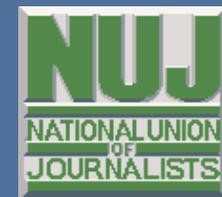


Copyright, contracts & creativity

Bournemouth University 25/09/09

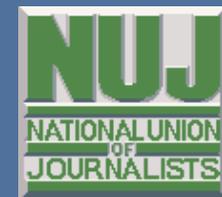
Mike Holderness - NUJ/CRA/EFJ

Key:  – areas where research is required



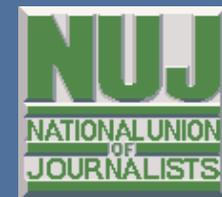
Yes, copyright is in crisis

- Theoretical perspective in 2 min
- Consider © as ensuring a continuing supply of creativity
- The crisis of legitimacy is central
- Users will pay *if and only if* they know the authors get a fair share ®
 - Research done in 2008 by ALCS



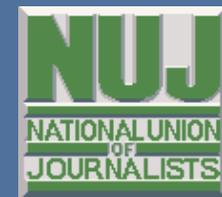
These are human rights

- *Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author*
 - United Nations Declaration on Human Rights Art. 27.2
- Every child in school now will be a published or broadcast creator by the time they can vote
- -ish. © – attitudes & awareness



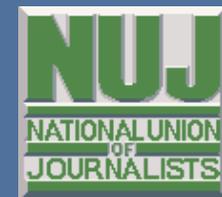
Online, authenticity is key

- **Q:** How does the user know that what they see or hear is what it says it is?
- **A:** The author's moral rights
 - To be identified as the author
 - thus take responsibility: esp. for journalism!
 - To defend the integrity of their work
- Authors' Rights, not copyright, are the proper legal base for online distribution



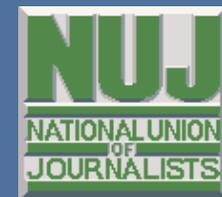
Authors don't get fair shares

- Why not?
 - Publishers & broadcasters unwilling to think about distribution mechanisms
 - 'Laundry-list' contracts
 - lawyers not paid enough
 - Profit, of course
 - Adequate micropayment systems didn't appear on time
 - Were the banks opposed?
 - *Interesting* situation with Google offering to do it...



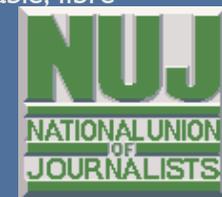
Text journalists' experience

- In UK & Ireland employed journalists have no rights in their work
- Freelances are under pressure to:
 - assign all rights (eg Reed-Elsevier, BBC World)
 - or grant a licence for all uses forever (*Times*)
 - at best, license online use for little (*Guardian*)
 - waive moral rights
 - even though there are no moral rights in journalism in UK law



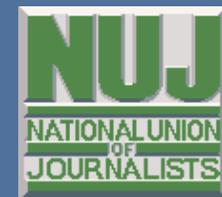
Photojournalists' experience

- The ability to re-license library images is essential to photojournalism being an economically viable profession... (R)
- Assignment of rights (Vivendi): (R)
 - The delivery of photographic work, entirely or in unity, means for the photographer the express acceptance of an exclusive assignment of his patrimonial rights in the images to Vivendi Universal, including in particular:
 - i) The right to reproduce and represent images, to adapt, for remuneration or for free, in all forms and means, by any means and process whether known or unknown at present (including printing, reprography, impress, photography, duplication, enlargement, reductions, arts graphics, in two or in three dimensions, sculpture, painting, drawing, lithography, photogram, photography, scanning, magnetic recording, optical, numerical, cinematographic, video, computing), and in any medium by any process, whether known at present or to be discovered in the future (including: paper, cardboard, oilskin, tank, plastic, mineral, solid or liquid, metal, gas, atmosphere, sky, planet, electricity, reflector, virtual, recording, magnetic or optical support, disc, slide show, compiling, catalogue, strip, film, or all compact and video support, projection, video and retro projection, laser projection, all projection by light process or others, computing file, network, network of network, web, intranet and internet, distribution, by analogical terrestrial television system, television, satellite, distribution per telephone, modem, cable, fibre optics, without limitation of this list).



