



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

January 1 - June 30, 2016

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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

First, a commercial. We've done two showings of our webinar, "E-Books and E-Rights." We plan to present it again in the fall. It's been well received so far, and we think we've beaten the technical challenges. Watch for it and let us know what you think. We're also starting work on the second of three webinars.

In the first half of 2016 (1H16) the GCD handled 70 new requests, plus three grievances and a contract advisement continuing from the second half of 2015 (2H15). This compares with 63 new requests in 2H15 and 76 new requests in the first half of 2015 (1H15). Of the 70 new requests, 54 came from members and 16 from non-members (down from 22).

Demand for GCD services: There were 14 new grievances, up from 13 in 2H15. Contract advisements went from 25 to 24. Member inquiries rose from 14 to 16, and non-member inquiries from 11 to 16. In other words, we saw a modest rise in volume from the previous quiet half-year. There was also a small rise in the rate of utilization by members.

Attracting new members: This was a banner half-year for services to members who had just joined or rejoined. Of the 54 members requesting services, 30 had signed up within the preceding two months - a record proportion. Six of these were former members who had rejoined. Our retention rate over a one-year period was also the highest since we started to calculate that statistic: a full 50 percent of members who joined for services a year ago (11 of 22) are still on board, although three of them lapsed and rejoined during the year; this compares with 38.9 percent of those who joined in 2H14. **Tables 10 and 11** of the Appendix summarize these numbers.

How requests reach the GCD: The website request form has become popular: 31 of the 70 requests came in that way. The form has become a much more reliable way to communicate. Six requests were referred by national staff members or officers. Four were referred through chapters. Three came in on the phone. One originated with the UK's National Union of Journalists (NUJ), with which we have reciprocity. For the first time, we received two inquiries referred by the Freelancers Union. The remaining 23 requests arrived by email.

Performance history: Between May 1, 1991, when the first database entry was recorded, and June 30, 2016, the last day of the present reporting period, the GCD handled 7,071 requests for assistance of all kinds. 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, we have records of having recovered \$1,569,906 for members during the life of the database.

Operations

The mix of cases showed a variation from previous periods. While the largest category of contract type in 2H15 was book (unspecified) with 10, this time book authors could be identified more easily: four unspecified books, four academic/textbooks, four self-published or subsidy press books, and a children's book. We had seven journalism contracts; most of these were grievances as we get few formal journalism contracts to review these days. There were four collaboration contracts, four for work-for-hire writing and editing, three related to screenwriting or TV, and two with agents. Three contracts were related to services performed (or not performed) for members: a grievance against a publicist, advice on a contract with a "virtual assistant," and the kind of contract we love to hear about: a member who is publishing the books of other authors and asked us for help in making her model contract as author-friendly as possible.

The complete list of contract types and frequencies appears in the Appendix as **Table 1**. Geographical distribution of requests is detailed in **Table 8**.

Contract advisements

Members requested full contract reviews in 15 of the 24 cases. In eight instances they sought advice on specific questions. One member wanted help in drafting a contract.

Concerns: As usual, one of the strongest concerns – voiced by 10 advisees – was payment amount, rates, and terms. However, 10 advisees also cited indemnification and liability clauses. We’ve seen these clauses grow more restrictive over time, and harder to get rid of despite our efforts to help members negotiate their way out of them. Nine advisees had questions about various kinds of rights, excluding copyright. Of these, seven mentioned subsidiary rights - the right of publishers to everything from e-book licenses to movies. Most advisees who mentioned rights mentioned several of them.

Termination and rights reversion clauses, arguably the most important clauses in a contract, came up in seven advisements. Five were concerned with editorial control. In line with increased concern about control in all phases of publication, five advisees were confronting noncompete clauses, which are creeping from the work-for-hire world into other publishing, and five were facing option clauses that gave the publisher control over their future work (not good things to have in contracts). Costs and expenses, and inappropriate fees charged – both largely of concern to subsidy press authors – each surfaced in four advisements. So did e-book issues, mainly centering around publishers’ efforts to set e-book royalties at the same rate as print royalties. Our webinar deals with these issues. If you haven’t seen it, look for an announcement of the next airing.

