

NWU Book Division Report, September 2018 – October 2021
for 2021 NWU triennial Delegate Assembly
October 2021

By Book Division Co-Chair Edward Hasbrouck

Rumors of the demise of the book have been greatly exaggerated. Revenues for sales of books and licenses for e-books increased substantially in 2020, and that trend has continued so far in 2021.

People are reading differently, but they are not only reading more (how much more time do you spend reading on your phone than you used to spend reading printed material?) but they are also reading more book-length works, albeit in different formats and on different devices. The question is not whether there is still money to be made in books or book-length written works – there is – but whether writers of books will receive our fair share of the growing revenues generated by our work.

The NWU Book Division works to organize writers of books (book-length works, whether distributed in printed and/or digital formats) in all genres, and advance their economic interests.

Following are some highlights of actions taken by the NWU Book Division since the 2018 NWU Delegate Assembly. These include work on issues specific to writers of books, including issues related to e-books. These also include policy advocacy related to legislation, regulations, and litigation on copyright and other issues that affect writers of work in other formats as well as authors of books, but where the Book Division has taken a leading role in NWU activities.

Aleah Barley was elected as Co-Chair of the Book Division at the 2018 Delegate Assembly, but was unable for personal reasons to carry out that office. Edward Hasbrouck has served as sole Co-Chair of the Book Division since 2018. I am grateful to those who volunteered to fill some of the gaps, especially Susan E. Davis (former Book Division Co-Chair and Chair of the Grievance and Contract Committee until her death in September 2020), Ann Hoffman (former 1st V.P.), and Barbara Mende.

Other ongoing activities by the Book Division co-chair and other member volunteers include moderating the NWU-Book listserv (special thanks to Charles Coe, with assistance from Barbara Mende, both of the Boston Chapter, for their long service as moderators); alerting Book Division members and other NWU members about issues affecting their interests through NWU-Book and the national NWUsletter; monitoring Congress, the Copyright Office, foreign governments, and international entities for developments affecting book authors' interests; participating in monthly advocacy conference calls with a national coalition of writers and visual artists (the Authors Coalition of America); representing the NWU to international federations (the International Authors Forum, the International Federation of Reproduction Rights Organizations, the International Federation of Journalists, and the IFJ Authors' Rights Expert Group) and working in cooperation with the Grievance and Contract Committee in response to grievances and advice requests related to books and e-books. Advice and grievances related to book contracts have always been central to the work of the GCC.

The Book Division co-chair has made presentations to NWU chapters and other organizations on book issues, and has given presentations and participated in discussions on copyright, writers rights, and the business models and working conditions of book authors and other writers in the U.S. as part of representing the NWU in international coalitions and to other international organizations.

The Book Division co-chair served a 3-year term from 2016-2019 as a member of the Board of Directors of IFRRO, holding the sole seat on that board reserved for an elected representative of writers worldwide. As a member of the IFRRO Board, he was able to participate in high-level public and private discussions with representatives of publishers, licensing agencies, and government officials responsible for copyright treaty negotiations, laws, regulations, and policies including annual meetings between IFRRO and the copyright division of the World Intellectual Property Organization. As the writer member of the IFRRO Board, he also co-chaired the meeting of the author caucus of IFRRO members at each IFRRO meeting. See our earlier the report on our term on the IFRRO Board at:

<https://nwu.org/nwu-three-year-term-on-ifrro-ends/>

Since 2016, the Book Division co-chair has served as the sole non-European member of the IFJ Authors' Rights Expert Group, helping to bring a more global perspective to IFJ's advocacy with WIPO and the European Union institutions concerned with copyright and authors rights (including the European Parliament, the European Commission, and the EU Intellectual Property Office).

Travel to Europe for meetings of IFRRO and IFJ also gave us the opportunity to lobby directly on behalf of the NWU with EU officials and US delegations to the EU and international organizations.

