



Grievance and Contract Division

Semiannual Report

to the NWU National Executive Committee, National Executive Board,
and Grievance and Contract Division

January 1 - June 30, 2014

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Supporting data is found in a separate Appendix, sent to members of the Grievance and Contract Division and available to others on request to gcdcoordinator@nwu.org.

GCD COORDINATOR'S REPORT

Overview

The first half of 2014 (1H14) continued slow in volume but was productive in terms of winning money for writers. We handled 80 new requests, plus two grievances pending from the second half of 2013 (2H13). This compares with 84 new requests in 2H13 and 111 requests in the first half of 2013 (1H13). Of the 80 new requests, 63 came from members and 17 from non-members.

Demand for GCD services: The number of grievances rebounded from 11 to 14. Contract advisements were down from 33 to 25. Member inquiries (24) and non-member inquiries (17) were nearly flat.

Attracting new members: Of the 63 members requesting services, 25 – 39.7 percent, the same percentage as in 2H13 – had joined or rejoined within the preceding two months. Our retention rate over a one-year period went back up; 35.7 percent of members who joined for services a year ago are still on board, up from 14.3 percent in 2H13. **Tables 10 and 11** summarize these numbers.

How requests reach the GCD: Twelve of the 80 requests were referred by national staff members or officers. Eight were referred through chapters. Nine were direct contacts with individual grievance officers (GOs) or contract advisors ((CAs; collectively, GO-CAs). One came in through our voice mailbox. One was referred to us on the NWU-Book discussion list. (We often refer members to that listserv and others, since they're great sources of real-world experience.) The remaining 49 requests arrived by email.

Performance history: An update of the numbers compiled for the latest six months shows that between May 1, 1991, when the first database entry was recorded, and June 30, 2014, the last day of the present reporting period, the GCD handled 6,767 requests for assistance. This number is artificially low because contract advisements only became part of the GCD portfolio in 1995 and the logging of inquiries (as opposed to grievances and contract advisements) did not begin until February 1998. And, of course, this work was going on long before the database was started. While dollar amounts may not be exact due to delays in *Heart & Soul* payments, we have records of having recovered \$1,563,155.88 for members during the life of the database.

Operations

The lower number of contract advisements, specifically book contract advisements, accounts in large part for the low numbers. Only 19 book contracts were submitted for either contract advice or grievance assistance in 1H14. Academic press contracts comprised an unusually large number of these, six, while the two agreements for electronic books represented a drop from previous half-years. Only six books were unspecified as to type, a category usually consisting mainly of trade fiction and nonfiction where numbers are typically in the teens.

Ten cases in total were journalism-related - periodicals, newspapers, and online publications. We dealt with four agent contracts and four work-for-hire agreements. Some of the interest in journalism was fueled by one member who successfully challenged a few all-rights contracts offered by content farms and aggregators. As we keep saying, it never hurts to ask.

The complete list of contract types and frequencies appears in the Appendix as **Table 1**.

Contract advisements

Members requested full contract reviews in 17 of the 25 cases. In five instances they had questions about their contracts but didn't ask for a complete review. Three members wanted help in drafting contracts; two of these requests were withdrawn because the deals didn't materialize.

Concerns: Rights of various kinds, other than copyright, were mentioned in 11 advisements. (Members concerned with rights usually cite several of them. Twelve members had asked about them in 2H13.) Only six members were concerned about payment rates and terms – an issue that used to dominate advisements. (Eight members mentioned them in 2H13.) Four members each were concerned about copyright, termination/rights reversion, and “overly broad terms.” Only three – an unusually small number – had difficulty with indemnification and liability clauses. (These are the clauses that say that if someone sues the publisher, you have to pay all of its court costs as well as any damages. It’s hard to get rid of them – publishers’ lawyers often dig in their heels – but we can suggest amendments to the language, advise members to have the publisher’s legal department review the manuscript, and suggest that members request coverage on publishers’ insurance policies.)

The list of concerns appears in the Appendix as **Table 2**.

Results: Four advisees reported improved contracts, and eight were “satisfied with advice” (they haven’t reported the final results of negotiations). Six members, a relatively large number, refused bad contracts. We’re always pleased when that happens, as writers are often so eager to be published that they’ll sign anything. We’re also pleased that no members signed bad contracts against our advice.

The complete list of results and their frequency appears in the Appendix as **Table 3**.

Grievances

Complaints: Non-payment or late payment was by far the most frequent complaint, cited in seven of the fourteen cases. Two complaints each were made regarding editorial practice/abuse, online infringement, kill fee issues, and requests for return of rights. (Grievants may have multiple complaints.)

