

N I N K

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Amazon Kindle: A Contract Review

BY F. ROBERT STEIN

Editor's Note: This is the third in a series of three articles examining the publishing contracts of the Kobo, NOOK Press, and Amazon Kindle digital publishing programs. The series was prompted by NINC member requests for clarification of certain contract provisions and is offered for educational purposes.

At the request of Novelists, Inc. I have read the Kindle Direct Publishing Terms and Conditions (the "Kindle Contract" located at <http://tinyurl.com/d3ncdp8>), which governs participation in and publication via the KDP digital self-publication and distribution program (the "Kindle Program"), and was last updated on June 13, 2013, as well as the Amazon list price page (<http://tinyurl.com/k6w8he7>) and the KDP Select FAQ (<http://tinyurl.com/724lnkd>). In this article I will express my *personal opinions* as to what I consider to be the most important provisions of the Kindle Contract, and as to how the Kindle Contract differs from the form contracts used by traditional large New York print publishers.

I will also touch lightly on the other documents mentioned above. Note: this is not intended to be an exhaustive review of each and every sentence in the various documents ... just those provisions I consider most significant to most authors.

For the same reason, if you are thinking of publishing your book(s) via Kindle, you should of course read the Kindle Contract and its attachments, rather than relying solely on this article.

E-Book-only

First, I should state the obvious: the Kindle Contract is designed to permit publication of an author's work in e-book form only — and only for reading on the Kindle e-reader device and on computers and other devices using Kindle software.

(I personally have Kindle, Nook, and iBooks software on my iPad and iPhone, and have used such software to purchase and to read books from Amazon.com, BN.com, and from Apple via its iBooks store.) The Kindle contract does *not* provide for any print publication.

Contracting Parties

The person or entity submitting a book to Amazon for publication is considered the "publisher" of that book, whether or not that person or entity is also the "author" of the book.

"Amazon," for the purpose of the Kindle Contract, includes Amazon Digital *Continued on page 4* ▶

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Address changes may be made on the
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Members without Internet access may
send changes to the Central Coordinator.

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Introducing...

The following authors have applied for membership in NINC and are now presented by the Membership Committee to the members. If no legitimate objections are lodged with the Membership Committee within 15 days of this Nink issue, these authors shall be accepted as members of NINC. For further information or to recommend eligible writers, contact:

Membership Chair: Tracy Higley

tracy@tracyhigley.com

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NINC has room to grow...

Recommend membership to your colleagues.

Prospective members may apply online at

<http://www.ninc.com>. Refer members at ninc.com.

Go to Members Only, "Member Services" and click "Refer a New Member to NINC." Take NINC brochures to conferences. Email Pari Taichert with your mailing address and requested number of booklets: ptaichert@comcast.net.

NINC Statement of Principle: Novelists, Inc., in acknowledgment of the crucial creative contributions novelists make to society, asserts the right of novelists to be treated with dignity and in good faith; to be recognized as the sole owners of their literary creations; to be fairly compensated for their creations when other entities are profiting from those creations; and to be accorded the respect and support of the society they serve.

THIS SPACE INTENTIONALLY LEFT BLANK ... OR?

After decades as a professional writer, the blank page still intimidates me. I ramble like a disorganized seventh grader while I decide how to begin a book, an article, or a blog post. On a bad day, even a simple email can stump me. I might say “I’m blank” or “I have no idea.” What I mean is there are too many words, too many ideas, all of them racing, tumbling, bumping, dancing, and crashing about in my mind, and at that moment I haven’t sufficient mental discipline to whip them into the proper order.

Steadfast professionalism saves me most of the time. Thirty-six years of writing under deadline has engrained certain habits, and one of them is the ability to grit my teeth and type words that can be edited into useable prose. Maintaining that sense of professionalism would be ten times as difficult during this evolving era in the publishing industry were it not for the camaraderie, the inspiring examples, and the wealth of knowledge in this organization.

NINC, more than any other writers organization, helps this lone writer maintain perspective and a sense of balance about the industry and my potential within it. That, in turn allows me to maintain the kind of flexibility which allows me to adapt to whatever the day — or the market — throws at me, all the while dealing with life’s squeaky wheels, nattering doubts, and the figurative (or real) nibbling ducks that eat up the last bit of time and patience I have on any given day.

Nevertheless, my balance and my priorities aren’t necessarily yours. While I’ve attempted in my role as *Nink* editor to provide a range of offerings in each issue, I’m sure there are many ways *Nink* could be more relevant to more members. So please, email me with your ideas, articles, and wish lists at laura@lauraphillips.net.

— Laura Phillips, *Nink* 2013 Editor

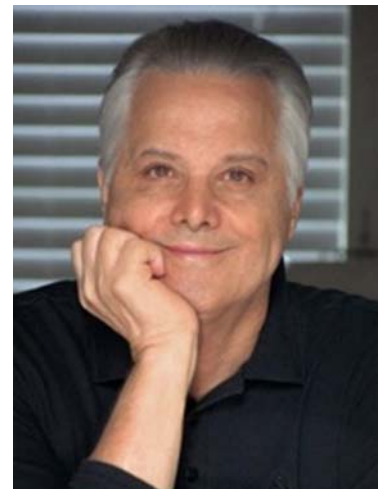
In memoriam

NINC member Leighton Gage died July 26 at his home in Ocala, Florida. He was 71. The *New York Times* reported the cause of death as pancreatic cancer.

Gage, whose previous career was in advertising, was 66 when his first book, *Blood of the Wicked*, was published in 2008. He went on to write six more crime novels set in Brazil featuring lead character Chief Inspector Mario Silva. The most recent installment, what is now his last book, is due to be published in January 2014 under the title, *The Ways of Evil Men*. His books have been translated into Dutch, Finnish, French, and Italian

Juliet Grames, Soho Press senior editor, wrote this tribute to Gage on the Soho Press website: “Leighton was a backbone of the crime fiction community as well as the Soho Crime family. A tireless author advocate with a powerful social media presence (he founded the blog Murder Is Everywhere, <http://murderiseverywhere.blogspot.com/>, which is devoted to international crime fiction). Leighton was a mentor and friend to many authors at various stages in their careers.”

Gage is survived by his wife, Eide, four daughters, and five grandchildren. The Soho Press tribute to Gage noted that the family had requested that, in lieu of flowers, donations be directed to pancan.org, the Pancreatic Cancer Action Network.



