ken Kesey’s One Flew Over the Cuckoo’s Nest

“Click.”
—Ivan Doig’s Ride With Me, Mariah Montana

“Maman died today.”
—Albert Camus’s The Stranger

“The book must be dropped.”
—Robertson Davies’s What’s Bred in the Bone

WHY DO IT: Kathleen Ossip’s new book is The Cold War. Earlier titles are The Search Engine and Cinephrastics.

In a PW essay, “Why I Write,” Ossip answered, “The floodgates open. Because it is never simple. . . . I write in order to feel like a semi-decent human being. It’s not socially or ethically acceptable for an adult to spend large chunks of time imagining, thinking, daydreaming, and staring into space, but that is probably my default mode. Writing is a way of incorporating those chunks of time into a useful, purposeful, productive activity.

“Why does anyone do anything? To have fun, to keep from being bored? The impulse tells me ‘whatsoever thy hand findeth to do, do it with all thy might.’ So I do.”

PLUGGED: Tina Fey, the TV comic, published a book of humor entitled Bossypants. Among the promotional blurbs on the jacket is one signed by Trees: “Totally worth it.”

FOR RELUCTANT READERS: Paul Langan, 39, of Voorhees, N.J, wrote nine of the Bluford books and edited the rest. The series is a hit, one 13-year-old explained, because the plots are about “teen pregnancy, drug dealing, death.”

The New York Times said the books were written at a level that struggling middle and high school students could read (fifth grade), about topics they want to read about, for a price they would pay—$1. “But many educators are of mixed minds: While they praise the
books as a gateway to literature, they have other reservations." The jacket photo on one book shows a boy with a silver pistol in his hands. While the books are about African-Americans and Hispanics, Langan is a white man.

Langan told The Times, "I'm not saying that I'm African-American. I'm definitely not. But the experiences that I've had have given me the ability to write stories that kids can relate to."

Townsend Press has sold or donated six million copies, and Scholastic says it has sold two million.

ON THE ROAD: Bill Steigerwald, a former Pittsburgh journalist, wrote in the magazine Reason that John Steinbeck's popular Travels with Charley (his poodle) was more fiction than an accurate account of a drive across America in a pickup truck. Although the back of the truck was equipped with a bed and camping equipment, the writer spent most nights in motels or luxury hotels. His wife Elaine was with him much of the time.

In 2010, Steigerwald tried to retrace Steinbeck's route. The New York Times said, "Discrepancies with the book's account immediately popped up." Steigerwald checked the first draft of Travels with Charley, now at the Morgan Library. Conversations with natives were apparently made up.

Jay Parini wrote a biography of Steinbeck in 1995 and the introduction to the Penguin edition of Travels with Charley. Parini told the Times, "Does it really matter that much? I have always assumed that to some degree it's a work of fiction. Steinbeck was a fiction writer, and here he's shaping events, massaging them."

RUMPUS: An inspirational bestseller, Three Cups of Tea, by Greg Mortenson was a topic on TV's 60 Minutes. Almost as good exposure as Oprah? Except the broadcast on CBS questioned the truth of some of the events described in the book. Three Cups of Tea has sold more than three million copies in paperback.

According to CNN, the TV report questioned a major account by the author about being lost in the Pakistani mountains, and said that some of the schools in Pakistan and Afghanistan that Mortenson's charity is said to have established either don't exist or were built by others. A statement from Mortenson said, "I stand by the information conveyed in my book."

The publisher, Penguin, said, "We rely on our authors to tell the truth and they are contractually obligated to do so."

William Zinsser, author of Writing About Your Life: A Journey into the Past, told The New York Times, "I don't think [publishers] care whether it's true or not. To me, the essence of memoir writing is absolute truth because I think everybody gains that way."


Lawrence Downes wrote: "To visit Apple's virtual bookstore is to enter a wonderland of unbound creativity and astonishment. The text is just the beginning, an anchor for pictures that glow and unfold, characters who talk and tumble, words that pronounce themselves and music that enlivens everything."

Then he asks, "But does digital interactivity engender mental passivity? As fingers flick and flit, making pixels work harder, what do brain cells do? What, I wonder, does interactivity do for the imagination, as reading a book gets closer and closer to watching television?"

Good questions? How do you feel about having your stories turned into television showbiz?

UNAUTHORIZED: Harper Lee, the 85-year-old author of To Kill a Mockingbird, issued a statement that said: "Contrary to recent news reports, I have not willingly participated in any book written or to be written by Marja Mills. Neither have I authorized such a book. Any claims otherwise are false."

Mills, a former Chicago Tribune reporter, said that her book, The Mockingbird Next Door: Life with Harper Lee, was a memoir "written with direct access to Harper, her sister Alice Lee and their friends and family." Alice Lee is 99 years old.

Mills's agent said that Mills "has the written support of Alice Lee and a lifelong family friend, and prior to Harper Lee's stroke in 2007, she had the verbal support of Harper Lee."

In the 108-page book proposal written by Mills, she recounts a time living next door to the Lee sisters. The New York Times did not mention a publication date.

DOG BOOK: Marvin Levin, 92, has been promoting his book, All I Know About Management I Learned From My Dog. Levin spent more than 60 years in the book business. He told PW, "Every publisher should write a book and try to promote it. They'll learn a lot."

Levin said he wouldn't do a book tour but "if Jon Stewart calls, I'll do the show."

WEB AIDE: Book Country is a website created for writers of genre fiction. Writers can post their own work on the site—an opening chapter or a full manuscript—and get critical comments from other users. To discourage plagiarism, the copy-paste and print mechanisms on the site have been disabled.

A project of Penguin Group USA, the company plans to generate income by letting users self-publish their books by paying for printed copies. The books will carry the stamp of Book Country.
The site is considered a separate operation from Penguin. Molly Barton is in charge. She told The New York Times, “One of the things I remember really clearly from my early editorial experiences was this feeling of guilt. I would read submissions and not be able to help the writer because we couldn’t find a place for them on the list that I was acquiring for, and I kept feeling that there was something we could do on the Internet to really help writers help each other.”

Penguin hopes the site will attract agents, editors and publishers scouting for new talent.

Other sites for writers include Ravelry, a site for knitters and crocheters that has more than 1.3 million registered users, Writers Café, Protagonize and Mibba. Bloom said Book Country planned to be comprehensive. “It’s connecting disparate pieces that writers had to go to three or four different sites to find.”

THE BIO: Judith Thurman is the author of biographies of Isak Dinesen and Colette. She wrote in The New Yorker: “It’s the drama of individualism which gives a biography its suspense, and cuts through the trivia of a life to its vital mystery.”

ONE BOOK: Brooklyn author Andrew Kessler, 32, opened a book store in Manhattan’s West Village and stocked it with about 3,000 copies of his book Martian Summer: Robot Arms, Cowboy Spacemen, and My 90 Days with the Phoenix Mars Mission. There are no other titles in the store.

PW called the book a “slightly offbeat firsthand account of scientific determination and stubborn intellect” that “delivers a fascinating journey of discovery peppered with humor.”

Kessler said he got the idea for his store from restaurants that specialize in one item. “I was thinking about people that just sell one thing really well.” At the end of April, Kessler told The New York Times that he thought he had sold about 200 copies, but “I have no idea. I’m not a very good business person.”

FAST: The gap between a newsworthy event and the publication of a book about it seems as if it’s about to vanish.

Less than a week after Osama bin Laden was killed on May 1, a publisher rushed into bookstores with Seal Team Six: Memoirs of an Elite Navy Seal Sniper by Howard E. Wasdin (the former Seal) and co-author Stephen Templin. The book had been scheduled for later in the month. It was an Amazon bestseller even before it was available.

Within a few days of the assassination, Random House had brought out an e-mail book collection of essays entitled Beyond Bin Laden: America and the Future of Terror.