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

Results: Six advisees reported improved contracts. Four refused bad contracts. Another member reported that the publisher wouldn’t budge on a work-for-hire contract, but she signed anyway. In that case the decision was reasonable; she tried before giving up. In six cases the writers were satisfied with our advice, but results are unknown.

We’re especially pleased with the outcomes of two cases. Jim Kaplan’s advice enabled a member to negotiate changes in the royalty rate, the treatment of future rights, the indemnification clause, the non-compete provision, rights to future work, the termination clause, and author approval of the title and cover of her book. It doesn’t get much better than that. A new member reported that Susan Casey and Mike Bradley “were really helpful in translating the contract -- dumbing it down, so to speak, to a level I could comprehend.” That’s what we’re here for.

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

Grievances

Complaints: Eight of the 14 grievances dealt with nonpayment or late payment. Four grievants complained that the other party failed to fulfill the contract. Two had trouble with royalty statements and two cited infringement. (Grievants may have multiple complaints.)

One of the nonpayment grievances, plus two carried over from 2H15, were against *Heart & Soul*, with whom we had to go to court in the past to collect for writers and editors. We’ve been corresponding with the magazine, which has promised that the checks are in the mail, but as of this writing we haven’t seen them. We’ve posted a new Writer Alert.

A grievance carried forward for over a year involves a subsidy press that agreed to release our member from her contract, but has refused to notify Amazon to delist her book so that she can publish it elsewhere. Unfortunately Amazon will not honor an author’s request. The publisher now claims it has done the notification, but the book is still listed at this writing.

Another ghost from the past surfaced. America Star, formerly PublishAmerica, has been notorious for not honoring its agreement with writers. An author who tried to cancel her contract was told that she’d have to pay over \$200 to get the rights back plus an exorbitant fee for the layout and design work. Since the book is listed online, she would have to go to considerable expense to replicate that work.

A member paid a publicist he found online to promote his book, paying her a large sum of money he couldn’t afford as a disabled veteran. He didn’t receive the services he had been promised. When he tried to take action with federal agencies, he found that they agreed with him that the operation was questionable, but couldn’t help him get his money back. Neither could we, unfortunately, despite Herculean efforts by our grievance officer.

A journalist from Australia joined online and filed a grievance under the mistaken impression that we were a collection agency and could get her the money a TV network owed her within three days. Naturally we allowed her to cancel her membership.

Grievance officer interventions: Fourteen GOs advised the grievants. Three helped them with demand letters. Phone calls were made in three cases and emails were sent in four. As noted, we posted the second Writer Alert against *Heart & Soul*. We also filed a credit report and a complaint with the Florida attorney general against the recalcitrant subsidy press.

We encountered a few cases where members wanted to leave everything to the grievance officer without actively participating themselves, and were unwilling to follow up on the GO's suggestions even when they agreed with them. A grievance is a joint effort. We can only help people who help themselves.

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

Results: Congratulations to Jerry Richard for bringing home the last \$350 on the \$1,750 grievance that was filed in 2014. We trust the recipient, who continued to write for the publication even when it owed her money, has totally severed the relationship.

We didn't score any clean wins on our current grievances, mainly because the nonpayment cases were so difficult (e.g., *Heart & Soul*) or members didn't follow through. We were happy to hear from two of our grievants, however, that they were paid even before being assigned to a grievance officer. One of them wrote, "I'll get back to you if the check bounces again." Luckily she didn't have to.

Results are categorized in **Table 6**.

Inquiries

There were 16 questions from members, up from 14 in the last half-year; and 16 from non-members, up a lot from the disappointing 11 in 1H15. Since two of the 16 non-members subsequently joined, we're happy to have them bring us their questions and to introduce them to our services.