Amazon Kindle: A Contract Review

Continued from page 1 ▶

Services, Inc., Amazon EU S.à.r.l., Amazon Services International, Inc., Amazon Serviços de Varejo do Brasil Ltda., and each other entity that directly or indirectly controls, is controlled by, or is under common control with any of those entities that joins as a party to the Kindle Contract (not that you will necessarily ever know which other entities so join).

You become bound by the Kindle Contract by using any part of the Kindle Program, whether or not you ever formally accept its terms.

Modification of the Kindle Contract

Unlike traditional print publishing contracts, the terms of the Kindle Contract can be changed at any time by Amazon in its sole discretion, and, with two exceptions, you are deemed to have been notified of (and to be bound by) those changes as soon as they are posted at <http://kdp.amazon.com>. You may or may not also be notified by email. If you disagree with any of the changes, your only recourse is to withdraw your book from publication via the Kindle Program.

The two exceptions are the Kindle Contract's royalty and grant of rights provisions, changes to which become effective 30 days after posting on the website or after you accept them via click-through or by making additional books available through the Kindle Program. That's right ... if you make additional books available, whether or not you ever noticed the changes in the Kindle Contract, you are deemed to have accepted those changes.

Duration of the Kindle Contract

The Kindle Contract continues indefinitely until terminated by either party. Each party has the absolute right to terminate at any time, with or without good reason. Amazon has five business days after termination before it must stop selling your book. Following termination, Amazon has the right to continue to make your book available to those customers who purchased or borrowed it prior to termination.

Grant of Rights

"You grant to each Amazon party, throughout the term of this Agreement, a nonexclusive, irrevocable, right and license to distribute Digital Books, directly and through third-party distributors, in all digital formats by all digital distribution means available." Subsequent language contradicts the "irrevocable," and makes clear that you may withdraw your book from new sales through the Kindle Program at any time.

Copyright Ownership

You retain full copyright ownership of your book, subject only to the rights you have granted to Amazon, which are in most respects temporary in nature.

Minors

Minors are not allowed to publish their own books via the Kindle Program, although their parents or guardians may do so on their behalf.

No Multiple Accounts

Each person or entity is permitted to hold only one Kindle account, and false identities are prohibited. I imagine (but do not know) that a person is permitted to own several different corporations or LLCs, each of which could maintain a separate Kindle account.

Metadata and Advertisements

Amazon reserves the rights to (i) remove or modify all metadata and product descriptions for any reason, and (ii) remove all or any part of a book's cover art for any reason, including in each case if it deter-

mines that the metadata or cover art does not comply with Amazon's content requirements. Amazon prohibits any advertisements or other content that is primarily intended to advertise or promote products or services.

Right to Reject Books

Amazon reserves the right to reject any book from participation in the Kindle Program.

Reformatting and Corrections

Amazon has the right under the Kindle Contract to correct any errors in the digital book file you deliver to them and to reformat your book. If you disagree with any changes made by Amazon, your sole recourse is to remove your book from the Kindle Program.

Marketing and Promotion

Amazon has the right to offer chapters or portions of your book to prospective customers without charge and without payment to you.

Amazon reserves the right to remove any book reviews which violate the Amazon Community Guidelines (<http://www.amazon.com/gp/community-help/customer-reviews-guidelines>).

Kindle Book Lending Program

All Kindle Books are automatically included in the Lending Program, which means that purchasers of a given book may lend it to others subject to certain restrictions. However, authors/publishers who elect to be included in Kindle's 35 percent Royalty Option (described below and in the Pricing Page located at <http://tinyurl.com/k6w8he7>) may opt out of the Lending Program, unless their book is included in a lending program of a different vendor.

Royalty Options

There are two options, which can be chosen separately for each book you sell through the Kindle Program:

The 35 percent royalty option is very simple: you receive 35 percent of the list price you select for your book, for each sale of your book anywhere in the world. The only exception is if you also sell the book through other sales channels, and if in one or more of those channels your book is made available for free ... if that occurs, Amazon may choose to match the other channel by making your book available for free on Amazon, in which case no royalty will be paid on such copies.

The 70 percent royalty option, when elected by the author/publisher, is applied to sales in certain territories which are identified in the Kindle Contract (and which include the US, Canada, the U.K., and many European countries, among others). You receive 70 percent of: your chosen list price, less delivery costs (which are equal to the number of megabytes Amazon determines your book file to contain, times a rate which varies from country to country, such as 15 cents per megabyte in the US and Canada, 12 cents (12/100ths of a Euro) per megabyte in France, Germany, Italy and Spain, and ten pence per megabyte in the U.K.).

There is also an exception to the 70 percent royalty option: If Amazon reduces its price for your book to match the price at which any digital or physical edition of your book is being sold through another sales channel (or at which Amazon is itself selling any physical edition of your book), then your royalty will be based on Amazon's reduced selling price (less taxes and delivery costs), rather than on your chosen list price.

If you select the 70 percent royalty option for a given book, you must grant Amazon the right to distribute that book in each territory in which you have appropriate distribution rights.

Royalty Payments

Royalties are paid separately by each Amazon entity which sells copies of your books, and are paid about 60 days after the end of the calendar month in which the sales were made, together with an online report detailing sales and royalties.

You select the currency in which you wish to be paid, and the selling Amazon entity will do any nec- ▶

essary conversion (and will use an exchange rate it determines, inclusive of unspecified conversion fees and charges).

Although the Kindle Contract is not entirely clear on this point, it appears that payments will ordinarily be made through direct deposit to a bank account you designate for such purpose.

Royalty statements become binding on you six months after they become available (rather than the two years more commonly seen in print publishers' contracts), and cannot be challenged thereafter in any legal proceeding. No interest will be paid on any sums collected through any such challenge.

Royalties may be withheld and ultimately forfeit in the event of a third-party claim, or if Amazon determines that you were in breach of your warranties and representations, or of Amazon's Content Guidelines (<https://kdp.amazon.com/self-publishing/help?topicId=A3KIRDTXIUQJX0>).

Pricing

You, as the author/publisher, determine the list price of your book (within the guidelines set forth on the [Amazon list price page](#), and you may change the list price on five business days' notice. Amazon may convert your list price to other currencies for sale in other territories and may add VAT where necessary.

Your list price must be no higher than the list price in any sales channel for any digital or physical edition of your book. **In addition, if you elect the 70 percent Royalty Option, your list price must be set at least 20 percent below the list price in any sales channel for any physical edition of your book.**

The list price guidelines for the 35 percent royalty option permit U.S. list prices up to \$200 per copy, and as low as \$.99 for a book of 3 megabytes or less, \$1.99 for a book between 3 and 10 megabytes, and \$2.99 for a book of 10 megabytes or more.

