



## **Interview with Lois Wasoff**

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KENNEALLY: If you think you understand publishing, then Lois Wasoff has written an essay for you in a new ebook available from Copyright Clearance Center. In “Publishing as Embodiment of Licensing,” the longtime publishing industry lawyer has reappraised the legal basis of the business in terms of screens, not pages.

Welcome to the Velocity of Content podcast series. I’m Christopher Kenneally for CCC.

Lois Wasoff’s essay is one-third of *Creating Solutions Together: Lessons to Inform the Future of Collective Licensing*. The free publication from CCC looks at a quarter-century of development in collective licensing for text publishing. CCC commissioned the volume in commemoration of the 25<sup>th</sup> anniversary of the final appellate decision in the case of *American Geophysical Union et al v. Texaco, Incorporated*.

Once upon a time, goes the Wasoff line of thinking, publishing was all about printing and distributing books and journals. Today, in a world of smartphones and tablets, that work done by authors, publishers, and booksellers is all about licensing. Lois Wasoff joins me now. Welcome to the program, Lois.

WASOFF: Hi, Chris. It’s good to be with you.

KENNEALLY: Well, thank you for joining us. I guess the place to start is to help us understand better the role of licensing as it has existed in the past. Publishing and licensing do work together, have done that for quite a long time, but the role is changing today. In the past, that role of publishing was around printing and distributing books. That required licensing, too, didn’t it?

WASOFF: Yeah, it definitely did. What I found really interesting, having started my career in publishing when we were all a lot younger, and when the concept that a separate set of rights applied to the words appearing on the page that didn’t apply to the physical object – that content was separate from the vehicle that carried it – that used to be very theoretical. That was not something that people who bought books and read them, who interacted with the content that producers were creating or facilitating the creation of – it wasn’t something that they encountered in their lives.



And then as digital technology developed and digital distribution of content just exploded, that theoretical distinction suddenly became something that everyone was aware of. Everyone understood that the words, to use the simplest example, could come off the page and could travel separately from the page. Suddenly, readers and now users were interacting with copyright concepts that were completely alien and obscure, that were just outside the awareness of people who weren't in the industry, and frankly were outside the awareness of a lot of people who were in the industry. That's the evolution that we've seen happening over the last several decades in publishing.

To go back to the question you raised and the point you were making, it's for that reason that licensing became something that the general public, that the reading public, that our user community is aware of, because now, that's how they get access. When you couldn't take the words off the page, you bought the book. You owned the book. You didn't have to focus on the fact that you didn't own the words. There was no interaction with copyright concepts when you were reading copyrighted materials, even though it was lurking in the background.

Licensing has always been a very important part of publishing, but in those olden days, licensing was a way of defining relationships between publishers. It was a way of making sure that all of the interests had been accommodated before the book was printed. And then the reader, the user, got access to the materials and didn't have to think about it. That still has to go on. But now, there's this extra element, which is that the user is aware that there are terms associated with access to content, and that has just blown up the world of publishing and changed our lives dramatically.

**KENNEALLY:** We will talk about the impact on users. But I want to focus first on the publishing community, because they got pretty good over quite a few generations at printing books and having authors sign contracts and doing deals with distribution and working with booksellers – all those things that we think traditionally of bookselling being. How well have publishers managed this transition from that old world to this new world, do you think?

**WASOFF:** There's no single answer to that question, because the responses have run the gamut. I think there are some generalizations that you can make. You can sort of set up a continuum. The portions of publishing that figured it out early and that became the most flexible and facile in dealing with this development was scholarly publishing. How many years has it been since you've actually held a printed journal in your hand? How many journals still exist in print?



Scholarly publishing figured out pretty early that its particular market had access to the tools to utilize digital materials, had reasons to prefer, in many instances, getting materials in digital form, really had the knowledge, the understanding, and the ability to use search capability to find exactly what they needed to use in their professional and academic lives, and scholarly publishing did a pretty good job of adapting to that and digitizing past volumes and creating new content in digital form and using capabilities that digital formats give you to provide background to content, linking of materials, materials presented visually and in the form of charts and letting people interact with them. Scholarly publishing got there.

Scholarly publishing didn't only deal with the tools. It had to figure out the business models. That has continued to evolve – the first business models being users got access through subscription agreements. That was a lucrative channel of business, because for the most part, the subscriptions were being purchased by institutions that were giving access to the participants in their academic institution – the students and the library, the professors and the researchers.

So that model worked for a while. There are a lot of reasons – that would be a bit of a digression – as to why that business model has changed and evolved. It hasn't gone away, but now there's a lot more material available through open access. People don't think about it, but open access is still based in licensing. The fact that free is also a price, and it's set by the entities that control the rights to the content, and because of a variety of financial factors, some proprietors, some owners of that content, some creators of that content set the price at free and are able to do it because their institutions pay the publication fees or through various mechanisms. But scholarly publishing absolutely went first.