Nine non-member inquiries would have been grievances if brought by members, and two would have been contract advisements. Four inquiries in total dealt with business practices and prices. Three inquiries related to risks of defamation suits, a legal area in which we can't give advice but about which members are properly concerned. Three asked the age-old question of how an author can confirm that his or her publisher is reporting book sales correctly. That's hard to answer, but Nielsen has a service called BookScan that can be useful to some authors and is available through Amazon. Three members requested our proprietary documents such as the Guide to Book Contracts. Two had questions about self-publishing.

Among the non-member grievances and inquiries were several relating to subsidy presses that weren't reporting royalties, turned out inferior quality work, didn't honor commitments to market books, overbilled for services, or were otherwise giving authors less than they were entitled to. Other unscrupulous operatives were reported, including a deadbeat blogger and a content farm that arbitrarily lowered its already low rates.

A full list of inquiry topics is in **Table 7**.

International cases

We recorded four grievances from members outside the U.S., including a member of our British affiliate the NUJ, who was paid as we were in the process of assigning her a GO. The other requests came from Canada, Australia, and Taiwan. We assisted an American member on a contract with a Canadian agent and another on an agreement with the British branch of an American firm. We received inquiries from an American working with African materials and from three non-members living outside the U.S.

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**. Names of individuals are omitted, and neither of these lists is all-inclusive.

Issues

We continue to make slow progress on some of the problems confronting writers. And new ones keep appearing.

E-book royalties. Our webinar on e-books and e-rights brought forward new questions from members who believed they weren't being treated fairly. We still hear about publishers who are trying to profit unreasonably from e-book licenses. In case anyone has forgotten, we hold that e-book licenses are subsidiary rights that should be negotiated separately from print rights, and should never be equated with sales of print books.

Subsidy presses. As noted in our discussion of non-member grievances, complaints about inferior quality work, failure to pay, lack of promised promotional support, and general subpar service. We're rarely asked to review contracts with such publishers, and we should be. You need even more help when you're paying them than when they're paying you. We're also available to help members with grievances against subsidy presses.

Control freaks. The numbers, plus questions we've been receiving over the past year, point to publishers wanting more control over their authors. Indemnification clauses are becoming stiffer and more troubling. We're seeing noncompete clauses (which aren't even legal in some states) moving from the work-for-hire world into other publishing. Options clauses, granting the publisher first refusal on the author's next work, concerned more members than usual. Termination and rights reversion was a greater concern than before. The trend toward wanting writers to click agreement to online contracts, and a trend toward spacing royalty statements farther apart (see next item), also demonstrate that writers have to protect their own rights more than ever because no one will do it for them.

Royalty statements. As we've discussed before, many members believe that their publishers - particularly subsidy presses - are stiffing them because they see that their books are ranked on Amazon and their publishers tell them they haven't sold any. The publishers are probably right; the Amazon rankings are meaningless and Amazon doesn't have to buy one book in order to offer it for sale. But every author is entitled to regular royalty statements. Every contract should specify how often they'll be issued, and authors should demand that they receive those statements at the specified time. Twice a year used to be traditional, and you'd think that with real-time inventories and other technological advances they would be easy to produce quarterly or even monthly; but no, at least one large publisher has gone to once-a-year statements. Regardless of the frequency, you should get every statement you're entitled to and should get answers to any questions you have about them. If you have trouble interpreting your statement, we're here to help. Send it to advice@nwu.org.

Scam artists. They've abounded in 1H16. They take the form of online publications that disappear and reappear under other names, agents who demand fees for reading and editing or insist that authors hire readers and editors of their choice, publicists and other service providers who don't deliver, ghostwriting clients who don't pay, content farms that develop such confusing rules for payment that they can argue their way out of any demand, and so-called agencies that broker agreements between writers and disreputable clients. One common characteristic of most of them is that they're hard to find when you're looking for your money.