All of the advocacy work of the Book Division has been carried out within the framework of the NWU priorities for copyright reform, which were adopted by the 2013 Delegate Assembly:

<https://nwu.org/book-division/position-papers-and-resources/priorities-for-copyright-reform/>

Many of the activities listed below have been reported and explained to NWU members, allies, and the general public through articles in the NWUletter and on our blog at NWU.org. Our public statements, position papers, official submissions to government agencies (including those listed below), and related resources are posted in the Book Division section on NWU.org at:

<https://nwu.org/book-division/position-papers-and-resources/>

Major advocacy projects, campaigns, and areas of work from 2018-2021 included the following:

1. U.S. copyright law and regulations

- (a) Small copyright claims: Legislation to create an administrative tribunal for “small” copyright claims, as an option (if agreed to by both parties) to Federal court, was enacted by Congress in late 2020, and is being implemented by the Copyright Office. The NWU endorsed this legislation, even though it is optional and falls far short of an enforcement mechanism genuinely available to writers in most cases of infringement of our copyrights.

- (b) Group registration of multiple works: In a small but significant victory that would never have been won without the leadership of the NWU in initiating the petition for rulemaking and building a coalition to support it, the Copyright Office adopted regulations in 2020 making it possible to register copyright in multiple short written works (stories, articles, blog posts, poems, etc.) distributed online with a single application form and fee, rather than having to fill out a separate form and pay a separate fee for each such article.
- (c) Moral rights of writers: The U.S. Copyright Office concluded a 4-year study in 2019 by recommending that Congress not enact any new legislation to protect the moral rights of authors, as recognized by international treaties ratified by the U.S. The NWU and its allies continue to call for such legislation, but action by Congress seems unlikely.
- (d) Future omnibus copyright “reform” legislation: At the end of the Trump Administration, Congress had begun work toward the next round of omnibus copyright legislation. The change in Administrations and Senate Committee chairs, and the deadlock in Congress, has postponed any such legislation indefinitely. But that does not eliminate the threat, or the need for organizing and building awareness. Opponents of copyright are organizing and building a lobbying campaign now, with nonprofit organizing and benign-looking libraries as their public front and backing from large Internet companies (who of course want to profit from our writing without having to pay for it). Whether it is framed as a law for “orphan works” or “controlled digital lending” or “digital first sale”, some sort of law allowing scanning and online distribution of copies of books without permission or payment to authors is likely to be proposed and considered as part of the next major U.S. copyright bill. It’s not certain to be enacted, but it is certain to be enacted if we don’t organize against it.

2. European Union copyright law and regulations

- (a) EU “Directive on Copyright in the Digital Single Market” (adopted April 2019): This is a major “omnibus” package of changes to EU copyright law. The NWU was one of the few non-European organizations of writers actively involved in lobbying EU legislators and trying to raise awareness of the implications of this legislation for writers outside the EU whose work is republished in the EU, including by EU-based websites and libraries.

On the negative side for U.S. and other writers outside the EU, the final directive as enacted allows scanning and redistribution on the Internet of digital copies of “out of commerce” works without authors’ or original publishers’ permission. This could generate some collective licensing revenues for U.S. authors distributed through the Copyright Clearance Center and the Authors Coalition of America. But in many cases (especially for non-EU writers) no payment will be required. Most works included in books that are out of print in the original editions (or in other editions, such as UK editions of U.S. books) will be defined as “out of commerce”, even if the author has reissued them in new forms. How damaging this provision will be to U.S. authors will depend on details of its implementation.

On the positive side, the directive includes provisions intended to force Google, Facebook, and other Internet companies to pay the original *publishers* for some of the news and other content that Internet companies copy and redistribute online (“share”). How much, if any, will actually be paid; how much, if any, of those payments will reach writers; and how much, if any, will reach writers (including self-publishers of websites, blogs, etc.) in the U.S. or elsewhere outside the EU, will also depend on how the EU directive is implemented.

- (b) Implementation of the new copyright directive by the European Commission: As with U.S. legislation, important details of EU legislation are often left to be determined through implementing regulations. Few, if any, non-EU organizations other than the NWU have been monitoring the implications of these regulations for writers outside the EU.
- (c) Implementation by the EU Intellectual Property Office: The EUIPO is charged with major pieces of the implementation of the copyright directive. Through raising awareness, building alliances, and direct engagement with the EUIPO, the NWU has already gotten significant improvements made to the new EUIPO portal for writers to manage uses and rights to their works that have been, or might be, deemed “out of commerce”.
- (d) Implementation by EU members, especially English-speaking members (U.K. and Ireland): Implementation of the EU directive by the UK has been delayed and placed in limbo by Brexit, but could ultimately have significant effects on U.S. writers and U.S.-published books (or books published in both the U.S. and U.K. or held by U.K. libraries). Continued monitoring of U.K. legislation and regulations remains important for U.S. writers.