NEW TITLES: Dan Wilbur, a comedian who lives in Brooklyn, has a blog that he claims renames books with titles that tell you what the book is about.

Roald Dahl’s James and the Giant Peach is “It’s Okay If Giant Fruit Kills Your Aunts As Long As They Were Bitches.”

The Great Gatsby becomes “Drink Responsibly.”

Howard Zinn’s A People’s History of the United States is re-titled “White People Ruin Everything.”

Plato’s Symposium is “Horny Drunk Guys Invent Philosophy.”

THEORY: Jo Nesbo, 51, is a Norwegian and author of The Snowman. He pronounces his name “Yoo Nez-baugh.” His books are bestsellers in his homeland, and his fictional detective hero is an alcoholic named Harry Hole. His American publisher hopes Nesbo will be the next Stieg Larsson.

Nesbo told The Washington Post, “Suspense is the same as humor, I think. You think that you laugh because you’re surprised, but really, the success is that it delivers the punch line a second before the reader reaches the same conclusion. Suspense does that, too.”

SPY MAN: David Ignatius, a columnist for The Washington Post, often shows up as a talking head on TV news shows. His Body of Lies and The Increment were bestsellers. His latest spy thriller, Bloodmoney, came out in June.

In a “Why I Write” essay in PW, Ignatius said, “I began writing fiction because it was the only way to tell all the intricacies of a real life spy story.”

“As so many writers know,” he added, “the experience of creating an imaginary world is closer to dreaming than it is to normal, grit-your-teeth work. It’s precocious, rather than conscious. Ideas fall into your head, and the book writes you, rather than the other way around.”

NEW BOOK SITE: Carolyn Reidy, chief executive of Simon & Schuster, said, “There’s a frustration with book consumers that there’s no one-stop shopping when it comes to information about books and authors.” So S&S, along with Penguin Group USA and Hachette, is creating Bookish.com on the Web “to provide information on all things literary”—what books to buy, reviews, excerpts from books, and news about authors. A late summer start-up was cited in a New York Times article.

Charlie Rogers, former editor in chief for digital media at NBC Universal, was named as editor in chief. There will be a staff of 20. They will select books from 14 or more participating publishers. There will be advertising and they will sell books.

END OF AN ERA: After 54 years at Random House, legendary editor Robert Loomis, 84, retired. Gina
WACKY IS BEST: Kevin Wilson is the author of The Family Fang, a novel. In a PW interview, he said that he sought the “strange and memorable” in his writing. He explained, “My teacher Pad-gette Powell talked about Don Bartheleme’s ‘wacky mode.’ I operate best in wacky modes. The hope is that the story will be strange enough to grab the reader’s interest, yet substantial enough to last beyond the strangeness. This feels like a genuine magic trick.”

On October 16, Baldacci will be part of a panel presented by the Mark Twain museum at Yale. Title: “Mark My Words: An evening with David Baldacci, John Grisham and Jodi Picoult.” Baldacci told PW that the trio would talk “about our writing and inspirations and of course the influence Mark Twain has had upon our work.”

ANTl-ROTH: In May, Philip Roth was awarded the Man Booker International Prize, an award given every two years to an author for extraordinary work in fiction. The winner gets about $97,000.

One of the judges, Carmen Callil, founder of the feminist publishing house Virago, resigned her post immediately and told The Guardian that Roth “goes on and on and on about the same subject in almost every book. I don’t rate him as a writer at all.”

One of Roth’s former editors, Wendy Strothman, wrote in a letter to the editor of the Times: “Mr. Roth has an uncanny ability to place his protagonists in the cross hairs of history to see what they will make of their fates. He is an original American writer and not the caricature that Ms. Callil portrays.”

LETTERS: Michael Dirda, on the staff of The Washington Post’s book pages, wrote about What There Is to Say We Have Said: The Correspondence of Eudora Welty and William Maxwell.

According to Dirda, “Most letters between writers are largely given over to envy, spite, wisecracks, discussions of money, the short-sightedness of award committees, soured love affairs and the innumerable horrors of the literary life.

“Instead, [these] two writers talk about family happiness and tragedy; they trade rose clippings and books, describe Christmas decorations. Throughout, they show to each other—and to seemingly everyone they meet—a gentle courtesy, a gen-

MESSAGE: A study of 6,000 children’s books, published between 1900 and 2000, found that males were the central characters in 57 percent of the books, while only 31 percent had female central characters. Male animals were main characters in 23 percent of the books and female animals starred in only 7.5 percent.

The study, conducted at Florida State University, suggested that dominant male characters and the gender disparity sent children the message that “women and girls occupy a less important role in society than men and boys.” The study was reported in The Guardian.

WACKY REPORTED: Business was what Wacky” in that he the cupy message gender percent. female characters were novel, by head. The business dren’s books, published tion than some editors, among the writers he edited: Maya Angelou, William Styron, Shelby Foote and Calvin Trillin.

Peter Matson, an agent, told The New York Times, “There will be no more Bob Loomises, at least not in the big companies. The publishing business has been turned on its head. The authority that people like Bob Loomis had has been captured by the marketing side of publishing.”

Loomis said, “I’ve been in this business for sixty years, and I want some time to myself.”

BIG HIT: Abraham Verghese’s first novel, Cutting for Stone, has more than a million copies in print in 25 languages. PW said a movie adaptation was in the works for 2013.
erosity of spirit, a love for people that is as strong as their love for literature.”

DEATHS

José Argüelles, 72, died March 23 in Australia. His home was in Ashland, Ore. Originally an art historian at Princeton and elsewhere, he was author of The Mayan Factor: Path Beyond Technology (1987) and Surfers of the Zuvuya: Tales of Interdimensional Travel (1988). A new book, Manifesto for the Noosphere: The Next Stage in the Evolution of Human Consciousness will be published later this year.


Lilian Jackson Braun, 97, died May 6 in Landrum S.C. She was the author of The Cat Who Could Read Backwards (1966) and 28 more “Cat Who” books, ending with The Cat Who Had 60 Whiskers (2007).

Harry Bernstein, 101, died May 3 in Brooklyn. He was the author of The Invisible Wall: A Love Story That Broke Barriers (2007), published when he was 96 years old.

David Broder, 81, died March 9 in Arlington, Va. The columnist for The Washington Post was the author or coauthor of seven books, including Behind the Front Page (1987).

E. M. Broner, 83, died June 21 in Manhattan. The Jewish feminist was coauthor of The Women’s Hagadah (1977) and author of novels including Her Mothers (1975), A Weave of Women (1978) and The Red Squad (2009).

Leonora Carrington, 94, died May 25 in Mexico City. The surrealist painter was also an author of novels and short stories. The House of Fear: Notes from Down Below and The Seventh Horse and Other Tales were published in 1988.

Warren Christopher, 85, died March 18 in Los Angeles. The former secretary of state in the Clinton administration was author of Chances of a Lifetime: A Memoir (2001).

Joel Colton, 92, died April 17 in Durham, N.C. He was coauthor of A History of the Modern World through nine editions. He also wrote Compulsory Labor Arbitration in France (1951), Leon Blum: Humanist in Politics (1966) and The Twentieth Century (1968).

Richard Cornuelle, 84, died April 26 in Manhattan. He was the author of Reclaiming the American Dream (1965), De-Managing America: The Final Revolution (1975) and Healing America (1983).


Johanna Fiedler, 65, died May 27 in Manhattan. She was the author of Arthur Fiedler: Papa, the Pops and Me (1994) and Molto Agitato: The Mayhem Behind the Music (2001).

Harold Garfinkel, 93, died April 21 in Los Angeles. Professor emeritus at the University of California at Los Angeles, Garfinkel was the author of Studies in Ethnomethodology (1967).


John Haines, 86, died March 2 in Fairbanks. He was the author of a dozen books of poetry, essays and autobiography. He was author of Winter News (1966) and The Stars, the Snow, the Fire (1989).