Two grievances were dropped because they might have damaged an otherwise profitable relationship. A newspaper refused to accept a member’s assigned interview article for a capricious reason, and he wanted damages because he’d promised the interviewee that the article would appear. Unfortunately he had no contractual basis for demanding that it be printed, damages don’t just happen because a writer asks for them, and pursuing a futile grievance might have cost him many other assignments. Another writer discovered that a magazine for which she had written for years had published a ten-year-old-plus article of hers online without her knowledge. After the publisher ignored her protests and requests for payment, she abandoned the grievance because she wanted to keep the relationship.

Neither of these writers had contracts to back them up. Nor did the educational writer who did a huge amount of preparation for her client’s project, only to have him refuse her submission. Moral: Always get a contract, and keep it on file forever. That means forever.

Grievance officer interventions: Most cases only required the GO’s advice. But there were more active interventions in 1H14 than usual. Three cases required letters or emails to the bad guys, and three necessitated phone calls. (GOs may take multiple actions.)

The full count of grievance issues appears in the Appendix as **Table 4**. A description of GO interventions is shown in **Table 5**.

Results: It was a lucrative half-year, partly due to a member who collected the last \$700 of the \$4,000 that had been owed her for over a year. But wait, we’re not finished. She wrote another article for the magazine. The publisher promised not to run it until she’d been paid, but he did. Result: another \$1,500 grievance, on which star grievance officer Jerry Richard has helped her to collect \$500 so far.

National Contract Advisor Susan E. Davis helped several journalists, two of whom were members (the lead writer at the publication joined in order to bring the grievance), to collect severance pay from a publication that let them go last November, but failed to meet its obligations until the NWU intervened. The total settlement came

to \$5,000. Stefan Ostrach intervened on behalf of a member who was being stonewalled by an online magazine, and she collected \$450.

While money didn't change hands in the first half-year, we have to celebrate the conclusion of the two-year-old *Heart & Soul* grievance. The final payment of \$52,000 in August brought the total collected for twelve writers and editors to over \$125,000. (The payment is not included in our total because it took place in the second half-year.) Kudos go to President Larry Goldbetter, the UAW legal department, and Maryland labor lawyer Arlus Stephens.

Results are categorized in **Table 6**.

Inquiries

There were 24 questions from members, the same as in 2H13, and 18 from non-members, up from 16. Most of the inquiries by far (ten) dealt with business practices and prices, e.g., when you need an agent, industry standards for online contracts, time restrictions on first rights.

Five of the non-member inquiries would have been grievances if brought by members, and five would have been contract advisements. Three dealt with copyright, two with legal questions, two with rights reversion, two with screenwriting, and two with the classic question of how to get accurate numbers on book sales. The nature of member and non-member inquiries is summarized in **Table 7** of the Appendix.

International cases

We received a request from our UK affiliate, the National Union of Journalists, on fees paid by a particular magazine. We were able to answer that within an hour with the help of our Journalism Division. Our Australian affiliate sought our input for a model screenwriting contract. An Irish journalist wanted ideas for collecting unpaid money from clients in different countries ranging from France to Singapore; it turned out she'd made the right moves already. An author found unauthorized ebooks being sold on an Australian website. Four cases involved foreign publishers. **Table 9** of the Appendix summarizes international cases.

Publishers and other business entities

A list of publishers and other entities with which our advisees had contracts appears in the Appendix as List 1. A list of entities against which grievances were filed appears as List 2. Entities about which member inquiries were received are in List 3, while those about which non-member inquiries were received are in List 4. Names of individuals are omitted, and none of these lists are all-inclusive.

Issues

We continue to make slow progress on some of the problems confronting writers.

Ebook contracts. Led by National Grievance Officer Amy Rose, we're working hard on the first of the three seminars on ebook contracts that the Delegate Assembly authorized in 2013 as part of a joint campaign by the GCD and the Book Division. We hope to complete the first one this year. The issue remains as hot as ever. We continue to hear from authors who are being asked to sign ebook amendments to contracts they entered into years ago, before ebooks were a serious market. The publishers, afraid that they'd have to pay authors 50 percent in royalties for subsidiary rights as stipulated in pre-2000 contracts, have been trying to renegotiate ebook royalties down to 25 percent or even to the percentage paid on print books, although their costs for publishing ebooks are much, much lower. New contracts generally arrive with ebook royalties set at the same level as print royalties. The worst offenders seem to be academic publishers. Which brings us to . . .

Academic publishers. As our experienced and knowledgeable contract advisor Ken Wachsberger recently wrote in *The Ann Arbor Independent*, academic presses — both university-based and commercial — offer writers “arguably the worst contracts in the business.” They offer incredibly low royalties, try to get authors to sign over their copyrights, require revised editions at will, charge authors for indices and permissions as well as for

promotional expenses, and generally take the position that their authors are academics who have to “publish or perish” and therefore need them more than they need the authors. Unfortunately, these presses are also publishing the works of professional non-academic writers, who are lured to them by their imagined prestige. Academic books, with six requests, were the largest defined category of contracts on which members sought advice in 1H14.

