

What you should know about...

# COPYRIGHT

**C**OPYRIGHT is the legal foundation for freelance journalists being able to charge for our work. Many of the problems that we have with it 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...”

Why would you want to understand these principles? Because doing so can increase your income: by a third, one survey said.

These notes strictly apply 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.

We have **highlighted** some of the non-obvious terms clients and contracts may use: see the link at the foot of the page for an expanded glossary.

**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. For **exceptions** that allow some uses despite this, see over.

**2** Standard practice is that what you sell to an editor or producer is a **licence** – that is, your permission to use your work. Longstanding practice is that you licence use 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 freelances 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 de-

mand 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 consultancy.

**4** Some freelances ask why they shouldn't hand over their reviews for *What Fridge?* Some writers do accept that web republication is part of the deal for use of their words.

But, we ask: why is the publisher going to all this trouble to get the right to re-use your work 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 **secondary use** of your work, for example when colleges, libraries and businesses photocopy it. To do this, UK freelances need to register with ALCS (for writers) or DACS (for photographers, illustrators, etc). This is free to NUJ members. See the link below to sign up for each online.

**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, a separate edition, with separate income to the publisher. Why not negotiate separate payments for these uses? Databases syndicate your work to individual readers. If they pay \$3 or more for a single article, shouldn't you get a share?

Some 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.

**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*

at [www.londonfreelance.org/feesguide](http://www.londonfreelance.org/feesguide) for suggested rates and the Rate for the Job at [www.londonfreelance.org/rates](http://www.londonfreelance.org/rates) for what journalists have reported being 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. If you arrange syndication you get the whole fee – so long as you haven't assigned all rights, of course.

Put what you agree in writing. This stops your client claiming what is called an **“implied licence”**: that is, one that can be inferred from your actions.

**7** If you as an NUJ member 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, the Freelance Office can help members use a Small Claims Court that was set up after an NUJ campaign and can deal with copyright claims up to £10,000, 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 byline or credit – to be **identified** – and the right to object to distortion of your work – to defend its **integrity**. You must use, somewhere – for example in an invoice – the magic phrase “Moral Rights Asserted”.

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. You do have moral rights in, for example, a book.

Publishers often demand you **waive** – that is, give up – moral rights anyway, maybe in case the law changes later. Resist this.

**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 done under a **contract of employment** (as against a freelance or casual contract). Moral rights barely exist in reporting done “in the course of employment” in the UK.

A briefing for members of the NUJ: updated March 2020