We urge writers to do their research in advance before signing on with anyone that's less well known than Random House or *The Chicago Tribune*. If you have to deal with an individual, investigate and get references if possible. (It is pretty much impossible to collect from an individual who doesn't want to pay you. We know; we've tried on countless occasions.) In any case, insist on a contract and have us review it. Never agree to a contract online; make sure you have hard copy of whatever you sign virtually or otherwise. Make sure, too, that you get paid (or pay for a service) by milestones: x dollars two weeks after receiving chapter one, x dollars two weeks after the appearance of a press release in x newspapers, etc. Most important, ***do not continue to produce work for any entity that is delinquent in paying you.*** The two-year-old grievance we just closed was the result of the writer continuing to produce work for the offending magazine publisher even after she saw she wasn't going to be paid promptly. And that was a fairly well-known publisher. With someone you don't know, you can't be too careful.

An internal issue: member follow-up. As we mentioned in the discussion of grievances, members sometimes report grievances and don't respond to follow-up questions. Or they ask us to assign a grievance officer and don't answer when s/he asks them for details of their cases. Or the GO requests documentation and they don't provide it. We've had several grievances we would have liked to pursue, but the members disappeared. The grievance process isn't something that you turn over to us. Grievants need to work in partnership with their GOs.

Often the GO will recommend an action for the member to take, and the member needs to follow that recommendation or reject it. It's hard work for both the GO and the member, and it can only produce good results if the member stays on top of it.

People

Most of our 20 GO-CAs are active on grievances or contract advisements. (One is on medical leave and three others are temporarily inactive.) They go the extra mile for our members, are always eager to help them, and do incredible work.

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

The pace picked up a bit from 2H15, due mainly to the rebound in non-member inquiries. We're glad to have them, because they give us the chance to introduce ourselves to more writers. But we're here to serve members, and we'd like to remind you of the many ways in which we can help you.

We believe our contract advice is the best deal around. True, our contract advisors aren't lawyers. But we feel we know more about literary contracts than lawyers who don't specialize in them. We're writers who have negotiated our own contracts. We've gone through extensive training and routinely consult one another if we need reinforcement. Our advisees regularly report that our advice helped them improve their contracts. See <https://nwu.org/grievance-and-contract-division/contract-advice/>. If something goes wrong and the other party violates a contract down the road, we're there to help with a grievance. See <https://nwu.org/grievance-and-contract-division/grievance-assistance/>. And if you just have a question about industry practices, a particular publisher or agent, or basic rights issues, we're right on the other side of advice@nwu.org.

Many thanks once again to National Grievance Officer Amy Rose, National Contract Advisor Susan E. Davis, and Assistant National Contract Advisor Paul MacArthur. They keep us on top of writers' individual and collective needs, and work tirelessly to fill them.

Special thanks to President Larry Goldbetter for his continuing support. Thanks also to Senior Advisor Mike Bradley, National Book Grievance Officer Phil Mattera, and our amazingly dedicated and skilled GO-CAs who keep walking through fire to help our members.

Compiled by Barbara Mende, Coordinator, Grievance and Contract Division, September 2016. 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 2016

Heart & Soul update

The long-running grievances of three writers for *Heart & Soul* have still not been resolved. In late August, we posted a new Writer Alert on the NWU home page (<https://nwu.org/writer-alert-heart-soul-magazine/>). There has been no response yet from the magazine.

On a more hopeful note: According to President Larry, the UAW is apparently prepared to offer legal intervention with *Heart & Soul* once again as it did successfully several years ago. Keep your fingers crossed that this situation will finally be settled!

NWU-GCD-Book Division webinar #2: Negotiating e-book contracts and terms

The first e-book webinar, "E-books and e-rights: What authors need to know," has been launched and presented twice online. Participants found it helpful. We plan to do further sessions this fall.