Assistant National Contract Advisor Paul MacArthur and Contract Advisor Ian Newhem, as well as Ken, have been active in speaking to academic gatherings about writers’ rights. Our contract advisors have been successful in helping our members negotiate better contracts.

Journalism or content? Many of our members have come to terms with the content farms that are replacing conventional markets. One particularly enterprising member has been systematically working several of them, negotiating to improve their contracts, with some success. You may not have to choose between being paid for one-time rights to an article and churning out twenty pieces a day for which you may or may not be paid.

Self-publishing. Many of our members and other book authors have turned to self-publishing. For a while it seemed as though the often abusive subsidy presses were fading away in favor of do-it-yourself operations such as CreateSpace and Lightning Source. But not only are subsidy presses not disappearing; they’re going mainstream. Author Solutions, umbrella company for a number of them, is now “a Penguin Random House Company” and has also “teamed up” with Simon & Schuster to create Archway Publishing. The mainstream publishers don’t exactly promise to monitor the self-published books in the hope of finding another *Fifty Shades of Grey*, but the implication is there. So choices are becoming more difficult. We hope authors will send us their self-publishing contracts of all descriptions for review.

Royalty statements. Our mailbox is still filled with emails from book authors who are sure that their publishers are cheating them out of royalties. Most of them probably aren’t, although some resourceful and determined writers have brought some publishers to task. But the fact that royalty statements are still infrequent and incomprehensible, coupled with the fact that reliable numbers aren’t available from distribution channels, feeds this lack of trust. We’re hoping to push back, and we’re appealing to everyone to send us royalty statements so we can quantify the problems.

People

Our roster is now at 26, of whom 22 are active on grievances or contract advisements. Thanks to the expertise of our new GO-CAs we’ve been able to handle more cases in such areas as scriptwriting, self-publishing, and children’s books. A table showing coverage and use of GCD services by chapter is in the Appendix as **Table 8**. Overall utilization rates are described in **Table 11**.

Conclusion

Our new GO-CAs have hit the ground running, and with lower demand we can afford to look for new business. Please contact us with your concerns on the issues mentioned above and any others you may have.

Many thanks once again to National Grievance Officer Amy Rose, National Contract Advisor Susan E. Davis, and Assistant National Contract Advisor Paul MacArthur. Thanks to them, the GCD is in the forefront of most of the NWU initiatives, and is still one of the main reasons members give for belonging to the NWU.

Special thanks to President Larry Goldbetter for his continuing support. Thanks also to senior advisor Mike Bradley, National Book Grievance Officer Phil Mattera, National Journalism Grievance Officer Renee Despres, and all of our incredibly brilliant and hard-working GO-CAs.

Compiled by Barbara Mende, Coordinator, Grievance and Contract Division, September 2014. Please direct questions and comments to GCDCoordinator@nwu.org.

Semiannual Report to the NWU National Executive Committee, National Executive Board,
and Grievance and Contract Division
from Amy Rose, National Grievance Officer

September 2014

Group Grievance Against *Heart & Soul* Successfully Resolved

All of us in the GCD are especially pleased with the successful outcome of the group grievance against *Heart and Soul*, undertaken on behalf of twelve writers and editors about two years ago (please see page 3 of Barbara's report, above). The efforts of the grievants, of President Larry, and of labor lawyer Arlus Stephens culminated in over \$125,000 in payments to the group members as of August of this year.

Congratulations to all! The win is just another example of what union can do for its members through cooperation, diligence, and persistence.

First Ebook Webinar Development Well Underway

Barbara (above, page 3) mentions the progress toward completion of the first of three webinars on ebook contracts. The initial 90-minute webinar, scheduled to roll out early in the new year, will cover the state of the ebook industry as it affects authors, the abuses to which many authors are subjected with respect to ebook publication, and an overview of strategies for avoiding or overcoming the abuses and achieving the best possible ebook deal.

The second webinar will focus on specifics of ebook contract negotiation, and the third on the pros and cons of ebook self-publication.

It is a pleasure and a privilege to contribute my instructional design experience to this undertaking and to collaborate with the other four development team members. Susan E. Davis, Paul MacArthur, Barbara Mende, and Edward Hasbrouck are providing the broad experience and rich subject matter expertise required to give this webinar solid value for participants. I thank every one of them for helping to make this one of the most enjoyable and rewarding training design projects I have worked on in 25 years as a training developer.