The laggard in the group – I don't think this is unfair to say – I think was trade publishing. Trade publishing certainly now gets a lot of revenue through digital sales. But it's still largely in the form of ebooks, which are different in terms of their capabilities – increasingly different from print works – but they're closer to the source. And it took a longer time for trade publishing to figure out how to do this.

And then I think all the other publishing communities, publishing sectors, are on a continuum somewhere in between those two extremes.

**KENNEALLY:** We still have the situation where authors and publishers work together through licensing to disseminate work. But on the user side, licensing is involved, too. Help our listeners understand what has changed there.



WASOFF: Basically, publishing agreements are licensing agreements. In some instances, the licenses are so broad that the creator is left with virtually none of his or her rights under copyright. But in its essence, a publishing agreement is a licensing agreement.

As you work your way sort of through the chain of distribution, you get to where publishers license to other publishers. The simplest examples of that are reprint agreements, translation agreements – the way that the content moves through various aspects to get to the ultimate reader. You can think of it as sort of upstream stuff.

But coming from the other direction, you're a researcher at Harvard, and you want to get access to journal articles published in your topic. You get access to them because someone – probably not you individually, probably the university – has purchased a license to get access to the materials that have been posted online. So the licensing obligations sort of flow in the other direction as well.

KENNEALLY: The challenge of licensing as a concept for publishing in the digital age, Lois Wasoff, is interesting for publishers, because it gets them coming and going, if you will. They have to engage in licenses with the authors, with the creators of materials, but they also have arrangements with other publishers, too.

WASOFF: Oh, yeah. Absolutely. That's a good point. It always used to frustrate me. Some of the dialogue and debate around copyright would start with this paradigm that there were the publishers and the users, as though they were completely separate entities. They were always in opposition. But every publisher of content is also a user of content, and that's always been the case.

So when there were discussions about, for example, fair use issues – one of the major statutory expansions of fair use was a change to make it easier to make fair use of unpublished works. That change in Section 107 was brought up and encouraged by publishers, and it was a substantial expansion of fair use. Publishers have always been on both sides of this, and publishers are not averse to fair use as a principle. I don't know anyone who works in publishing who thinks about these things who is. So publishers have always been sort of on both sides of this. There's more common ground than you might think.

KENNEALLY: What's interesting for us at Copyright Clearance Center, Lois Wasoff, is of course copyright and its relationship to re-use. So I have to ask you a question about how publishing as licensing has an impact on re-use. It's a question of individuals and organizations, but there are also important points to make around collective licensing, and you've reflected on that considerably in this essay.



WASOFF: Yes, that's definitely the case. When we talked earlier about the great awakening, where suddenly the words leapt off the page and can travel separately, that also meant that in addition to the traditional reuses that could be made of published works – quotations in the body of a new work, or a publisher giving a reprint license for the whole book to another publisher – there has grown up over the last couple of decades huge markets in the licensing of excerpts, in the licensing of articles from newspapers that are relatively short or chapters from books or multiple chapters from books for use in things like course packs and e-reserves at universities – digital delivery of materials to students.

Those kinds of licenses can be managed best and most efficiently for everyone through some form of collective management. They are often licenses for specifically defined uses that don't carry with them a significant per-use transaction fee. So you run into an issue if you're an individual publisher of having to manage licensing requests to use relatively small amounts of material in relatively predictable ways for which you'll be charging very little. It doesn't take very long before the transaction cost wipes out the benefit to the publisher. The result is that the publisher doesn't deal with it efficiently. The outcome of that is that the potential user gets frustrated and either uses something else or uses the materials without permission.

Collective licensing schemes can address all of that, where the publisher preauthorizes a collective rights management resource to give permissions for certain materials at certain rates for certain uses, and all of that is maintained – all that information is maintained centrally, so a response can be given immediately. All of that facilitates the marketplace and makes the whole process of getting access to and reusing copyrighted materials for a variety of societally beneficial purposes much more manageable.

So this growth in the importance of licensing out for publishers – licensing not just from the original creator to the publisher in that first publishing agreement, or between publishers to facilitate distribution – this brave new world where bits and pieces and chunks of previously published work can end up in the hands of people who really can make use of them quickly, inexpensively, in usable formats – that's a huge opportunity. And that's something that the publishing community has started doing well, as collective licensing tools have been developed and are being utilized.

KENNEALLY: Lois Wasoff, thank you for discussing with me your contribution to the new CCC ebook, *Creating Solutions Together: Lessons to Inform the Future of Collective Licensing*.

WASOFF: Thank you, Chris. It's always a pleasure to spend a little bit of time with you.



KENNEALLY: Our co-producer and recording engineer is Jeremy Brieske of Burst Marketing. You can subscribe to the program wherever you go for podcasts and follow us on Twitter and Facebook. I'm Christopher Kenneally. Thanks for listening. Join us again soon for another Velocity of Content podcast from CCC.

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