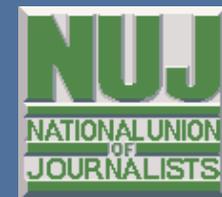
BBC freelance terms of trade

- **17.1** In consideration of the payment of the Fee, the Freelance hereby assigns to the extent which they are able, and otherwise agrees to assign to the BBC absolutely and with full title guarantee, and warrants that any individual, agent or sub-contractor engaged by the Freelance to assist in providing the Product(s) and/or Services have assigned and/or agreed to assign to the Freelance absolutely and with full title guarantee all IPRs (both existing at the date hereof and in the future) in any Product(s) in all languages throughout the Universe for the full period of such rights (including all rights to renewals and extensions thereof).
- **17.3** The Freelance hereby grants the BBC, a non-exclusive, royalty free, irrevocable licence to use and sub-licence any IPRs in any Product(s) under the Contract which have not, for whatsoever reasons, been assigned under this Clause 17.



British Photographic Council:

- What percentage of your images are identified or credited as your work on publication ?
 - More than 75%..... 25.9%
 - 50-75%..... 25.0%
 - 25-50%..... 21.8%
 - 0-25%..... 27.3%
- In your opinion should all your images automatically (by law) be identified as your work on publication?
 - Yes..... 83.2%
 - No..... 7.0%
 - Unsure..... 9.9%



Book authors' experience

- Royalty deals look like a good model...
 - but mostly apply to 'trade books'
- Non-fiction publishers demand all rights
 - And for academic authors, the economic function of publication is *advertising*...
- Then there's the indemnity clause...
 - *Amantia phalloides*
 - courtesy US Department of Agriculture



Education in peril

- Education authors are pressed to waive their moral rights...

- ...with bizarre

- results... [®]

- © Matt Salusbury
- 'an editor had changed my account of Christopher Marlowe's death to suggest he had in fact lived and secretly gone to Spain for the rest of his days...
- ...which was news to me.'

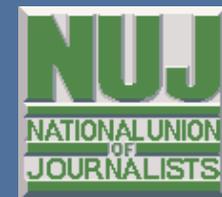


The trouble with contracts

- ...or with UK law?
- The 'primacy of contract'...
- ...is based on the fiction that Rupert Murdoch and I sit down across a table to negotiate as equals
- UK law does, however, recognise the need to regulate consumer credit

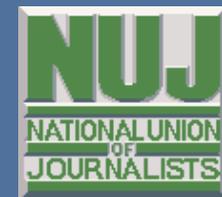
The least-worst solution yet

- *Urhebervertragsrecht*
- Passed in Germany in 2002;
regulates authors' rights contracts ®
- Encourages voluntary agreements
- Failing that, there's a review process
 - Can review amount payable
 - Can compensate for 'windfall' income



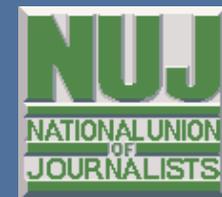
Collective solutions

- In UK agreements for freelance terms are probably illegal...
 - Creators need the right to negotiate
- The competition authority frowns on recommended rates
 - Creators need (at least) data
- Inalienable moral rights [®]
 - If alienable, they're meaningless
 - EU Commission resistant to act without data on impact



Changes beyond contract

- Moral rights for all – esp. journalists
- Regulation of businesses' accounting [®]
 - Creators need transparency in payments
- A consistent right to equitable remuneration
 - Important for Google books/news/video/world
- Access to justice [®] (in progress)
 - At present can cost £4000 to recover £200
 - Copyright Small Claims Courts needed



Mike Holderness

- www.londonfreelance.org/ar
- www.creatorsrights.org.uk
- mike@holderness.eu