Miriam Hansen, 61, died February 5 in Chicago. A film scholar, she was the author of Babel and Babylon: Spectatorship in American Silent Film (1991).


Brian Jacques, 71, died February 5 in Liverpool. He was the author of Redwall (1986), which became the first book in a best-selling, 21-volume fantasy series for children.

Diana Wynne Jones, 76, died March 26 in Bristol, England. She was the author of more than 25 books including Charmed Life (1977), Witch Week (1982), Howl’s Moving Castle (1986) and The Merlin Conspiracy (2003).

David T. Kearns, 80, died February 24 in Vero Beach, Fla. He was the author of Winning the Brain Race: A Bold Plan to Make Our Schools Competitive (1988) and Prophets in the Dark: How Xerox Reinvented Itself and Beat Back the Japanese (1992).

H.R.F. Keating, 84, died on March 27 in London. He was the author of more than 40 books of crime fiction, including The Perfect Murder (1964), Inspector Ghote’s First Case (2008) and A Small Case for Inspector Ghote (2009).

Steven Kroll, 69, died in Manhattan on March 8. He was the author of 96 books. Titles include Is Milton Missing? (1975), The Biggest Pumpkin Ever (1984), Sweet America and When I Dream of Heaven (both 2000) and Jungle Bullies (2006).

Arnost Lustig, 84, died February 26 in Prague. He was the author of A Prayer for Katerina Horovitzova (1973). Other books were published in the U.S. under the title Children of the Holocaust (1995).


Perry Moore, 39, died February 17 in Manhattan. He was the author of a novel, Hero (2007), and a bestselling book about the making of a movie trilogy for which he served as executive producer: The Chronicles of Narnia: The Lion, the Witch and the Wardrobe: The Official Illustrated Movie Companion (2005).


Leo Rangell, 97, died May 28 in Los Angeles. The psychoanalyst was author of The Mind of Watergate: An Exploration of the Compromise of Integrity (1980), The Human Core (1989) and The Road to Unity in Psychoanalytic Theory (2006).

Nicholas V. Riasanovsky, 87, died May 14 in Oakland, Calif. The college professor was the author of A History of Russia (1963), which is still in print.

Abraham Rothberg, 89, died March 28 in Rochester, N.Y. He was the author of The Other Man’s Shoes (1968), The Sword of the Golem (1970) and The Stalking Horse (1972), as well as five nonfiction books.


Sara Ruddick, 76, died March 20 in Manhattan. She was the author of Maternal Thinking: Toward a Politics of Peace (1989) and co-editor of Mother Troubles: Rethinking Contemporary Maternal Dilemmas (1999).

Joanna Russ, 74, died April 29 in Tucson. She was author of The Female Man (1975), We Who Are About To . . . (1977), Souls (1983), How to Suppress Women’s Writing (1983) and Magic Nurses, Trombiling Sisters, Puritans & Perverts (1985).


Leo Steinberg, 90, died March 13 in Manhattan. The art historian was author of Other Criteria: Confrontations with Twentieth-Century Art (1972) and The Sexuality of Christ in Renaissance Art and in Modern Oblivion (1983).

William J. Stuntz, 52, died March 15 in Belmont, Mass. The legal scholar was the author of Fighting Crime: Race, Crime, and Democracy in America, which will be published this fall.

Kate Swift, 87, died May 7 in Middletown, Conn. She was the coauthor, with Casey Miller, of several books about the sexual discrimination embedded in English usage, including Words and Women (1976) and The Handbook of Non-sexist Writing (1981/2001).

Dick Wimmer, 74, died May 18 in Agoura Hills, Calif. He was the author of Irish Wine (1989), which was rejected 162 times before publication. His Irish Wine Trilogy was published in 2001.

Kathryn T. Windham, 93, died June 12 in Selma, Ala. She was the author of Alabama: One Big Front Porch (1975) and 15 other books including: 13 Alabama Ghosts and Jeffrey (1969) and Spit, Scary Ann & Sweat Bees (2009).