The list price guidelines for the 70 percent royalty option permit U.S. list prices ranging from \$2.99 to \$9.99.

Permitted list prices and other requirements vary from country to country.

Regardless of your list price, Amazon has sole and complete discretion to set the retail customer price at which it will sell your books.

Data Collection

Amazon has sole ownership and control of all data it obtains from customers and prospective customers, thus making it impossible for you to create a list of names and addresses of purchasers of your books to be used for follow-up newsletters, correspondence, etc.

Taxes

Amazon accepts responsibility for the collection and remittance of any and all taxes imposed on its sales of your book to customers. However, Amazon also reserves the right to deduct or withhold from sums otherwise due to you "any and all applicable taxes." I think this refers to withholding of income taxes on amounts due to you where required by law, but I cannot be certain.

DRM and Geofiltering Technology

The Kindle Contract gives Amazon the option (but not the obligation) to make DRM technology available to you for the protection of your digital file, and geofiltration to limit sales of your book to those territories in which you hold distribution rights. Amazon disclaims any warranty that any such technology will actually provide the intended protection.

Rights Clearances

It is the sole responsibility of the author/publisher to obtain and to pay for all necessary clearances and licenses for all third-party text and illustrations in your book, so that Amazon may distribute it without liability to any third party.

Rights Dispute Resolution

If anyone other than yourself makes your book available on Amazon, then after you notify Amazon of the infringement (using Amazon's designated procedure for such notifications), Amazon will attempt to verify your claim, and upon verification, will remove the infringing edition from its websites and pay you any unpaid royalties due on such infringing edition.

Warranties and Indemnification

These are pretty much comparable to those in traditional print publishing agreements.

Confidentiality

“You will not, without our express, prior written permission: (a) issue any press release or make any other public disclosures regarding this Agreement or its terms; (b) disclose Amazon Confidential Information (as defined below) to any third party or to any employee other than an employee who needs to know the information; or (c) use Amazon Confidential Information for any purpose other than the performance of this Agreement... ‘Amazon Confidential Information’ means (1) any information regarding Amazon, its affiliates, and their businesses, including, without limitation, information relating to our technology, customers, business plans, promotional and marketing activities, finances and other business affairs, (2) the nature, content and existence of any communications between you and us, and (3) any sales data relating to the sale of Digital Books or other information we provide or make available to you in connection with the Program.”

Note those last two points: you're not supposed to tell anyone how many books you sold through Amazon or how much you earned on those sales!

Disputes

“Any dispute or claim relating in any way to this Agreement or KDP will be resolved by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify... The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA's Supplementary Procedures for Consumer-Related Disputes. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, Amazon will not to seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the United States county where you live or at another mutually agreed location. You and we each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration you and we each waive any right to a jury trial. You or we may bring suit in court on an individual basis only, and not in a class, consolidated or representative action, to apply for injunctive remedies. You may bring any such suit for injunctive remedies only in the courts of the State of Washington, USA.”

Applicable Law

The agreement is governed by the laws of the United States (including specifically the Federal Arbitration Act) and of the State of Washington.

Liability of Amazon Entities

“Each Amazon party is severally liable for its own obligations under this Agreement and is not jointly liable for the obligations of other Amazon parties.” I believe this means that if you do not receive proper payment for copies of your book sold in Europe or Brazil, you cannot assert a claim against the United States Amazon entity ... rather, you must assert your claim against the particular entity which failed to pay the amount due. But you've always wanted to visit Brazil, right?

Assignment

“Amazon may assign any of its rights and obligations under this Agreement without consent.”



Notices

“To be effective, any notice given by a party under this Agreement must be in writing and delivered (i) if by an Amazon party, via email, via a posting on the Program website or via a message through your Program account, or (ii) if by you to Amazon Digital Services, Inc., via email to kdp-support@amazon.com with a copy to contracts-legal@amazon.com...”

Kindle Select Option

(see <http://www.amazon.com/gp/feature.html?docId=I000739811>)

If you elect this option, your book must be exclusive to Kindle ... you cannot allow it (or any substantially similar book) to be made available in digital format on your website or in any other channel of sale.

Benefits of this program include:

- ▶ Inclusion of your book in the Kindle Owners' Lending Library Program, through which you will receive a share of a monthly cash fund established by Amazon, your share to be determined by Amazon based upon how many times it was borrowed, as compared to the number of times all 350,000+ books in the program were borrowed, in the relevant time period.
- ▶ Your book will be eligible to earn a 70 percent royalty on sales to customers in Brazil, Japan and India.
- ▶ You will be permitted to schedule one or more promotions, for a total period of five days during each 90-day period your book is in the Kindle Select program, in which your book will be offered without charge to customers (and for which “sales” you will receive no royalties).

Duration of participation in the Kindle Select Program

“Once you include a Digital Book in KDP Select, your Digital Book will be in KDP Select for a period of 90 days, unless we remove your Digital Book from KDP Select. Your Digital Book's participation will automatically renew for additional 90-day periods, unless you opt out through the KDP website before renewal If you un-publish your Digital Book, we will remove it from the Kindle Owners' Lending Library, but you must continue to comply with these commitments, including exclusivity, through the remainder of the Digital Book's then-current 90-day period of participation in KDP Select. If you don't comply with these KDP Select terms and conditions, we will not owe you Royalties for that Digital Book earned through the Kindle Owners' Lending Library Program, and we may offset any of those Royalties that were previously paid against future Royalties, or require you to remit them to us.”

Eligibility

“If your Digital Book consists primarily of content that is in the public domain or licensed by you on a non-exclusive basis (i.e., if others can also publish this content), you cannot include it in KDP Select. We reserve the right to determine the types of Digital Books that we accept in KDP Select. We can choose not to accept your Digital Book in KDP Select or to remove it from KDP Select at any time in our discretion.”

Bob Stein is an attorney with Pryor Cashman LLP. He counsels and represents authors, literary agents, book publishers, and others in publishing negotiations and disputes. He also represents film producers in the pre-release review of screenplays and films and assists insurers of film and television productions in determining the insurability of various productions. He previously worked in-house at Random House and Simon & Schuster, and was General Counsel at Warner Books, DC Comics, and the other publishing divisions of Warner Communications.

Business Briefs

Compiled by Sally Hawkes

No Full Disclosure from Barnes & Noble

B&N filed a proxy statement and 10K report with the SEC at the end of July without any information on if or when there will be separation with Nook Media. As for brick and mortar locations, the 2013 fiscal year had 675 stores on the books. Plans state that 2014 will see the close of 15 to 20 stores and up to 5 new stores.

