

June 2012

A few things you should know about...

# COPYRIGHT

A briefing for members of the NUJ: updated June 2012

**M**ANY OF the problems that freelancers face involve copyright. Some of these problems stem from editors and publishers being frightened that copyright is complicated, or believing myths about it. It is not complicated: everything you need to understand is here, unless your question resembles “I did some work in 1955...” Note that this advice applies to the UK only. Irish law is similar; but check. The law in joined-up Europe is very different, and much friendlier to authors. Again, check.

Why would you want to understand these principles? Because doing so can increase your income: by a third, one survey\* says. We have **highlighted** some of the non-obvious terms clients and contracts may use.

**0** What you create as a freelance, you own. Photo, news story, radio feature, crossword clue... if you made it, it's yours.

**1** What you own is the “expression”: the actual arrangement of words in the article, or objects and people in the photo, or whatever. There is no copyright in facts or in ideas. If an editor or producer commissions you to produce work based on a particular idea, in law this has no effect on your ownership of the work. You make it, you own it.

**2** Standard practice is that what you sell to an editor or producer is a **licence** – that is, your permission to use your work, once, in one territory, in one medium. Examples are First British Serial Rights, World Wide Web Reprint Rights... or Japanese (second edition) translation rights.

**3** Publishers and producers are vigorously trying to get freelancers to **assign** our rights – for no extra money. “Assign” is jargon for “sell outright”. This means that they want the freehold in your work, for the price of a month's rent.

Publishers with smarter lawyers may generously allow you to keep copyright in your work, then demand a licence to do anything with it, anywhere, forever. This means that they want a 999-year lease, for the price of a month's rent.

Often, they don't pay their lawyers enough to think about what they actually need. So the lawyers do what lawyers do when they're confused: they put in everything, including but not necessarily limited to the kitchen sink. Or, ironically, they “borrow” the text of someone else's contract, often one intended for computer programming.

**4** Some freelancers ask why they shouldn't hand over their reviews for *What Fridge?* After all, will they be worth anything in a couple of months' time? We say: if not, why is the publisher going to all this trouble to get the right to re-use them for free? If you license only first-use rights you can get extra money – perhaps from **syndication** in translation to *Quel réfrigérateur?*

And you can get money from businesses that photocopy your work. To do this, UK freelancers need to register with ALCS\* (for writers) or

DACS\* (for photographers, illustrators, etc). This is free to NUJ members. Contact the Freelance Office\* for forms.

**5** One reason for the publishers' rights grabs is that they want to put stuff on the Web, and sell content to database archives. The Web often is, and databases clearly are, separate editions, with separate income to the publisher – and you should be able to negotiate separate payments for these uses.

Databases syndicate your work to individual readers. If they pay \$3 for a single article, shouldn't you get a share?

Publishers complain that they're spending money to give work away on the Web: but they want you to assign rights so they can keep all the proceeds from advertising and from future pay-per-view schemes – as well as from old-fashioned syndication to other publishers.

**6** So wherever possible, *do not assign your rights*. Ask the editor or producer what they actually want to do with your work. Negotiate a specific payment for each use. See the Freelance Fees Guide\* for suggested rates and the Rate for the Job\* for what's been paid.

By long-standing tradition, if your work is syndicated – used in another publication – at your publisher's initiative, then you get half the fee.

Put what you agree in writing – use the Confirmation of Commission form\*. This stops your client claiming what is called an **implied licence**: that is, one inferred from your actions.

**7** If you find unauthorised use of your work, contact the Freelance Office\* for help objecting in writing and taking it further if need be. If a stiff letter doesn't do the trick, from the autumn of 2012 we expect there will be a Small Claims Court capable of dealing with copyright claims up to £5000 at reasonable cost.

There is a guide to tracking down online pirates in the online Freelance Fees Guide\*.

**8** The **Moral Rights** are the right to a by-line or credit – to be **identified** – and the right to object to distortion of your work – to defend its **integrity**. In UK law, you do not have either of these moral rights in work which appears in newspapers or magazines, nor in work which reports “current events” anywhere. Publishers often demand you **waive** – that is, give up – moral rights anyway, maybe in case the law changes later. Resist.

You do have moral rights in, for example, a book – so long as it contains the magic phrase “Moral Rights Asserted”. **Remember**: you still initially **own** everything you produce as a freelance, even if you don't have moral rights. The moral rights are separate from the economic rights.

**9** You do not own work which you produce under a contract of employment (as against a freelance or casual contract). There are no moral rights in work done in employment in the UK.

★ For links, documents and more on authors' rights see [www.londonfreelance.org/ar](http://www.londonfreelance.org/ar)