In the meantime, we are ready to start developing the second proposed webinar, "Negotiating e-book contracts and terms." This webinar will cover the essentials of e-book contracts and contract negotiations. It will focus on contract terms that can present the biggest obstacles to achieving a fair and favorable contract. All of these issues were presented as problems to the GCD over the past six months (see Barbara's report above). These include:

- Payment amounts, rates, and timing. This includes deciphering royalty statements.
- Definition of rights, including copyright and subsidiary rights. The goal is to prevent the publishers from claiming ALL rights, as they are often inclined to do.
- Indemnification and liability clauses. These clauses are increasingly restrictive, and it takes skill and savvy to negotiate out of them.
- Termination and rights reversion clauses. It is vital for the author to negotiate fair terms to ensure he/she can get the rights back and/or end the contract if necessary or desirable.
- Option clauses, which can give the publisher excessive control over the author's future work, something many authors will not welcome.
- Noncompete clauses: The language used to protect the publisher/employer from competition is often too restrictive. When possible, the author should be prepared to negotiate more favorable terms.
- Editorial control. There is increasing concern with the quality of the production and the publisher's freedom to alter and control the process and the final product. Can one negotiate to protect oneself from undesirable editorial changes by the publisher?

A third webinar is also projected. This one is to cover the question of self-publishing vs. traditional publishing. A major issue to be addressed here is the nature and practices of subsidy presses. As Barbara reports above, great caution is called for when selecting and working with a subsidy press.

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. President Larry has been especially helpful with the *Heart & Soul* case.

If anyone wishes to discuss this report, please feel free to contact me at 313-882-5183 or nwu1ngo@gmail.com.

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

September 2016

First E-book webinar

After the 2013 Delegate Assembly approved a series of three webinars for the NWU's e-book royalty campaign, the joint Book Division-GCD committee (NGO Amy, Assistant NGO Paul, Book Division Co-Chair Edward Hasbrouck, Coordinator Barbara, and me, NCA and Book Division Co-Chair) began holding conference calls starting in February 2014. After several beta tests in 2015 and a series of tweaks during the winter as well as research for the technology with which to present the webinar, Amy, Barbara, and I gave two presentations to members in early summer, which were well received.

In addition to giving at least one more presentation to members, we plan to offer it to non-members. A subcommittee of the three of us, two National Executive Committee members, and possibly other volunteers will set up a marketing plan to non-members. We will also consult with Treasurer Mitzi Runyard Timan about how best to have enrollees pay for the webinar. A one-month discount if they join the union has been suggested.

The joint committee will soon meet to begin work on the second webinar in the series: "How to negotiate the best deals for new e-books in the future."

Time to create an e-book addendum to the Guide to Book Contracts

During the webinar development process, it became obvious that the text on e-books and other topics in the current *Guide to Book Contracts* needs to be revised. One of the pluses of creating the webinar is that material from the presentation, among other GCD resources, can be easily recycled into an addendum to the *Guide* until funds can be allocated for a comprehensive revision. I volunteer to draft an addendum at an hourly wage, which I hope other members of the committee will review gratis. However, we cannot proceed with the addendum, let alone a full revision, until funding is either secured with a grant or budgeted as part of union expenses.

Contract workshops

Contract workshops are a valuable way to educate members and recruit other writers to join the union. Providing information that most writers need but don't have easy access to is a resource of union membership that is increasingly important during the digital revolution. In the past, workshops have been given on a regular basis by Paul and me. Other presenters have included the *Guide's* original co-author Phil Mattera, Barbara, and contract advisor Ken Wachsberger. I gave a workshop on copyright and preventing piracy of digital work in February at the New York Chapter's annual conference.

I encourage all CAs to educate members in their chapters and/or give workshops at local writers' conferences and other events. Chapters are encouraged to host these workshops where GCD members can 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

A big thank you to all GCD members for providing the valuable knowledge, guidance and support members require and rely on. You are a big reason new members join the NWU each year. Working closely with Amy, Barbara, and Paul is an ongoing pleasure. Barbara's expert organizational skills and wealth of knowledge based on many years of experience keep the division firmly moving forward. Her witty monthly reports convey our many challenges and successes.

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