BOOKS BY MEMBERS

Alma Flor Ada and Gabriel Zubizarreta: Dancing Home; David A. Adler (and Edward Miller, illus.): Mystery Math: A First Book of Algebra; Karl Alexander: Time-Crossed Lovers; Rudolfo Anaya: Randy Lopez Goes Home; George Ancona: Come and Eat!; Philip Appleman: Perfidious Proverbs and Other Poems: A Satirical Look at the Bible; Sarah Aronson: Beyond Lucky; Artist Arthur: Mayhem; Linda Ashman (and Kristin Sorra, illus.): No Dogs Allowed; Avi (and Greg Ruth, illus.): City of Orphans; Kate Banks (and Gabi Swiatkowska, illus.): This Baby; Russell Banks: Lost Memory of Skin; Ellen Bari (and Raquel Garcia Maciá, illus.): Jumping Jenny; Lee H. Barnes: When We Walked Above the Clouds: A Memoir of Vietnam; Bonny Becker (and Kady MacDonald
Denton, illus.): The Sniffles for Bear; Beverly Behan: Great Companies Deserve Great Boards: A CEO’s Guide to the Boardroom; Helen Benedict: Sand Queen; Marianne Berkes (and Cathy Morrison, illus.): Animalogy: Animal Analogies; Marianne Berkes (and Jill Dubin, illus.): Over in Australia: Amazing Animals Down Under; Matt Blackstone: A Scary Scene in a Scary Movie; Annette Blaugrund: Dispensing Beauty in New York & Beyond: The Triumphs and Tragedies of Harriet Hubbard Ayer; Roy Blount Jr.: Alphabetter Juice: Or, the Joy of Text; Karen Blumenthal: Bootleg: Murder, Moonshine, and the Lawless Years of Prohibition; Mr. Sam: How Sam Walton Built Wal-Mart and Became America’s Richest Man; Caroline Bock: Lie; Janice L. Booker: Across the Alley Next Door to the Pool Room; Lisa Bork: In Sickness and in Death: A Broken Vows Mystery; Fred Bowen: Quarterback Season: A Fred Bowen Sports Story; Sandra Boynton: Happy Hippo, Angry Duck: A Book of Moods; Moo, Baa, La La La!; Kimberly Brubaker Bradley: Jefferson’s Sons; David Prager Branner (and Li Feng): Writing and Literacy in Early China; Walter M. Brash: Before the First Snow: Stories from the Revolution; Elise Broach: Missing on Superstition Mountain; John Brockman (Ed.): Culture: Leading Scientists Explore Civilizations, Art, Networks, Reputation, and the Online Revolution; Sam Brower: Prophets’ Prey: My Seven-Year Investigation into Warren Jeffs and the Fundamentalist Church of Latter-Day Saints; Peter Brown: You Will Be My Friend!; Sandra Brown: Lethal; Joseph Bruchac: Dragon Castle; Jan Burke: Disturbance; Elizabeth Kane Buzzelli: Dead Dogs and Englishmen; Rebecca Cantrell: A Game of Lies; Emily Card (and Orson Scott Card; Honocel A. Ibdarola, illus.): Laddertop; Talia Carner: Jerusalem Maiden; Lorene Cary: If Sons, Then Heirs; Jennifer Castle: The Beginning of After; Megan Chance: City of Ash: Phyllis Chesler: Mothers on Trial: The Battle for Children and Custody; Eileen Christlow: Five Little Monkeys Reading in Bed; Carmela Ciuraru: Nom de Plum: A (Secret) History of Pseudonyms; Andrew Clements (and Mark Elliott, illus.): Trouble-Maker; Penny Coleman: Elizabeth Cady Stanton and Susan B. Anthony: A Friendship That Changed the World; Julie Crabtree: The Crepe Makers’ Bond; Nina Crews: Jack and the Beanstalk; Bill Crider: The Wild Hog Murders; Steve Cushman: Heart with Joy; Julie Danneberg (and Judy Love, illus.): The Big Test; Melissa de la Cruz: Witches of East End; Valerie DeLaune: Pain Relief with Trigger Point Self-Help; Trigger Point Therapy for Foot, Ankle, Knee & Leg Pain; Corinne Demas (and John Manders, illus.): Pirates Go to School; Athol Dickson: The Opposite of Art; Bill Doyle (and David Borgenicht and David Morton; Yancey Labat, illus.): Everest: You Decide How to Survive!; Julie Drew: Daughter of Providence; Pete Dunne: Arctic Autumn: A Journey to Season’s Edge; Elisabeth Eaves: Wanderlust: A Love Affair with Five Continents; Clyde Edgerton: The Night Train; Anne Edwards: Leaving Home; Scarlett and Me; Dave Eggers: When Marlama Pulled a Thread; Kathryn Erskine: The Absolute Value of Mike; Ellen Feldman: Next to Love; Brian Floca (illus., and Kate Messner): Marty McGuire; Paula Fox: News from the World; Betsy Franco (and Doug Cushman, illus.): Double Play: Monkeys Around with Addition; Jack Gantos: Dead End in Norvelt; Michael Genelin: Requiem for a Gypsy; Kathleen George: Hideout; Lindsay Barrett George: That Pup!; Tess Gerritsen: The Silent Girl; David Gessner: My Green Manifesto: Down the Charles River in Pursuit of a New Environmentalism; Nassir Ghaemi: A First-Rate Madness: Uncovering the Links Between Leadership and Mental Illness; Brent Ghelfi: The Burning Lake; Patricia Reilly Giff (and Alasdaire Bright, illus.): Star Time; Keli Goff: The GQ Candidate; Chris Grabenstein: The Black Heart Crypt; Lucia Greenhouse: Fathermothergod: My Journey Out of Christian Science; Barbara Gregorich: Sound Proof; Lois V. Harris: Maxfield Parrish: Painter of Magical Make-Believe; Robbie H. Harris (and Nadine Bernard Westcott, illus.): Who Has What?: All About Girls’ and Boys’ Bodies; John Hassett (and Ann Hassett): Too Many Frogs!; Dorothy Hearst: Secrets of the Wolves; Erica Heller: Yossarian Slept Here: When Joseph Heller Was Dad, the Author Was Home, and Life Was a Catch-22; Wendy Henrichs (and Yoshiko Jaeggi, illus.): I am Tama, Lucky Cat: A Japanese Legend; Martha Whitmore Hickman: Burden and Gift; Oscar Hijuelos: Thoughts Without Cigarettes: A Memoir; Nancy Holder (and Debbie Viguie): Damned; Cathy Holton: Summer in the South; Alan Hruska: Wrong Man Running; Edward Ifkovic: Escape Artist; Donna M. Jackson: The Elephant Scientist; What’s So Funny? Making Sense of Humor; Maggie Jameson: Eternity; Expansible: Marthe Jocelyn (and Nell Jocelyn, illus.): Ones and Twos; Marthe Jocelyn: Scribbling Women: True Tales from Astonishing Lives; Angela Johnson (and Scott M. Fischer, illus.): Lottie Paris Lives Here; Merry Jones: Summer Session; Traci L. Jones: Silhouetted by the Blue; Erica Jong (Ed.): Sugar in My Bowl: Real Women Write About Real Sex; Susan Kelley: IOPRAHED: and Other Adventures of a Woman of a Certain Age; Eric A. Kimmel (and Martina Peluso, illus.): Joseph and the Sabbath Fish; Karen Koen: Before Versailles: A Novel of Louis XIV; Maxine Kumin (and Barry Moser, illus.): Oh, Harry!; Michael Kurland: Ten Little Wizards; Jim Lehrer: Tension City: Inside the Presidential Debates, from Kennedy-Nixon to McCain-Obama; Ellen Levine: In Trouble; Laura Levine: Pampered to Death; Alexander Maksik: You Deserve Nothing; Peter Manso: Reasonable Doubt: The Fashion Writer, Cape Cod, and the Trial of Chris McCouen; Leslie Margolis: Everybody Bugs Out; Ann M. Martin: Rules for Living with My Sister; Jean Marzollo (and Chad Phillips, illus.): Help Me Learn Numbers 0–20; Wendy Mass: 13 Gifts; Gordon McAlpine (and Shawn Green): The Way of Baseball: Finding Stillness at 95 MPH; Anne McCaffrey (and Todd McCaf
frey): Dragon’s Time; Patrick McGilligan: Nicholas Ray: The Glorious Failure of an American Director; Cameron McWhirter: Red Summer: The Summer of 1919 and the Awakening of Black America; Rae Meadows: Mothers & Daughters; Meg Medina (and Claudio Muñoz, illus.): Tía Isa Wants a Car; Deena Metzger: La Negra y Blanca; Richard Michelson (and Zachary Pullen, illus.): Lipman Pike: America’s First Home Run King; David Milgrim: Eddie Gets Ready for School; Jacquelyn Mitchard: Second Nature; Craig Moodie: Into thetrap; Margot Morrell: Reagan’s Journey: Lessons from a Remarkable Career; Elizabeth Mosier: The Playgroup; Marissa Moss: The Name Game.

Donna Jo Napoli (and Jim Madsen, illus.): The Crossing; Ann Napolitano: A Good Hard Look; Phyllis Reynolds Naylor: Incredibly Alice; Mette Norgaard (and Lori R. Conant): Touchpoints: Creating Powerful Leadership Connections in the Smallest of Moments;

Eric Olsen and Glenn Schaeffer: We Wanted to Be Writers: Love, Life, and Literature at the Iowa Writers’ Workshop; James O’Shea: The Deal from Hell: How Moguls and Wall Street Plundered Great American Newspapers;

Alison Pace: A Pug’s Tale; Richard Panchyk: Charting the World: Geography and Maps from Cave Paintings to GPS; Herman Parish (and Lynne Aprill, illus.): Amelia Bedelia’s First Field Trip; Katherine Paterson (and John Paterson) (and John Rocco, illus.): The Flint Heart; Katherine Paterson (and Pamela Dalton, illus.): Brother Sun, Sister Moon: Saint Francis of Assisi’s Canticle of the Creatures; Susan Patron (and Erin McGuire, illus.): Lucky for Good; Darcy Pattison (and Kathleen Rietz, illus.): Prairie Storms; Julie Ann Peters: She Loves You, She Loves You Not . . . ; Nathaniel Philbrick: Why Read Moby-Dick?; Christopher Phillips: Constitution Café: Jefferson’s Brew for a True Revolution; Ann Pietrangelo: No More Sex: Living, Laughing & Loving Despite Multiple Sclerosis; Jena Pincott: Do Chocolate Lovers Have Sweeter Babies?: Exploring the Surprising Science of Pregnancy; Amy Plum: Die for Me; Alex Prud’hon: The Ripple Effect: The Fate of Fresh Water in the Twenty-First Century; Lisa Pulitzer (and Cole Thompson): Portrait of a Monster: Joran van der Sloot, a Murder in Peru, and the Natalie Holloway Mystery; Maureen Putnam: The Name of the Star;