3. Unauthorized online distribution by libraries (and others) of scanned copies of books

For many years, both libraries and for-profit Internet companies have wanted to scan all our books and put them on the Internet without our permission and without paying us. Libraries want to build larger digital collections than they could afford to pay for, at the expense of our livelihoods (and while the librarians themselves of course are paid), while Internet companies want to monetize our work for their shareholders’ profits. Whether they call this “public interest” or “innovation”, it amounts to an attack on our rights, our livelihoods, and our ability to take advantage ourselves of new digital publishing possibilities.

Libraries (the friendly public front of this anti-copyright, anti-writer movement) and the Internet companies lurking behind them (and often funding their “nonprofit” activities) have tried out a variety of rhetorical memes and legal schemes to justify their taking of our rights and their copying of our works without permission or payment. They tried to finesse this through a sham “settlement” with Google that would have given Google a hugely profitable monopoly on publishing new e-book editions of books to most of which rights had reverted to authors. They tried to declare out-of-print books to be “orphan works” or “out-of-commerce” works, even if new self-published editions were generating revenues for writers.

The latest pretext for unpaid redistribution of digital copies of library books is a legal fiction called “Controlled Digital Lending” [sic] cooked up by the Internet Archive – which was already scanning books and putting them online long before it had any semblance of a claim that its actions were legal – with help from some anti-copyright academics (who have tenured faculty salaries and benefits so they don’t need royalties from their books).

NWU position papers and statements in opposition to CDL are on our site at:

<https://nwu.org/book-division/cdl/>

“Controlled Digital Lending” is an existential threat to authors’ rights and authors’ incomes. If libraries, or anyone else, can make unlimited numbers of digital copies of our books, and distribute them worldwide on the Web, without payment or permission – which is what the Internet archive actually does, despite its claims to the contrary – how can we make a living from distribution of digital copies of our work in authorized formats?

The NWU has led the global fight against “Controlled Digital Lending” by writers and other creators of printed works (photographers, graphic artists, etc.). We did the research (and the writing – we are writers, after all, if nothing else – of white papers and blog posts and explainers) to expose what the Internet Archive is doing and the falsehoods in its claims; successfully initiated a global coalition of authors’ organizations; drafted and obtained endorsements from an unprecedented array of organizations for a detailed FAQ and a public appeal for dialogue with libraries and archivists; and brokered the only meeting held to date between the Internet Archive and its leading defenders and its victims and critics.

Unfortunately, this hasn’t been enough. The pressure to legalize unpaid distribution of unlimited numbers of digital copies of printed books has only escalated with the pandemic. We urgently need member volunteers to sustain and build this campaign for the long haul.

Incomplete list of Book Division written interventions, presentations, events, etc., 2018-2021:

September 21, 2018: Comments and Renewed Petition for Rulemaking on Copyright Registration Fees submitted to the U.S. Copyright Office by the NWU, Society of Children’s Book Writers and Illustrators, Dramatists Guild of America, and Text and Academic Authors. The NWU led this coalition in a successful campaign for changes to Copyright Office regulations to make it easier and less costly to register multiple articles, stories, blog posts, etc. with a single application for a single fee.

October 25, 2018: Presentation to the IFRRO Legal Issues Forum at the IFRRO annual world conference, “Controlled Digital Lending by Libraries and Archives”.

January 2019: NWU objections to violations of the rights of US and other non-EU authors from the proposed EU Directive on copyright. Position paper used for education, outreach, and EU lobbying.

February 13, 2019: NWU-led coalition of 30+ national and international organizations of writers, visual artists, and allies releases FAQ on Controlled Digital Lending (CDL) and “Appeal to readers and librarians from the victims of CDL”, along with NWU press release and blog post. Press coverage of the campaign highlights the role and statements of the NWU and its Book Division.

February 19, 2019: Comments of the NWU and NPPA on Proposed Rules for Group Registration of Short Online Literary Works submitted to the Copyright Office.