Retaining Members Who Join the NWU for GCD Services

The services offered by the GCD continue to attract new members to the NWU. But a disappointing number (between 60 and 85 percent) allow their memberships to lapse after they have gotten the help they need. I suggest that grievance officers and contract advisors have a unique opportunity to improve this retention rate by virtue of their relationships with their advisees.

The GO or CA usually gets to know an advisee well enough to be able to present an individualized inducement to stay in the union. One advisee may reveal an interest in helping other writers. Another may express curiosity about how to find an agent. A third may betray frustration at having nobody to consult with about how to arrange a book tour. In each case, the GO or CA can easily inform the advisee of particular opportunities (e.g., training as a grievance officer; taking advantage of the NWU Book listserv and the Authors Network. The timing and nature of the "inducement" obviously varies from person to person and case to case.

Perhaps future GO-CA training sessions can include a short segment on retaining members – one at a time. We can then monitor retention rates to determine whether our efforts make a difference. I welcome the opportunity to pursue this idea with others who are interested.

Congratulations and Thanks

My warmest congratulations and sincere thanks go to the grievance officers and contract advisors who provide steady and helpful support to our members. As always, I tip my hat to my GCD colleagues: NCA Susan, Assistant NCA Paul, and Coordinator Barbara.

If anyone wishes to discuss this report, please feel free to contact me at 313-882-5183 or nwugoca1@earthlink.net.

Semiannual Report to the NWU National Executive Committee,
National Executive Board, and Grievance and Contract Division from
Susan E. Davis, National Contract Advisor

September 2014

Planning the First Ebook Webinar

After the 2013 Delegate Assembly approved a series of three webinars as part of the ebook royalty campaign (proposed by a joint Book Division-GCD committee and approved at the 2011 Delegate Assembly), Book Division Co-Chair Edward Hasbrouck, 2nd Vice President (EOVP) and Assistant National Contract Advisor (ANCA) Paul MacArthur, GCD Coordinator Barbara Mende, NGO Amy Rose, and I (NCA and Book Division co-chair) began work on the first webinar. Since Amy has extensive experience and proficiency in writing webinars, she was hired to do that for a stipend of \$1,500. Our proposed date for offering the webinar to members and friends was November 2014.

We held a preliminary conference call in February to sketch out topics to be covered in the first webinar. The original topic as defined in the 2013 DA resolution was: “What members need to know to understand terms about e-books in their current contracts and how to make sure they are getting paid properly and/or can understand their royalty statements.” That of course has evolved during the course of our work.

Our first conference call, which all committee members attended, took place on April 27. We reviewed Amy’s outline of the webinar and made suggestions about reorganization of topics and refinement of wording. Then after Amy made the suggested revisions, we continued to review and revise via email.

Our second conference call took place on July 24 without Edward (whom we excused since he was otherwise occupied in Europe). Again we reorganized and refined and continued to do so via email. A third conference call, with all committee members, took place on August 29. This proved to be an exceedingly valuable session. More in-depth familiarity with the scope of our topic led us to even better organization and refinement.

Progress is definitely being made, but it is likely that we won’t be able to offer the webinar until early 2015.

Need to Update Guide to Book Contracts on Ebooks

It has become exceedingly clear in the course of planning the webinar that the material on ebooks in the current Guide is sorely out of date and must be revised as soon as possible. While there are probably other areas in the Guide that need revision—a thorough review is required—no money has been budgeted to do such a revision. However, one of the many benefits of doing the webinar is that that material can be relatively easily recycled into an addendum to the Guide until funds can be allocated for a thorough revision. I volunteer to do the addendum in consultation with other members of the webinar committee, in addition to a final review by National Book Grievance Officer Phil Mattera and longtime GCD member Mike Bradley.

Contract Workshops

A number of GCD members have given contract workshops over the years, including the Guide’s original co-author Phil, Paul, Barbara, and I and contract advisors Shirley Moskow, Ken Wachsberger, and Ian Newhem. These workshops are useful to educate writers, both members and non-members, and to recruit new members. Providing this information, which most writers don’t have easy access to, is a union resource that is especially important in this evolving digital revolution.

I encourage all CAs to educate members in their chapters and/or give workshops at local writers’ conferences and events they attend. Chapters should be encouraged to host these workshops where GCD members share their expertise either in person or via Skype (or other such technology). If CAs are interested in doing workshops, please contact me (sednyc@rcn.com).

With Appreciation

Thanks to all GCD members who provide the valuable, thoughtful guidance and support members need and rely on. You are the reason new members join the NWU month after month. Working closely with Amy, Paul, and Barbara is an ongoing pleasure. The division stays firmly on track thanks to Barbara's expert organizational skills, wealth of experience, and delightfully light touch.

If anyone wishes to discuss this report, please feel free to contact me at 212-989-6756 or sednyc@rcn.com.