Esmeralda Santiago: Conquistadora; Sapphire: The Kid; Sam Savage: Glass: John Sayles: A Moment in the Sun; Leda Schubert (and Amanda Haley, illus.): Reading to Peanut; Elizabeth Scott: Between Here and Forever; Alex Shakar: Luminarium; Kathleen Sharp: Blood Feud: The Man Who Blew the Whistle on One of the Deadliest Prescription Drugs Ever; Vicky Alvear Shecter: Cleopatra’s Moon; Edith Sheffer: Burned Bridge: How East and West Germans Made the Iron Curtain; Anne Rivers Siddons: Burnt Mountain; Judy Sierra (and Linda Davick, illus.): We Love Our School!: A Read-Together Rebus Story; Judy Sierra (and Marc Brown, illus.): Wild About Books; Zoological; Lorena Siminovich: I Like Vegetables; Lesley Simpson (and Janice Lee Porter, illus.): Yuvi’s Candy Tree; Marilyn Singer (and Julia Cairns, illus.): A Full Moon Is Rising; Mike Slosberg: Seven Stories to Read Before They Become Movies; Jane Smiley: True Blue; April Smith: White Shotgun; C. W. Smith: Stepplings; Marion Roach Smith: The Memoir Project: A Thoroughly Non-Standardized Text for Writing & Life; R. L. Stine: It’s the First Day of School . . . Forever!; John Janis Strauch: Tides: J. Courtney Sullivan: Maine; Nova Ren Suma: Imaginary Girls;

Sonia Taitz: In the King’s Arms; Marcia Talley: A Quiet Death; Linda Tancs: The Best Words Ever; Arlana Tiben-Sky: And Then Things Fall Apart; Myron Uhlberg (and Colin Bootman, illus.): A Storm Called Katrina; Linda Urban: Hound Dog True;


Xu Xi: Access: Thirteen Tales; Gabrielle Zevin: All These Things I’ve Done.
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Awards and Fellowships
The English Department at George Washington University is accepting applications for the 2012–2013 Jenny McKeen/Moore Visiting Writer position. The 2012–2013 position is open to poets only. The visiting poet will teach one course at the university and one workshop, open to the community, and will receive a stipend of roughly $58,000 as well as benefits. Deadline: **November 1, 2011.** Call (202) 994-6180 or visit gwu.edu/~english/creative_jennymcmeanmoore.html for more information. Contact: Department of English, The George Washington University, 801 22nd Street, NW, Suite 760, Washington, DC 20052.

The Lewis Center for the Arts at Princeton University sponsors the Hodder Fellowship for writers of exceptional promise who have not yet received widespread recognition. Fellows are typically poets, playwrights, novelists, creative nonfiction writers, and translators who have published one highly acclaimed book and are undertaking significant new work that might not be possible without the time afforded by the fellowship. The stipend for 2011–2012 was $63,900. Deadline for 2012–2013 period: **November 1, 2011.** Visit princeton.edu/arts/lewis_center/society_of_fellows for application instructions. Contact: Joseph Henry House, Princeton University, Princeton, NJ 08544.

The Creative Writing Program at Stanford University offers the Wallace Stegner Fellowships in fiction and poetry. Recipients take part in a full-time, two-year, non-degree granting program, receiving a $26,000 stipend each year, as well as tuition and health insurance. Application fee: $60. Application timeline: September 1–December 1, 2011. Visit stanford.edu/group/creativewriting/stegner.html for full details and guidelines, and to download the application form or apply online. Contact: Admissions Coordinator, Creative Writing Program, Stanford University, 450 Serra Mall, Building 460, Stanford, CA 94050-2087.

Multiple Genres

*Inkwelld*, the journal of Manhattanville College, is holding its annual short fiction contest and poetry contest. Winners will receive publication and cash prizes of $1,500 (short fiction) and $1,000 (poetry). Entry fee: $15 per story; $10 for the first poem and $5 for each additional poem. Submission timeline: August 1–October 30, 2011. Visit inkwelljournal.org/competitions.html for full submission guidelines, or write to inkwell@mvill.edu. Contact: *Inkwelld*, Manhattanville College, 2900 Purchase Street, Purchase, NY 10577.

Reed Magazine offers two annual prizes, the John Steinbeck Award for fiction, sponsored by the Center for Steinbeck Studies at San Jose State University and the National Steinbeck Center, and the Edwin Markham Prize for Poetry, sponsored with San Jose State University. Entry fee: $14 per story; $10 for three–five poems. Deadline: **November 1, 2011.** Visit reedmag.com to access the online submission system and read the full guidelines, or e-mail reed@email.sjsu.edu. Contact: *Reed Magazine*, SJSU English Department, One Washington Square, San Jose, CA 95192-0090.

The Pushcart Prize—Best of the Small Presses series has been published every year since 1976. Nominations for the Pushcart Prize may be submitted by magazine or small book press editors by **December 1, 2011.** Eligible work includes, but is not limited to, poetry, short fiction, and nonfiction essays. Visit pushcartprize.com or call (631) 324-9300 for more information. Pushcart Press, PO Box 380, Wainscott, NY 11975.

Submissions will be accepted for the 24th annual Lambda Literary Awards October 1–December 15, 2011, for books published in 2011. The awards are based principally on the LGBT content, the sexual orientation of the author, and the literary merit of the work. A book can be submitted by its author or by its publisher. Entry fee: $35. Visit lambdaliterary.org/awards/awards-guidelines for details or e-mail awards@lambdaliterary.org. Contact: Lambda Submissions, Lambda Literary Foundation, 5482 Wilshire Blvd, #1595, Los Angeles, CA 90036.

The Westfield Atheneum Library in Massachusetts sponsors the Carol Otis Hurst Children’s Book Prize honoring outstanding works of fiction and nonfiction, including biography and memoir, written for children and young adults, that exemplify the highest standards of research, analysis and authorship in their portrayal of the New England experience. The winner receives $500 and travel expenses to participate in a public presentation of the prize and reading and/or talk. Deadline: **December 21, 2011.** Visit westath.org/about/CarolHurst_Award.htm, or call (413) 568-7833, for submission guidelines, restrictions, downloadable entry forms, and an in-depth description of the theme, The New England Experience. Contact: Carol Otis Hurst Children’s Book Prize, Westfield Atheneum, 6 Elm Street, Westfield, MA 01085.
Every year, the Texas Institute of Letters (TIL) presents awards in several categories at its spring banquet in Dallas, with prizes totaling more than $22,000. Visit texasinstituteofletters.org/award for a description of each award. Entrants must have been born in Texas or have lived in Texas for at least two consecutive years at some time. A work whose subject matter substantially concerns Texas is also eligible. Deadline: January 6, 2012. Visit texasinstituteofletters.org for contest guidelines. Contact: tilsecretary@yahoo.com. TIL is also the cosponsor, with the University of Texas at Austin, of the Dobie Paisano Fellowship Program, which offers housing and a stipend. Visit utexas.edu/ogs/Paisano for details.

Fiction Contests

*Phoebe*, a journal of literature and art, sponsors an annual Winter Fiction Contest, awarding $1,000 and publication in the journal to a short story of up to 7,500 words. Entry fee: $15. Deadline: December 1, 2011. Visit phoebejournal.com for more details. Contact: Phoebe Winter Fiction Contest, *Phoebe*, MSN 2D6, George Mason University, 4400 University Drive, Fairfax, VA 22030.

The Tennessee Williams/New Orleans Literary Festival is holding its annual Fiction Writing Contest. The grand prize includes $1,500, publication in the *New Orleans Review*, airfare, accommodations, and a VIP All Access Festival Pass to the festival (March 21–25, 2012 in New Orleans), and a reading at the festival. The contest is open to writers who have not yet published a book of fiction. Entry fee: $25. Deadline: November 15, 2011. Visit tennesseewilliams.net for submission guidelines and to enter online (and for information about the One-Act Play Contest, deadline November 1), or e-mail info@tennesseewilliams.net. Contact: Fiction Contest, Tennessee Williams/New Orleans Literary Festival, 938 Lafayette Street, Suite 514, New Orleans, LA 70113.

*The Baltimore Review* is holding its annual Short Fiction Competition, awarding $500 and publication to the first-place winner. Second and third place receive $250 and $100, respectively. Entry fee: $20 ($25 to receive a one-year subscription to the journal). Submission timeline: August 1–December 1, 2011. Visit baltimore review.org for full guidelines. Contact: *The Baltimore Review* Short Fiction Competition, PO Box 36418, Towson, MD 21286.