PW Daily



Conference Highlights for Author Support Teams

BY KELLY McCLYMER
CONFERENCE CO-CHAIR

There have been many questions about the conference's *Author Support Team* (AST) sessions, so we thought we'd answer them here in *Nink*, with some specifics.

Because AST encompasses everything from full project management to specific task involvement like formatting, editing, or marketing, we have to emphasize that not all AST sessions will be right for everyone. This year we're looking at all the possibilities in a broad way, because our theme is "The Author's World" and authors are just beginning the journey of discovery for new and different kinds of support.

Here are some of the sessions that may be of interest to Author Support Teams:

Breaking News From the Self-Publishing World: Hear from Mark Coker of Smashwords, Mark LeFebvre of Kobo, Nina Paules of e-Publishing Works, and others on the front lines of the indie publishing world. *Useful in order to help Author Support Teams see how their work fits into the bigger picture of author success.*

How To Build An Effective Lifeboat Team: Hear from NINC members who put together Lifeboat teams based on last year's conference sessions. What's working? What can work better? How can you form your own? *Useful in order to help Author Support Teams see how their work fits into the bigger picture of author success on a cooperative scale.*

Q and A with Author Support Teams: Get tips from those who have been creating in-house author support teams and seeing great results. *Useful in order to help Author Support Teams determine what more can be added to the teamwork already in place.*

Passive Marketing: Randy Ingermanson explains how to set up a system that markets while you sleep (or write). *Useful for AST marketing, web design, and newsletter people.*

Is Your Webpage Doing All It Can For Your Career? Julie Kenner presents two hours of in-depth information on how to use your webpage to sell the author's brand and books. *Useful for AST marketing, web design, newsletter, social media, and blogging people.*

ROUNDTABLE — Best Practices for Authors and Author Support Teams: AST professionals and authors discuss best practice for working together efficiently and effectively. *Useful for all AST pro-* ▶

professionals and authors looking to create realistic and supportive working relationships.

Selling Foreign Rights: Joe Nasisse, Jim McCarthy, and Lisa Vance will discuss the growing possibilities in foreign markets. *Useful for AST project managers and marketing people.*

Bringing Your Book to Hollywood: Tips from Screenwriter Kam Miller and Hollywood agent Dana Borowitz about selling to Hollywood. *Useful for AST project managers and marketing people.*

And don't think we've forgotten that the theme of the conference is "The Author's World." We have several great sessions to help authors find the balance in life and career, and focus on the writing, beginning with our First Word morning session's advanced writing workshop with Lisa Cron (*Wired for Story*), and continuing with several excellent sessions led by wellness and artist coach Elissa Wilds, literary attorney Bob Stein, and agents Jim McCarthy and Lisa Vance.

We haven't even mentioned the Night Owls, which will offer many creativity enhancing activities and discussions.

If you haven't registered your AST member, there is still time. Registration closes September 30, though, so don't delay.

To see all the workshop sessions, you can view the tentative schedule on the conference website, http://ninc.com/conference_center. We're still working on adding in speakers from ACX, Audible, Amazon, and Nook Press, so look for the breaking news on the website in the coming weeks.

Hope to see you there!

Business Briefs

Bowker Finds Print Healthy

R.R. Bowker's annual report for 2012 notes print titles are up 3.3 percent (traditional publishing houses and self-publishers). Companies that reprint public domain titles are up 10.9 percent. This provides a total 9.5 percent increase from 2011. Fiction titles rose 10 percent. Business books were up 38 percent, but biographies dipped by 10.9 percent. Juvenile books went up six percent. The numbers since 2009, when e-books started to make a splash in publishing, show print has only gone down by one percent. *PW Daily*

Apple Still Swinging at DOJ

Apple's legal team calls the DOJ instructions "a draconian and punitive intrusion into Apple's business, wildly out of proportion to any adjudicated wrongdoing or potential harm." They say Apple didn't do anything illegal. The publishers' settlements have taken care of any antitrust issues, while their deals benefited the market. So they are appealing the July 10 ruling against them, which includes a five-year moratorium on signing any e-book distribution business deals with agency terms, as well as a 10-year compliance program. Publishers have two years for both the settlement and compliance program. And so the story continues . . . *PW Daily*

Dog Days of Summer for Overstock and Amazon

As temperatures went up in late July, pricing went down 10 percent below Amazon at Overstock for 360,000 titles out of 450,000. The Overstock CEO said he would continue to lower prices through the first week of August as Amazon responded with their own decrease. That meant a 55 percent discount or more for customers. *Sisterland* by Curtis Sittenfeld sold for \$11.48 on Amazon and \$10.33 at Overstock; the list price was \$27.00. Both companies sold the \$27.00 *Let's Explore Diabetes with Owls* by David Sedaris at \$11.97. Overstock intends to review on a weekly basis on comparisons. *PW Daily*

Your Vote: It's Easy, It's Convenient, It's Needed!

Candidate biographies for the slate of 2013 NINC Officers and Nominating Committee appeared in the August 2013 issue of *Nink* and remain available online at the NINC website.

Completed ballots must be **received by** October 31, 2013. If you will not be attending the Annual General Meeting at the conference, please take a moment to complete a Proxy form (See page 12) and submit it to the Central Coordinator before September 15, 2013.

Ballot

Member Signature: _____

Member Name (Please Print): _____

Please print out this Ballot, complete, and mail to:

Ballot c/o Novelists, Inc.
P.O. Box 2037, Manhattan, KS 66505

Ballots must be received by October 31, 2013

Save Time and a Stamp, and go Green!
Vote online at
www.ninc.com
In the Members Only section

ITEM 1: Election of Officers for 2014

Yes	No	
_____	_____	Julie Leto, President-elect
_____	_____	Ashley McConnell, Treasurer

Item 2: Election of the 2014 Nominating Committee (Vote for no more than five [5] candidates)

_____ Pamela Burford	_____ Randy Ingermanson	_____ Olivia Rupprecht
_____ Zita Christian	_____ Barbara Meyers	_____ Kathryn Shay
_____ Carole Nelson Douglas	_____ Cynthia Bailey Pratt	_____ Janet Tronstad

Annual Business Meeting

NINC Bylaws require that an Annual Business Meeting be conducted at the conference. No vote is anticipated at this time, but your presence—in the form of a proxy or physical appearance—is required to ensure a quorum is attained. If you will not be attending the meeting, please send your Proxy to the Central Coordinator by September 15, 2013.