March 28, 2019: Presentation on “How writers monetize words: The marketplaces for writing in digital formats” at an inter-agency workshop organized by the copyright division of the US Patent and Trademark Office and attended by all U.S. Federal agencies concerned with copyright. The NWU presentation gave an overview of writers’ digital revenue sources, business models, and publication formats. The NWU was the only writers’ organization invited to present at this event, which helped educate U.S. policy-makers and regulators and frame subsequent discussions. The panel was recorded and video remains available from the USPTO website as an educational and outreach resource.

April 2019: Copyright Office report concluding 4-year long study and consultation acknowledges earlier comments submitted by the NWU and IFJ calling for U.S. legislation to implement U.S. treaty obligations to recognize the “moral rights” of writers, but declines to recommend any new legislation.

June 6, 2019: Presentation to the IFRRO Legal Issues Forum, “Update on Controlled Digital Lending”

June 2019: Resolution opposing “Controlled Digital Lending” proposed by the NWU and adopted by the World Congress of IFJ.

October 2019 – Transition of NWU-Book mailing list from YahooGroups.com to Riseup.net. This change was necessitated by the shutdown of most Yahoo Groups services. With little warning, we were forced to find a new (politically progressive, union-friendly, free) list hosting provider, migrate our subscriber list, notify NWU members of the change, and learn a new administrative interface. Special credit is due to Barbara Mende of the Boston Chapter, who continues to manage list administrivia.

November 7, 2019: Presentation to IFRRO’s European Group at IFRRO’s annual world conference on “Out-Of-Commerce Works and non-EU authors under the EU Directive on Copyright in the Digital Single Market”. This was the only presentation to IFRRO and its members on the implications for non-European writers of changes to European copyright licensing under the new EU copyright law.

November 2019: Resolution opposing “Controlled Digital Lending” proposed by the NWU and adopted by the World Congress of the IFRRO.

November 2019: NWU recommendations for implementation by the EU and its members states of the EU directive on copyright. Position paper used for education, outreach, and EU lobbying.

December 4, 2019: NWU comments submitted to the Intellectual Property Unit of the government of Ireland in response to consultation on the transposition of the EU Directive into Irish law.

January 20, 2020: Comments submitted by the NW, IFJ, and the Science Fiction & Fantasy Writers of America to the EU Intellectual Property Office in response to draft specifications for the “Out-of-Commerce Works Portal” being created as part of implementation of the EU directive on copyright.

February 16, 2020: Presentation on the Book Division as part of NWU panel at San Francisco Writers Conference.

February 20, 2020: Day-long workshop organized and hosted by IFRRO with the EU Intellectual Property Office and the European Commission regarding implementation of the EU directive on copyright. The concerns raised by the NWU about adverse impacts on authors were supported by IFJ and other authors’ organizations, and led to changes partially although not entirely mitigating them.

March 19, 2020: Comments of the NWU and APA on copyright registration and “online publication” submitted to the Copyright Office.

April 22, 2020: NWU statement on the Internet Archive’s book scanning, and funding for distance learning: “We need federal funding for distance learning, during the pandemic — and after.”

April 27 & May 5, 2020: Public webinar and associated explainer on NWU website: “What is the Internet Archive doing with our books?”

May 29, 2020: Meeting between the Internet Archive and critics of its “Controlled Digital Lending”. The NWU initiated this meeting, which is the only meeting held to date between the Internet Archive and critics of Controlled Digital Lending. The NWU organized presentations by representatives of diverse classes of adversely impacted authors: writers, photographers, visual artists, etc. Although the Internet Archive refused to engage with our criticisms, it was an important opportunity to expose their inability to defend their practices and to build global solidarity among their critics worldwide.

June 15, 2020: Reply comments of the NWU on copyright registration and “online publication” submitted to the Copyright Office.

March 5, 2021: NWU comments on “orphan works” provisions of discussion draft of Digital Copyright Act of 2021 submitted to the Senate Judiciary Subcommittee on Intellectual Property.

September 2, 2020: NWU comments submitted to the Copyright Office regarding “sovereign immunity” and infringements of writers copyrights by state government entities including state colleges and universities and their libraries.