The Ruth Hindman Foundation and the University of Alabama in Huntsville English Department sponsor the annual H. E. Francis Contest for short fiction. The winner receives $1,000. Entry fee: $15. Deadline: December 31, 2011. Visit uah.edu/english/hefrancis contest for submission guidelines. Contact: Department of English, Morton Hall 222, H. E. Francis Contest, University of Alabama in Huntsville, Huntsville, AL 35899.

The Civil War Institute at Gettysburg College offers the Michael Shaara Award for Excellence in Civil War Fiction, awarding $5,000 to a novel about the Civil War published in the current calendar year. Deadline: December 31, 2011. Visit gettysburg.edu/civilwar/prizes_and_scholarships/michael_shaara_prize/about_themichaelshaara_prize.dot for submission guidelines or contact Diane Brennan, Administrative Assistant, at (717) 337-6590 or civilwar@gettysburg.edu. Contact: The Michael Shaara Book Prize, Civil War Institute at Gettysburg College, 300 N. Washington Street, Campus Box 435, Gettysburg, PA 17325.

Nonfiction Contests

The Bancroft Prizes are awarded annually by Columbia University to the authors of distinguished works in either or both of the following categories: American History (including biography) and Diplomacy. The prize carries a $10,000 stipend. The awards in 2012 are for books published in 2011. Deadline: November 1, 2011. Visit library.columbia.edu/eguides/amerihist/bancroft.html for an expansion of the above themes, as well as submission guidelines and instructions for books due for publication after November 1. Contact: Bancroft Prize Committee, Columbia University, c/o The Office of the University Librarian, 517 Butler Library, Mail Code 1101, 535 West 114th Street, New York, NY 10027.

The Lincoln Prize, sponsored by Gettysburg College and the Gilder Lehrman Institute of American History in New York, honors the finest scholarly work in English on Abraham Lincoln, or the American Civil War soldier, or a subject relating to their era. The prize includes a $50,000 cash award and generally is given to a book. Deadline: November 1, 2011. Visit gettysburg.edu/civilwar/prizes_and_scholarships/lincoln_prize for a detailed outline of eligible books, as well as submission guidelines, or call (717) 337-8255/e-mail lincolnprize@gettysburg.edu. Contact: The Lincoln Prize, 300 N. Washington Street, Campus Box 435, Gettysburg, PA 17325.

Poetry and Drama Contests

Truman State University Press in Missouri holds the annual T. S. Eliot Prize for Poetry, awarding $2,000 and publication under a standard contract to the winning manuscript. Entry fee: $25. Deadline: October 31, 2011.
Visit tsup.truman.edu/TSEliotPrize/guidelines.asp for full submission guidelines. Contact: T. S. Eliot Prize for Poetry, Truman State University Press, 100 East Normal Avenue, Kirksville MO 63501-4221.

Smartish Pace will offer its annual Beullah Rose Poetry Prize for exceptional poetry by women. The winner will receive $200 and publication in Smartish Pace; the finalists will also receive publication. Entry fee: $5. Deadline: November 1, 2011. Visit smartishpace.com/contests/beullah_rose for full submission guidelines, or write to cbanks@smartishpace.com. Contact: Clare Banks, Smartish Pace, Beullah Rose Poetry Prize, PO Box 22161, Baltimore, MD 21203.

Every year Bear Star Press awards the Dorothy Brunsman Poetry Prize to a writer living west of the central time zone, along with $1,000 and publication of the winning manuscript. Entry fee: $20. Deadline: November 30, 2011. Visit bearstarpress.com/submissions.htm for full guidelines and to submit online. Contact: Bear Star Press, 185 Hollow Oak Drive, Cohasset, CA 95973.


Fence Books sponsors the annual Motherwell Prize for a first or second full-length collection of poems by a woman writing in English. The winner receives $5,000 and publication. Entry fee: $25. Submission timeline: November 1–November 30, 2011. Visit fence.fenceportal.org/contest/guidelines.html for guidelines and entry forms. (This link also leads to information about the Fence Modern Poets Series, a contest awarding $1,000 and publication to a poet writing in English at any state in his or her career, which has a February deadline.) Contact: Motherwell Prize, Fence Books, Science Library 320, University of Albany, 1400 Washington Avenue, Albany, NY 12222.

Five Points, a journal of literature and art, sponsors the James Dickey Prize for Poetry, awarding $1,000 and publication in the journal to the winning set of poems. Entry fee: $20 for up to three poems (includes a one-year subscription). Deadline: December 1, 2011. Visit fivepoints.gsu.edu for full submission guidelines. Contact: Five Points, James Dickey Prize for Poetry, Georgia State University, PO Box 3999, Atlanta, GA 30302-3999.

Chelsea, an independent literary magazine, will offer its annual poetry competition, awarding $1,000 and publication to the winning entry. Entry fee: $15. Deadline: December 15, 2011. Visit chelsea.mag.org for detailed submission deadlines; no queries will be accepted by phone, fax or e-mail. Contact: Chelsea Awards Competition, PO Box 773, Cooper Station, New York, NY 10276-0773.


**MEMBERS MAKE NEWS**

The James Beard Foundation’s 2011 Book, Broadcast & Journalism Awards were presented at a ceremony on May 9, at Lincoln Center in New York. On Food and Cooking: The Science & Lore of the Kitchen, by Harold McGee, was inducted into the Cookbook Hall of Fame. The Very Best Recipes for Health: 250 Recipes and More from the Popular Feature on NYTimes.com, by Martha Rose Shulman, was a finalist in the Healthy Focus category, and Good Meat: The Complete Guide to Sourcing and Cooking Sustainable Meat, by Deborah Krasner, was a finalist in the Single Subject category.

The Eric Hoffer Awards for short prose and books honor the memory of philosopher Eric Hoffer by high-lighting notable writing and honoring the independent spirit of small publishers. The winning stories and essays are published in an annual anthology. The 2011 winners included: Diana M. Raab, Writers and Their Notebooks, Academic Press category; and Richard Jackson, Resonance: Poetry. The First Runners-up included Jean Naggar, Sipping from the Nile, Memoir; and Vicky Oliver, 301 Smart Answers to Tough Business Etiquette Questions, Business. Honorable mentions were given to Matthew Tully, The Chimera Seed, Commercial Fiction; M. M. Cornell, Reticence of Ravens, Commercial Fiction; Jan Donley, The Side Door, Young Adult; and Catherine Wanek, The Hybrid House, Home.
The 23rd annual Lambda Literary Awards were presented at a reception on May 26 in New York. Winners included *Gender Outlaws: The Next Generation*, co-edited by Kate Bornstein (and S. Bear Bergman), and *Secret Historian: The Life and Times of Samuel Steward, Professor, Tattoo Artist and Sexual Renegade*, by Justin Spring. The books also received acknowledgment at the Publishing Triangle Awards, presented on April 28 in New York. *Gender Outlaws* received a Special Award in Nonfiction and *Secret Historian* received the Randy Shilts Award for Gay Nonfiction. *The Sensual World Re-Emerges*, by Eleanor Lerman, was a finalist for the Audre Lorde Award for Lesbian Poetry. The finalists for the Ferro-Grumley Award for LGBT Fiction included *Big Bang Symphony*, by Lucy Jane Bledsoe, and *The Silver Hearted*, by David McConnell.

The Texas Institute of Letters presented several awards at a banquet in Dallas on April 30. C. W. Smith received the Lon Tinkle Award for sustained excellence in a literary career, as well as the Kay Cattarulla Award for Best Short Story for “Caustic,” originally published in *Southwest Review* in 2010. Dotti Enderle received the Austin Public Library Friends Foundation Award, Young Adult Book, for *Crosswire*.

**Walter Brasch** received three awards from the Pennsylvania Press Club, an affiliate of the National Federation of Press Women, at the organization’s annual luncheon and awards banquet on June 4 in Myerstown. The awards were in the categories of features, columns, and business and labor.