Proxy A

To appoint the current NINC Board of Directors as your agent:

The undersigned hereby appoints Laura Parker Castoro, Meredith Efken, Sylvie Kurtz, Ashley McConnell, Pat McLinn, and Laura Phillips, each of them as his/her true and lawful agents and proxies with full power of substitution to represent the undersigned on all matters coming before the membership at the Annual Business Meeting of members to be held at the Myrtle Beach Marriott Resort and Spa at Grande Dunes, 8400 Costa Verde Drive, Myrtle Beach, SC 29572 on Sunday, October 27, 2013 at 9:30 a.m.

Member Signature: _____

Member Name (Please Print): _____

Proxy B

To appoint a fellow NINC member as your agent:

The undersigned hereby appoints (print member's name) _____ as his/her true and lawful agent and proxy with full power of substitution to represent the undersigned on all matters coming before the membership at the Annual Business Meeting of members to be held at the Myrtle Beach Marriott Resort and Spa at Grande Dunes, 8400 Costa Verde Drive, Myrtle Beach, SC 29572 on Sunday, October 27, 2013 at 9:30 a.m.

Your Proxy will be distributed at the Annual Business Meeting to the NINC member you have designated.

Member Signature: _____

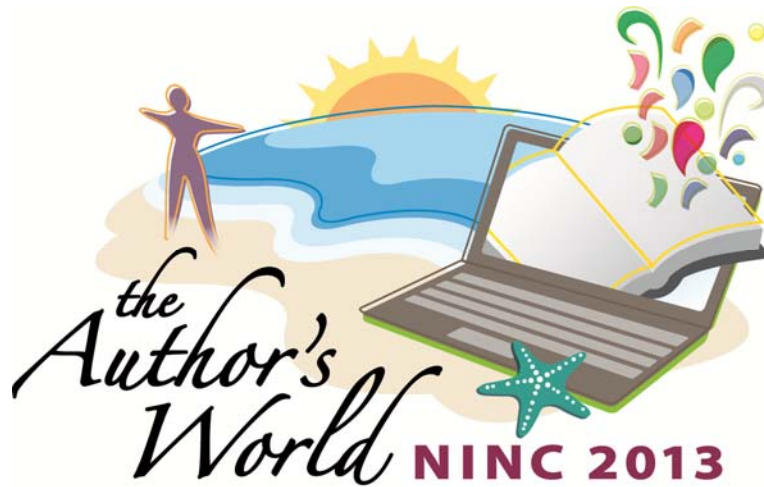
Member Name (Please Print): _____

Proxy A or Proxy B, when properly executed, will be voted in the manner you directed. If no direction is given with respect to any particular item, this proxy will be voted in favor of the proposals put forth by the Novelists, Inc. Board of Directors.

Please print out this Proxy form, complete, and mail to:
Proxy c/o Novelists, Inc.
P.O. Box 2037, Manhattan, KS 66505

Your Proxy must be received by September 15, 2013.

Save Time and a Stamp, and go Green!
Indicate your Proxy preference online at
www.ninc.com



What To Do In Your Spare Time

BY SANDRA KITT
CONFERENCE PUBLICITY COORDINATOR

Actually, there is no shortage of ways to entertain yourself and occupy your free time while in Myrtle Beach in October. The heavy summer season crowds will be gone, and the beach community will be only a week away from celebrating Halloween! Pretty much all of the area attractions will be operating, except for miniature golf. NINC members will be able to enjoy dozens of restaurants, lively nightlife entertainment, cultural activities and historic sites, specialty stores and boutiques, and much more.

We're arranging for each attendee to get a local entertainment planning guide, along with a VIP discount card to many of the area attractions, especially designated for NINC members.

You can always scout out the specific local details by going to the Visit Myrtle Beach website at http://www.visitmyrtlebeach.com/?cid=g_destination_mb for more details. But, to cut to the chase, here is a short list of venues that might be of particular interest to conference attendees:

- ▶ The South Carolina Hall of Fame honors contemporary and past citizens who have made outstanding contributions to the state's heritage.
- ▶ Brookgreen Gardens, a National Historical Landmark, is home to more than 1400 works by 350 sculptors from the 19th Century to the present. Visitors also can join overland and boat tours of the Low-country History and Wildlife Preserve, containing thousands of acres of native plants and animals.
- ▶ Hopsewee Plantation, a South Carolina National Historic Landmark, is a preservation rather than a restoration site. Owned by only five families, it was built 60 years before the revolutionary war.
- ▶ Hobcaw Barony is a 17,500-acre wildlife refuge owned by the non-profit Belle W. Baruch Foundation.
- ▶ L.W. Paul Historical Farm — The farm provides visitors with the opportunity to observe and participate in activities that would have been commonplace on traditional family farms in Horry County from 1900–1955.
- ▶ Battleship NORTH CAROLINA — Visitors can walk the decks and learn more about daily life on board and the fierce combat her crew faced in the Pacific Theatre during World War II.
- ▶ Art & Soul, an Artisan Gallery, is located in the heart of Myrtle Beach, in Rainbow Harbor, and features artists of batik, blown glass, folk art, fused glass, jewelry, metal works, oil paintings, painted glass, photography, pottery, silkscreen, wood carvings, and more!
- ▶ La Belle Amie Vineyard is an operating vineyard open to the public located in the Grand Strand area. ▲



WRITING is TAXING

By Diane Kelly

And the Winner Is ...

Authors routinely give away copies of their books as prizes, and may even give away big-ticket items such as an e-reader as a means of drawing attention to their website or promoting the release of a new book or series. Be sure to properly report the prizes you award and to take the proper deductions so you don't get in trouble with Uncle Sam.

Reporting a Prize. If you award prizes totaling \$600 or more to a single recipient in a given tax year, you must report the prizes on a 1099-MISC at the end of the tax year. Report the prize in Box 3 "Other Income." You will be required to include the winner's name, address, and taxpayer identification number (social security number) on the 1099 form. Failure to report the winner's tax ID number can subject you to penalties. Therefore, it is critical that you obtain the taxpayer's tax ID number prior to delivering the prize. In fact, if you are running a contest with a prize valued at \$600 or more, I would suggest that you make it an express requirement that the winner provide a properly completed W-9 before the prize will be awarded.