Tasks for the future of the Book Division and the NWU as a whole:

In addition to the policy advocacy work described above, much that the Book Division could have done (and in earlier years did) has been left undone for the last decade, and especially for the last three years, for want of member volunteers and/or funding to pay for expenses (much less stipends for those members unable to donate their time to NWU work without at least some remuneration).

We have not done enough in recent years to draw on the skills and expertise our members have, and that they would be willing to share with their fellow members (as they have in the past) if the NWU asked them to do so and organized and advertised a suitable forum for sharing.

Since the one thing we have in common is that we are writers, one of the forms that this should take is the development of written resources. Our “Freelance Writers Guide” and “Guide to Book Contracts”, in particular, are among the most valuable tools we have created to help each other as NWU members, but are out of date. A very high priority for the NWU as a whole and the Book Division in particular should be finding volunteers – and, if necessary, funding for stipends – to update and produce new editions of the “Freelance Writers Guide” and “Guide to Book Contracts”. Also important for the NWU as a whole would be guides to a range of types of contracts for writing to be published in digital formats.

The pandemic has gotten us accustomed to virtual events. Despite their drawbacks, these have advantages: Any virtual skill-sharing event produced by any of our geographic chapters can, and should if of general interest to the NWU membership at large, (a) be advertised to the national membership and (b) be recorded so that it can become part of a member-to-member skill-sharing resource library.

Particularly common requests from members are for resources (which used to be provided in part by the Freelance Writers Guide) on business models and tips for writers of different types of works or who make a living in different ways, and especially for self-publishing resources and advice. There is demand from members for how-to guides, training, and directories and reviews of resources, tools, and service providers for print and digital self-publishing, e-book creation, editing, book design, etc.

There’s much that member volunteers could do to improve our website, without needing a grand redesign, such as creating (and someone committing to maintain!) a library of resources for members.

There are also regular requests for the NWU directory of literary agents, which has not been maintained and would need to be rebuilt from scratch – a major task.

There are also other issues that could be a focus for organizing campaigns. Royalty statements have long been opaque, and aren’t getting better. A Book Division survey of members a few years ago, which we didn’t have the resources to follow up on sufficiently, found that many members were unable to determine from their royalty statements whether their books had been issued in e-book form, because e-book licensing revenues were merged with, and misreported (and underpaid) as, print sales. There’s been interest in a campaign for better royalty statements, perhaps starting with a template of what a royalty statement should look like. But no member to date has volunteered to lead such a campaign.

As Book Division Co-Chair, I’ve done as much as I could, but I have had to pick my battles. There is much more that members of the Book Division could do.

Some of the changes brought about by the pandemic are likely to persist. We and our allies have gotten used to holding national, international, and coalition meetings virtually, making it easier for NWU members to be involved and connect with fellow members regardless of where they live. Congressional offices and government agencies in the U.S. and abroad have also gotten used to virtual meetings, so it is no longer necessary to live in or travel to DC (or Brussels) to lobby Congress (or the EU).

In the Before-the-Pandemic Times of face-to-face meetings, we were unable to have meetings of the Book Division (or other NWU Divisions) except at infrequent national gatherings such as the Delegate Assembly or NEB meetings, which not all NWU members could attend. We could and should have regular virtual general membership meetings of the Book Division (as should the other national NWU divisions and committees). I regret that I didn't start convening such meetings earlier in the pandemic.

Any NWU member, regardless of where they live or whether they are able or willing to travel, could now lead the NWU's legislative and regulatory advocacy with government agencies, could represent the NWU in national and international coalitions and federations, and could chair the Book Division.

I announced three years ago, when I was re-elected as Co-Chair of the Book Division, that I did not intend to run for another term. I have been Co-Chair for twelve years, and it is time for me to move on from the role of Division Co-Chair, even while I intend to remain an NWU member and active in NWU policy analysis and advocacy work in Washington, DC, and internationally.

To date, no NWU member has indicated an interest in succeeding me as Book Division (co-)chair.

The Book Division has been one of the most active components of the NWU, and I hope that committed volunteers will step forward to carry forward its work – including new and better ideas and new projects and campaigns that old people like me wouldn't have thought of. I look forward to sharing what I have learned and to working with them on the transition to new Division leadership.

Solidarity,

Edward Hasbrouck

Book Division Co-Chair, 2009-2021

ehasbrouck@nwu.org

415-824-0214