The *Haunting of Charles Dickens*, by Lewis Buzbee, was named an honor book and runner-up for the 2011 Judy Lopez Memorial Award for children’s literature, sponsored by the Women’s National Book Association, Los Angeles Chapter, in association with the Judy Lopez Memorial Foundation.

**Charlie Russell: Tale-Telling Cowboy Artist**, by Lois V. Harris, was a finalist for the 2011 Western Writers of America Storyteller Award, part of the annual Spur Awards. The book was also a 2011 Parents’ Choice Recommended Award winner, an honor sponsored by the Parents’ Choice Foundation.

**Ellen Kirschman** received the Public Safety Writers Association’s 2011 Grand Prize for *I Love a Cop: What Police Families Need to Know*. She also received first place in the category for unpublished books of fiction for her manuscript, *Burying Ben*.

**Diane Stanley** received a 2011 Arab American Book Award, Children/Young Adult, for *Saving Sky*. The award will be presented at a ceremony on September 29 in Washington, DC. The awards are sponsored by the Arab American National Museum and focus on books and authors dealing with the Arab American experience.

**June A. Willenz** was inducted into the Maryland Women’s Hall of Fame at a ceremony on March 29 at the Miller Senate Office Building in Annapolis. Willenz was cited for her lifetime career as a global human rights advocate, in particular through her work on behalf of female veterans.

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**Legal Watch**

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Mary judgment motion to dismiss, alleging that none of his statements were actionable. At trial, the District Court, Sixth District noted that it must review the statements in the complaint and determine whether any factual disputes would prevent the court from granting summary judgment as well as whether either party is entitled to summary judgment as a matter of law. The court further explained that “statements about matters of public concern that are not capable of being true or false, and statements that can’t be interpreted as stating facts are protected from defamation actions by First Amendment.”

To evaluate whether any of Dennis Laurion’s statements were defamatory, the court considered the following four factors: 1) the statement’s precision and specificity; 2) the statement’s verifiability; 3) the social and literary context in which the statement was made, and 4) the statement’s public context.

The first statement the court considered was, “Dr. McKee seemed upset about the transfer from ICU.” The court found this was clearly the opinion of Dennis Laurion, and that there was no way to prove factually whether or not Dennis believed Dr. McKee was “upset” about his father’s transfer.

The second statement the court considered was Dennis Laurion’s allegation that Dr. McKee stated he “had to find out if you [Ken Laurion] had been transferred (from the ICU to a standard room) or died.” Dr. McKee admitted to making this statement, even if it was taken out of context. (Dr. McKee insisted he made it to add some levity to the situation rather than to be disparaging). The court held that since there was no issue the doctor made the statement, Laurion’s comment could not be found to be defamatory as it was subject to multiple interpretations.

The third statement the court considered was Dennis Laurion’s allegation that Dr. McKee stated, in
regard to the stroke victim survival rate, that “44 percent of hemorrhagic strokes die within 30 days. I guess this [living, as Ken Laurion did] is the better option.” While McKee denied stating the percentage, and alleged that Dennis Laurion found the statistic on Wikipedia, the court found that the gist of the conversation, that many stroke patients die, is true, and was confirmed by McKee’s deposition. As such, the court noted that case law required it to conclude that the statement, even if partially false, was not defamatory since the gist of the statement was true.

The fourth statement the court considered was Dr. McKee’s comment, that “You [referring to Ken Laurion] don’t need therapy.” The court held that this statement cannot carry a defamatory meaning, noting that even if he stated such, the statement itself was not negative or defamatory in any way in regard to Dr. McKee. If anything, the court found that such a statement would be a valid medical opinion on Dr. McKee’s part.

The fifth statement the court considered was Dr. McKee’s comment, when Ken Laurion’s hospital gown came slightly open, that “It doesn’t matter,” which could potentially lead to some “embarrassing exposure” on the part of Ken Laurion during the exam. The court found this was not defamatory as Dr. McKee described the incident in his deposition, and noted that since the top of the gown was secure, the gown would not fall off entirely. Thus, the court concluded, the gist of Dennis Laurion’s postings on this subject were true and not could be held to be defamatory to Dr. McKee.

The sixth statement the court considered was Dennis Laurion’s declaration that Dr. McKee left the room after the examination without talking to the family. Dr. McKee claimed he told the family “they could go now.” The court concluded that while the parties were talking about the same incident, they clearly had different perspectives, and found there was nothing potentially “defamatory” for a jury to decide in regard to the statement.

The seventh statement involved Dennis Laurion’s Internet postings, where in one post, he claimed that he bumped into a former coworker who was a nurse and told her what had happened with his father. According to Dennis’s post, the alleged friend guessed it was Dr. McKee and called him “a real tool.” The court found that no one could state with certainty what the term “tool” meant in that context, although they understood it to have a negative connotation. The court held it was too vague a statement to be considered defamatory.

The eighth statement the court considered was taken from a letter written by Dennis where he alleged that Dr. McKee blamed Ken Laurion for “the loss of his time.” The court held this to be Ken Laurion’s perception of Dr. McKee, which is not actionable as far as defamation is concerned, since it doesn’t concern a provable fact. The court ruled the same on the ninth claim, where Dennis accused Dr. McKee of “scowling” when he left the room. Again, the court found this was not really a provable fact but merely Dennis’s perception of Dr. McKee’s reaction. The court noted that even if there were a videotape (which there was not), a jury would be left with little “proof” that a scowl was present, since it is a matter of perception rather than plausible fact. Likewise, the court found the tenth statement, where Dennis alleged that Ken Laurion was merely a “charting assignment” for Dr. McKee, was also entirely Dennis’s perception of Dr. McKee and could not be viewed by a jury as defamatory.

Finally, the court held that the eleventh statement, in which Dennis alleged that Dr. McKee failed to treat Ken Laurion with dignity, was clearly the opinion of Dennis, and more than any other statement, could not possibly be held to be defamatory nor could such be proved to be “true” or “false.”

Ultimately, the court granted Dennis Laurion’s summary judgment motion to dismiss the entire defamation lawsuit.

—Michael Gross, Staff Attorney

Pallente
Continued from page 14

How does the Copyright Office get the message out to people who simply don’t think about their actions?

Just because something is for private or noncommercial use doesn’t mean it’s not infringing. The law is clear on this.

The answer to the education question is, “It depends.” Some people really, truly are unaware. I would put teenagers in that camp. I’ve got a 12-year-old and a 14-year-old. They know more about copyright than most people their age do; however, the Internet confuses people. If you can find it on the Internet, people are sharing it; if it’s that easy to do, it must not be wrong. That’s a little different situation than, I am willingly, purposefully distributing musical works, because I can, because I’ve hacked into a system or I’ve set up automated software to do it.

We can reach the first group. We can reach the people who just have no idea. As I said, I consider copy-
right a life skill now and I think we need to be quite proactive in my office about education. There are also people who know a little about copyright, but perhaps don’t agree that copying in certain instances is very damaging—maybe we can reach them. As to the larger community, there will always be people who infringe on purpose, either because they feel like it’s their mission to “free” copyrighted works or because they hate the government, or they hate law, or they have some other issue. I don’t know that education helps that crowd. Sometimes we simply need to rely on the rule of law.

You raise an interesting point that will be relevant as we put together educational resources: What’s the proper divide between educating authors and other copyright owners about what they need to know—because I do feel like a big part of my mission is empowering them—and educating users or potential users about how to navigate copyright? That’s a question I’m still working through. Creating a culture of respect for copyright law is important work.

*It sounds like starting young would help, going into schools and working with teenagers.*

And college students. Based on the experiences I’ve had, I think they’re quite proprietary and law-abiding once they have an idea of what copyright’s about. They move from thinking, I don’t know, it’s easy, everybody else is doing it, to Wait a minute. I understand, I’m a poet, or I write lyrics, or I have a rock band. Then they begin to feel quite proprietary pretty quickly.