Request the taxpayer's tax identification number by asking them to complete a W-9 form. You will note that by signing the W-9 form, the taxpayer asserts under penalty of perjury that the information contained therein is correct. Thus, by obtaining the properly completed W-9 form, you have protected yourself from liability if the tax ID contained therein is incorrect. It is not sufficient for the prize winner to simply provide the tax ID number to you via email, phone, or another form of communication. You will not be protected if you obtain the tax ID number via this type of informal communication. You can obtain a W-9 form at this link: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

Amount of Deduction. Prizes are deductible in the amount that you paid for the prize that is awarded. For instance, if you paid \$249 for an e-reader that you give away as a prize, your deduction would be \$249.

Even though intangible prizes such as a personal autograph added to a book, the right to name a character in a novel, or the right to have lunch with an author have value, the IRS allows no deduction for these prizes because you have not paid any money out of pocket for these items. You are only allowed to deduct the actual out-of-pocket cost for the prizes.

Prizes vs. Gifts. Keep in mind that gifts are not prizes. A gift is given to a recipient of your choosing that is not made pursuant to a contest. A gift is something you give to a business associate that is intended for their personal use, either now or in the future. Your deduction for business gifts is limited to \$25 per recipient per year. For example, if you send your editor and/or agent a basket of fruit or chocolate after a contract negotiation has been completed, the gift would be considered a business gift and would be subject to the \$25 deduction limitation.

Gifts do not include items that cost \$4 or less on which your name is clearly and permanently imprinted and that you intend to widely distribute (i.e. pens, magnets, coasters, etc.). Your deduction for these items is not limited, no matter how many you may give to a business associate.

In addition, if you donate a prize to a charity and the charity then auctions off or awards the prize, the charity is treated as the party awarding the prize, not you. Thus, you would have no requirement to report the award of the prize, even if the prize is valued at \$600 or more. You would be entitled to take a business expense deduction for the cost of the prize donated if you derive a business benefit in return for the prize, such as promotion of you and your books on the charity's website, in a program, or at

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Photo by Sabrina Ingram

Not Your Usual Writing Advice

By JoAnn Grote

Next?

“There is the risk you cannot afford to take; there is the risk you cannot afford not to take.”

— Peter Drucker

Most career novelists are blessed with more story ideas than it's possible for any one person to develop in a lifetime. How does a writer decide which of the multitude of ideas to develop into story next?

In NINC Member Mary Jo Putney's November 1994 *Nink* article “Setting Goals and Making Choices,” she discussed how your career goal influences your choices. “I usually have half a dozen story ideas simmering, but the next book I write is always the one I think is most likely to take my career where I want it to go.” She continued, “I don't know if my decisions are always the right ones but I always try to make them based on a balance between rational business considerations and emotional, creative considerations.”

I asked Mary Jo how she would answer the question, “How do I decide which book to write next?” today, almost 20 years further along in her career, when her published books have reached beyond historicals and Regencies to YA novels and stories with fantasy elements.

“I would still say the same,” she responded, “but with the addendum that indie publishing has opened up wonderful creative opportunities. I'm still going to write the book that is best for my career goals — this is my career, not my hobby. But if I have the time, I can also write the oddball project that will satisfy the Muse. Maybe it won't make a lot of money, but it will make me happy. Having other creative outlets means we're less likely to get bored with the career-building books. I've written a whole lot of Regency historicals, and I still enjoy them — but if I hadn't wandered into other fields along the way, I might have gone stale. Usually the other fields are fantasy, and writing such stories sends me refreshed back to the bread and butter historical.”

A few years ago NINC member Edie Claire posted to NINClink that she felt her best chances for a quick sale were to either rewrite a finished book to please a picky editor or to complete a proposal that was two-thirds done. “But can I work on either of these projects?” she wrote. “Of course not. Because some \$#@# Muse I've never even seen before hijacked my brain last week and will not let me think about anything except ‘project 3,’ a grandiose, time-consuming, and implausible book that I know I will never finish, much less sell. I keep telling the Muse I need money and that I'm not interested in her stupid, time-wasting, pie-in-the-sky ideas, but the wench has a Glock to my temple and she just won't let up. Help! What can I do? Is Musecide a crime?”

I suspect there aren't many of us who haven't been in her shoes at some point.

Edie sought advice from NINC members. One contingent believed the new idea was a form of self-sabotage to keep her from the hard work of completing a serious project, that she should kill off the Muse and get back to her “real” work. Others suggested working on the new project as a reward after completing her daily work on one of the earlier projects. Some believed she should take a short break to write down the basics of the story, then set it aside and finish the almost-completed projects.

“I'm always hesitant trying to do in a Muse,” former NINC member Karen Harbaugh wrote. “The last time my Muse hijacked me, I ended up with more than twice the money I had made before, and wouldn't you know it, she did it just when I was the most financially strapped and thinking I should go with the same old ▶

I had been writing because my editor at the time was offering money sight unseen for it.”

After offering this enticing example, Karen suggested, as others had, that Edie jot down a short synopsis of the grandiose idea and promise the Muse she'd write the new story after the others were completed. “Although you'll write it on the side, because it's not like the Muse is offering you a sizeable check and a Glock doesn't put food on the table. And by the way, couldn't the Muse see her way to helping out with the other books and getting you more of an advance for them? Sometimes Muses are open to negotiation.” Karen's book, *Night Fires*, (Bantam/Dell 2003) was a Rita finalist and is still in print.

I love the idea of negotiating with the Muse.

When other authors, published or unpublished, ask my opinion on what they should write next, I usually answer with a question: “If you knew you only had one year to live, but you would have the energy, strength and ability to write one book, which book would you choose?”

I believed that response would lead every writer to her own perfect answer. Considering the uncertainty of life, shouldn't the next book always be the one you know you want to leave behind? I'm no longer certain the answer is always that simple — although I believe the question has relevance.

NINC member Linda Barrett was diagnosed with cancer soon after selling her first book, a category romance, and she had surgery the same month the book was released. She was under contract for more titles at the time and wrote more category romances during treatment and recovery and for years afterward. (You can read more of her story in “We Bounce Back,” *Nink*, June 2004.) I noticed Linda published a women's fiction novel, *Family Interrupted*, this year, and I wondered whether she'd made the choice to write a different type of story because of her experience with a life-threatening disease.

“The original “itch” to try something bigger or different came just before the second breast cancer was discovered in December 2010. I didn't understand what was happening except that my proposals were getting rejected, partly because of a new editor, but partly because I was starting to people my stories with a “cast of thousands” — lots of relatives, lots of subplots, lots of POVs. While submitting category romance and receiving rejections, I had started working on a women's fiction project which allowed for the expansion that category did not. I was thinking about life questions that maybe didn't come with a total happy-ever-after but as I call it, a *hopeful* ever after.

“Oy! Trying something so big and new-to-me was crazy, difficult and shot my confidence right to shreds. I didn't know how to control the story structure — how to go back and forth through time — I think that was my hardest issue. But I finished the book and let it rest for awhile. In the meantime, I had an idea for another big story which turned out to be *Family Interrupted*, which was published in April this year. I learned so much about handling a lot of material and timeline. The reviews are wonderful, and it's being discussed at two book club groups so far. I was now focusing on family-in-crisis type situations and how the aftershocks affected each person individually and the family as a unit.

“As I went through treatments, I was comparing the first and second experiences and the collateral events in our lives. I knew deep down that I had a book here. By the time I attended the October 2011 NINC conference, I knew I'd write a memoir, and I had my picture taken with and without my wig on by former NINC member and photographer Sasha White. *Hopefully Ever After: Breast Cancer, Life and Me* will be released independently this October. Lots of laughter, tears and love for at its heart is a romance. I guess the difficult decision for some writers would be deciding if they wanted to reveal their experiences. Because of my particular circumstances, as a carrier of the BRCA1 gene mutation, I had no compunctions. I wanted to share what I've learned. (Think Angelina Jolie's decision). The book has already garnered a fabulous review from Joni Rodgers, a *NYT*-bestselling author (*Bald in the Land of Big Hair*) and cancer survivor.

“I worked on these independent projects through my treatments: One, fiction; the other non-fiction. Both were stimulating, challenging — even with chemo brain — and kept me on my normal writing path. I haven't had time to rewrite the first women's fiction book yet.”

Linda's response wasn't what I anticipated, but I find it intriguing. Yes, the type of books she's writing has changed considerably, but the change happened more gradually than I expected. The changes were the result of her life experiences and her growth as a writer, as with all of us. It appears the Universe stepped in with the frustrating rejections of the stories she intended to continue writing, thus making the choice to concentrate on women's fiction easier than it may have been otherwise.

Annie Dillard in *The Writing Life* asks a similar question to that I ask, “What would you begin writing if you knew you would die soon?” She expands on the idea with “What would you say to a dying person that would not enrage by its triviality?”

It’s an interesting question, but I’m not certain the answer is as simple as first appear. Sometimes when in a grave situation, a person isn’t seeking to know the greatest pearls of wisdom regarding life or death, or wondering about a religious concept related to the afterlife, or even seeking answers to why he experienced this life. Maybe the person wants to read something that will make him laugh, or get so caught up in a thriller he forgets he may not be here long, or to read something that reminds him of when he was a young man and fought beside other young men for an ideal, or what it felt like to fall in love or play with his first dog when he was a boy.

I’ve chosen which books to write for various reasons at different stages of my own career. Only a couple of my published books would qualify as the answers to my “what would you write if you only had a year left” question. Sometimes the book I chose to write next was the one that would most quickly bring in money for rent, insurance and the other money — musts for survival. Other times the books were chosen as Mary Jo discussed above, determined by my career goal — which has changed from my early writing years. There is a series I wish I’d chosen to write instead of some of the books I did write. I realize I will likely not ever choose to write that series, for time has moved on. New ideas have captured my interest, stories I’m as eager to tell as those I abandoned along the way.

So what is the answer to the question “What do I write next?” I believe the answer changes as we change, as our circumstances change, as the publishing world changes, as our career goals change, and as our life goals change. Perhaps it eases fear of possible regret over the choice to remember that who we are and what is important to us always come through in our stories, regardless of story lines, genre or form.

Note: Mary Jo’s and Linda’s articles can be accessed in the Nink archives on the NINC website at www.NINC.com.

JoAnn Grote is the award-winning author of 40 books, including inspirational romances, middle-grade historical novels, and children’s nonfiction. Contact her at jaghi@rconnect.com.

Writing is Taxing

Continued from page 13 ▶

an event. If you donate an item to a charity but do not receive a business benefit in return, the donation would be treated as charitable gift and would be deducted on Schedule A rather than Schedule C. An example would be your donation of an e-reader to a charity for auction wherein you receive no promotional benefit from the donation. In such a case, the IRS deems the contribution to have been personal rather than business related and thus requires that you treat it the same as your other charitable contributions as an itemized deduction on Schedule A.

Diane Kelly is a retired CPA/tax attorney and the author of the humorous *Death and Taxes* romantic mystery series and a self-published romantic comedy.

Business Briefs

Reactions to Bezos and Washington Post Buy Out

- Gives Bezos a “bully-pulpit” for Amazon causes
- Bezos not union friendly but the *Post* is union
- Amazon Publishing and *Post* columnists could collaborate
- Bezos claims he’s leaving the management in place
- What does Bezos mean by experimentation for future changes?

PW Daily

The Mad Scribbler

By Laura Resnick



The Fifth Circle of Hell

“Ye who enter, abandon all hope.”

— Dante Alighieri, *Inferno*

This account of events which occurred some years ago is extracted from detailed records that I kept at the time. I have redacted the names to protect the innocent (*me*) from retaliation by people I never want to hear from again.

▶ A week after I deliver Book One to Publisher, Editor says he’s authorizing D&A payment. It doesn’t come. I insist Agent follow up. Payment still doesn’t come. The check finally arrives 5 months later, only after much nagging. No explanation for the delays.

▶ Around that time, Editor starts saying that I will soon receive revision notes. I keep receiving nothing. His notes finally arrive eight months after delivery. The edit is an incoherent, rambling mess. Portions of it don’t even apply to my book (but perhaps apply to another manuscript that Editor was reading at the same time?). I contact Editor with my questions, but he can’t explain his comments.

▶ During production for Book One, I discover that the map we agreed on a year ago for the front matter doesn’t exist and a full page of text is missing from the galleys. Editor never responds to my various messages about these matters, so I insist that Agent follow up. Editor then responds by erroneously claiming he has *already* discussed these matters with me.

▶ After I deliver Book Two, I wait nearly eight months for the acceptance check.

▶ Then I ask for feedback on Book Two. Editor erroneously claims he has *already* given me feedback. He also declines to discuss the manuscript with me when I follow up on this.

▶ Editor has ignored all messages about scheduling Book Two, so nine months after delivery, I finally convince Agent to go over Editor’s head to get it scheduled for publication. The date is set for 23 months after delivery, i.e. 14 months hence. (Spoiler: The book will miss its release date.)