*Do you worry about how our culture has come to view copyrighted property as something people deserve access to for as close to free as possible?*

I don’t think the problem is going away. As I said, the agenda on exceptions and limitations is legitimate in some ways, but in many ways it’s a political foil. It’s just a way of saying copyright is not working, so anything we can do to minimize copyright is best. I don’t think copyright owners, and authors in particular, can win by playing that game. You can’t spend all day, every day—certainly as an individual but even at the Authors Guild’s organizational level—responding to ridiculous, inaccurate comments from the Copyleft movement. It’s not worth anyone’s time to do that. I could do it all day long and I’d still be banging my head against the wall.

What we have to do is be more proactive about explaining what copyright actually does and how it works, and the importance of it in a society that values culture. I feel a huge responsibility to be part of this effort.

The hard work is about building cost-effective licensing models that are as pervasive as the content itself. I’ll use iTunes as an example. iTunes is so successful because people no longer wanted to buy entire albums. At a certain point that mentality shifted. Yet one still had to buy the album to get the couple of songs that you really wanted. Until iTunes came along and people could license and purchase whatever they wanted for a reasonable fee, people were just really angry about music. I’m not suggesting for a moment that it’s a model that will necessarily work for book authors, but writers do have to participate to make copyright work in the marketplace. Micropayments are important because they add up. If they’re done well, they can really, really help.

Traditionally, the Register of Copyrights has participated primarily in policy discussions relating to legislation, but has always had a heavy international, intergovernmental role as well. I see my role in the future as doing all of that, but also being much more active in marketplace conversations that may never require legislation.

I would prefer to bring authors and tech sector folks together when we’re not looking at legislation that’s beginning to polarize people. Before we get to that stage, we can talk through, together, what the different needs are. I think I’m reflecting my own transactional background as a copyright lawyer. Copyright is an asset and it’s supposed to work in the business world.

*If a writer is surfing the Web and sees an obvious example of copyright infringement of his or her own work, perhaps a scanned copy of a book or an illegally duplicated e-book for sale, what can be done?*

You need to document it, because the statistics are important. One anti-copyright argument goes like this, “You know, there’s all this talk about piracy, but it’s never really been documented. People say it’s a big deal, but it’s not really.” Well, it’s hard to document. Individual authors should document it in any way they can, whether that’s printing out a screenshot, saving the link, etcetera. Going back to the Authors Guild, the legal department you have has always been fantastic on this point—compiling information from members. Compile infringement incidents—how often it’s happening and the circumstances—and then share it with government officials like me who can share it in the appropriate policy circles, where it becomes really, really useful information.

I was never so excited to report to work in the morning as I was when I worked at the Authors Guild.

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3 Critics of standard copyright who argue for more restricted versions of copyright.
It was early in my career and it solidified my career track in copyright and First Amendment work. My job involved lots of different things, from writing amicus briefs on First Amendment and copyright issues to performing outreach and education. But what I really loved about my job as an Authors Guild lawyer was the ability to talk with members every day and help with particular contract and copyright issues. What I really miss is that kind of direct contact, knowing what is happening in the lives of authors. When I say I have an open-door policy with authors and always will, I mean it, because it’s beneficial to me. I talk frequently with Paul Aiken and Jan Constantine, and I hope the relationship will develop even further, because it’s really important for the Register of Copyrights to hear what is happening in the lives of authors. I don’t want to commence policy discussions in a vacuum. It doesn’t do any good. The worst possible thing would be to get legislation passed and have it make no meaningful difference in authors’ lives. ♦

Contracts Q&A

Continued from page 19

also help, if you can get it, to add that the compensation paid to the reviser won’t exceed what is traditional and customary for the type of book involved and the type of revisions to be done (both, admittedly, fuzzy concepts but you get the idea).

3. Provide that the reviser’s work will be done on a work for hire basis, with the copyright in that work to be in your name. This will facilitate your republishing your book (with another publisher or as an ebook) if the revised edition goes out of print and the rights revert to you. It is particularly appropriate since, even if the publisher pays that person an advance, that amount will ultimately be deducted from royalties and subsidiary rights income otherwise payable to you.

4. In situations where neither you nor your estate select the reviser, limit the amount paid to that person that can be deducted from amounts otherwise payable to you, especially if the amount payable is stated as a percentage of what you would otherwise get. In particular, if the reviser will be getting royalties, limit the percentage of your royalties that can be paid. It’s okay for the percentage to increase each time a new revision is done without you, but it should never reach 100 percent or even get close to it. Remember, the book became successful enough for the publisher to want to revise and republish it because of your work on the book at the start (whether because of how it was structured, what you wrote or because of your reputation). You and your heirs should always be entitled to a percentage of every revised edition—no matter how much it changes—because of that. In my opinion, that percentage should never go below 25 percent no matter how often the book has been revised, though you may think it should be higher or lower and should use your own judgment in negotiating that.

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. ♦

E-Books Reach the Tipping Point

Continued from page 7

Simon & Schuster’s Free Press—to release quickie digital versions followed by paperbacks.

It’s still too early to say how widespread instant e-books will become. After all, it’s not all about printing; writing and editing a book can take a while.

Another, related nascent trend that’s yet to prove itself is “enhanced” e-books, in which multimedia features supplement the text. De Young said Hachette has just begun putting new titles through a review to see which, if any, of “eight digital content types” should be added. These add-ons can be pricey, and De Young said that during the next two years Hachette will be experimenting to see what types of content readers want and what they’re willing to pay for it.

As with so much about e-books—“experimenting” is the key word.

“It’s no more publishing as usual,” said Julie Grau. “You can’t take things for granted, and you need to question every step.” ♦

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MARTHA FAY, Bulletin Editor

The Authors Guild, the oldest and largest association of published authors in the United States, works to protect and promote the professional interests of its members. The Guild’s forerunner, The Authors League of America, was founded in 1912. The Authors League now serves the joint interests of The Authors Guild and The Dramatists Guild.

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Letters

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work are already known—thanks in large part to the effort publishers have made to promote their works. But what new authors will be able to break through the media cacophony to find an audience? Very few. And, as you so rightly pointed out, once an author breaks through, his work is now viciously pirated. You win and then you lose.

What makes the e-book doubly vexing for me is that, aside from being an author, I'm also a graphic designer who has specialized in book design for the last 15 years. E-books are anti-design. Any flourishes and nuances that make a book unique are lost in text that must reflow on multiple devices and platforms.

Even with copyright reform, the genie is out of the bottle and we’re all screwed. I pray I’m wrong about all this, as pessimists like me are the only people who are happy when we’re wrong... but only time will tell.

Thanks again for a great editorial and for all the great books I’ve enjoyed reading over the years

—Bill Walker, Los Angeles, CA
www.billwalkernovels.com

Scott Turow responds:
I agree that American publishers didn’t think deeply about the problems of e-books and especially the devil’s bargain they initially made with Amazon. But they would argue that, with PDFs and laptops and other e-readers, if they had resisted, an illegal market would have arisen. We need to fight now. We both seem to recognize that.
Membership Application

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Agent Name __________________________ Agent phone (___) ___________

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How did you become interested in joining the Guild? (check one) □ Invitation □ Writing journal

□ Referred by __________________________ □ Other __________________________

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

Writers may qualify on the basis of being book authors or freelance journalists. Book authors must have been published by an established American publisher. A writer who has a contract with an established publisher for a work not yet published may join as an associate member. A contract with a vanity press does not qualify a writer for membership in the Guild. Freelance journalists must have published three works, fiction or nonfiction, in a periodical of general circulation within the last eighteen months.

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Please enclose a check for your first year’s dues in the amount of $90 payable to “The Authors Guild” or charge your Visa or MasterCard.

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