▶ Editor keeps telling me to expect revision notes, but they never come. Finally, 13 months after delivery, I again insist Agent go over Editor’s head and convince Publisher to set a deadline for Book Two to bypass Editor and go straight to the copy editor.

▶ When the deadline arrives, the “edit” begins coming in chunks scattered over the course of a week. There are no notes, no letter, just one or two brief mark-ups every 20-25 pages (such as incorrectly changing a narrative verb from past-tense to present-tense). I have waited more than a year for this.

▶ Book Two is unusually long. Editor has repeatedly assured me that the length is “not a problem.” But about a month after I deliver my revisions (a self-edit, obviously), production informs me that they have been telling Editor for over a year that they will not publish the book at this length.

▶ Editor now claims that I have deliberately tried to conceal the length of Book Two from him with deceptive formatting and misstatements about it, so that he “never knew” its true length. I immediately produce multiple emails where I candidly and accurately discussed Book Two’s length with Editor, starting a year before delivery and also after delivery. He ignores this.

▶ Next, Editor claims that he repeatedly told me to cut Book Two substantially or else to split it into two volumes, and that I refused. I immediately produce multiple emails demonstrating that Editor specifically told me *not* to split Book Two (when I offered to do so), that he stated it did *not* need cutting, and that he said on multiple occasions (including more than a year after delivery) that the length was “not a problem.” Editor never acknowledges this.

For the next month, Editor ignores all my messages about Book Two and takes no steps toward getting it published. Meanwhile, the clock continues ticking toward the release date.

▶ It’s now clear, talking with production, that Book Two will not be published as is, and I have to choose between cutting the manuscript or splitting it into two volumes. I repeatedly ask for information about what length is publishable, so I can assess whether cutting the novel to that length is feasible. Editor ignores this question multiple times, then claims there is no answer and that this information “cannot be known.”

▶ Editor then tells me that *he* will cut Book Two. For obvious reasons, I emphatically reject this plan, and I ask again how much text *I* need to cut. No answer. A couple of weeks later, Editor sends me his suggestions for cutting the manuscript. His recommendations would render the story utterly incoherent while reducing the book’s length by only 2%-3%. I decline to implement the notes and ask yet *again* what final length would be publishable, so I can determine whether to cut or to split the novel. (Would I need to cut 30 pages? 600 pages? No one will say.)

Rather than answering my question, Editor declares that I’m difficult to work with, unreasonable, and doing my book a disservice by refusing to let him make it better.

▶ We’re running out of time, so I decide, in the continuing absence of any information at *all* about acceptable length, to split the book into two volumes. I do so, and I write additional text to make the two halves of the story work better as separate releases. Then the first volume, hereafter known as Book Two, *finally* goes to the copy editor. I also deliver the second volume, hereafter known as Book Three.

▶ Agent contacts Editor about negotiating the contract for Book Three. Editor says that no contract is needed or will be issued for it, because it was once part of Book Two. Editor insists that Publisher therefore has the right to publish Book Three as a separate release without acquiring rights or paying me.

I make it clear to Agent that I will sue if Publisher does this. Agent writes to Executive Editor, CEO, and Legal Department pointing out that they’ve got no legal right or precedent to publish Book Three without a contract. Publisher immediately agrees, and a contract is issued. No one ever explains Editor’s assertions.

▶ Editor sends me the cover mechanical for what is now Book Two, saying it’s fine and he’s about to approve it. I take a look: There are multiple typos on the front and back covers, the cover copy is for the wrong book, and under “About the Author,” the space is completely blank. I cite these mistakes, but all my messages about this are ignored for the next six weeks. I finally get Young Assistant at Publisher to look into it for me.

▶ I discover when proofing Book Two galleys that, due to a production error, 5,000 words have vanished from the text. Production says they’re “too busy” to fix their mistake. I point out that this can’t wait; Book Two is scheduled for release Real Soon Now. I follow up multiple times with Editor and with production. Never get any response. I finally insist that Young Assistant to look into this; he treats me like a lunatic nuisance making unreasonable demands.

▶ Book Two misses its release date. Publisher doesn’t notify anyone (including me), so the big chains assume the book has been canceled. They announce this to customers and cancel orders for it. I find out because readers contact me to ask me what happened. I contact Publisher, but never get any reply.

Book Two *finally* starts shipping a month later, two years after original delivery. Book Three is scheduled for release six months later.

▶ With Book Two on its way to stores at long last and Book Three now safely out of Editor’s hands and apparently on track for its release date, I refuse to keep working with Editor. Due to all of the above, ▶

I have been suffering from chronic stress illnesses for more than a year, culminating in a weird psychosomatic pain on my left side that has lately become so severe (here's the Big Clue) I can no longer type. I won't work in these conditions anymore. I'd rather give up my writing career than go through this again. I refuse to deal with Editor ever again, under any circumstances whatsoever.

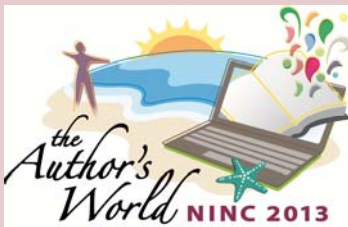
A few days after conveying that decision to the publisher and now finally free of that editor... all of my stress illnesses disappeared completely, as if they had never existed.

My then-agent, who had a strong relationship with this editor, had long been very resistant to my refusal to keep working with him—a subject that I first raised upon receiving the incoherent notes for Book One after an eight-month wait, and which I kept raising thereafter. When I finally dug in my heels and forced the issue, my relationship with the agent went from tense to untenable, and I terminated our association soon thereafter. The agent continued placing projects with that editor, who remained in his senior position with that publishing house for years—until his departure was recently announced, not long after a sexual harassment complaint was filed against him with the publisher's parent company.

Despite the hellacious publishing process these books endured, they were all very well reviewed, and Book Two and Three made multiple Year's Best lists.

After the books went out of print, I got the rights reverted, gave the old manuscripts a fresh edit, and self-published them as e-books. In doing so, I finally shed the toxic miasma of depression, frustration, stress, and bitterness that had for years surrounded this material, and I reclaimed these titles as good books I'm proud to have written. Which is yet another example of the opportunities and rewards that new technologies and distribution channels offer to writers!

Laura Resnick's In Legend Born, The White Dragon, and The Destroyer Goddess are available as e-books.



NINC 2013 Conference

Myrtle Beach, SC • October 24-27

Don't miss out on any of the speakers, the information, the networking of the Novelists, Inc. Annual Conference!

Read the latest information in this issue, see page 9 and page 13

Or check visit the website: www.ninc.com for updates.

You'll want to attend!

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