AS THE FREELANCE went to press we were expecting a crucial mid-February “Report Stage” Lords debate on a Bill to change copyright law. The “Enterprise and Regulatory Reform” Bill includes powers for Ministers to write Regulations permitting licensing of “orphan works” whose authors cannot be found, and “Extended Collective Licensing” (ECL) allowing the BBC, for example, to write cheques to collecting societies for the right to put archive programmes online, leaving it to them to distribute the money to creators such as yourself – or not to you, if you’ve been pressed to sign away your rights.

During the final day of the Lords Grand Committee’s discussion of the Bill on 31 January, Labour Peer Lord Stevenson of Balmacara observed that “extended collective licensing requires fair contracts. People who work in the creative industries are already seeing intensified efforts by many publishers and other intermediaries to coerce individuals who are sole traders into signing away all rights to their work. Those who succumb… would be deprived of the income that the ECL provisions in the Bill are supposed to offer. The failure of the Bill,” Lord Stevenson added, “to include measures to level the playing field for negotiation of contracts undermines the purposes of copyright in promoting fresh creativity.”

The Liberal-Democrat Lord Clement-Jones moved an amendment to probe the possibility of challenging such unfair contracts in the courts, “inspired by the Creators’ Rights Alliance which feels that the contractual scales are very much weighted against it.” The NUJ has largely campaigned on the Bill through its membership of the Creators’ Rights Alliance.

The Conservative Peer Baroness Buscombe noted that the government claims that “ECL has operated in the Nordic countries without challenge.” But “there is a difference… in Nordic countries, the system operates against a background of legislation that guarantees remuneration for creators and the identification and integrity of works.”

The new government Minister responsible for copyright, Viscount Younger of Leckie, answered a different question, about payment to “rights-holders” – including publishers who’ve imposed contracts assigning income to them. He promised a meeting with concerned Lords to discuss unfair contracts.

A group of news and picture agencies have threatened to initiate a judicial review of the Bill even before it is passed.

Meanwhile, on 20 December the Intellectual Property Office unveiled its policy on “exceptions” to copyright – rules stating when works can be used without permission of, or payment to, their authors. The document noted the submissions made – including those from the NUJ and CRA – on the dangers of its proposals, ignored them, and announced that it would bring in almost all the changes possible under EU law, in the Spring.

Clement-Jones and other Lords on 28 January raised concerns about Parliament being presented with a “take-it-or-leave-it” wedge of good, appalling and indifferent changes – thus being put in the same position that authors and performers face with “take-it-or-leave-it” unfair contracts. There’s more online.

© Mike Holderness

THE NORTHERN Ireland Director of Public Prosecutions announced in January that it has decided not to prosecute in the case of Martin O’Hagan – the Sunday World reporter murdered in Lurgan in 2001. O’Hagan was Secretary of NUJ Belfast and District Branch, and is believed to be the only journalist murdered in Northern Ireland.

The case was based on evidence supplied by Neil Hyde, convicted in 2012 for numerous Loyalist Volunteer Force offences, who agreed to help police in exchange for a reduced sentence. The prosecutor decided that, “in the absence of any corroboration, the available evidence is insufficient to provide a reasonable prospect of obtaining a conviction against any individual”.

Sunday World northern editor Jim McDowell expressed anger at the decision. NUJ Irish Secretary Seamus Dooley said the union “does not accept that the State can walk away from this case. The murder… was an outrageous act of violence which cannot go unpunished.”

Recent months have seen an upsurge in attacks against journalists in Northern Ireland, with one photographer having a pipe bomb placed outside his house and another injured in demonstrations at Belfast City Hall. NUJ general secretary Michelle Stanistreet said “The targeting of a journalist in this way is totally unacceptable and we are deeply concerned by this attempt to intimidate journalists.”

Work for Condé Nast, NatMag, or Haymarket? Get in touch

THE FREELANCE hears of developments in the contracts “offered” by Condé Nast, by the National Magazines group and by the Haymarket group to freelances. All freelances who do work for these publishers, please contact the Freelance Office, if you haven’t done so already, to discuss objections. We need to hear both from those of you who provide words and pictures and those who work shifts there are equally worrying reports of rate cuts. Please email freelanceoffice@nuj.org.uk saying which titles you do work for.

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**Google buys off publishers**

Publishers in France have been pressing for a law giving them a share of the revenue that search engines make by listing their content. On 1 February Google announced it had settled with them – promising €60 million for a “Digital Publishing Innovation Fund” and to “deepen our partnership with French publishers to help increase their online revenue”. The union the Syndicat national des journalistes regrets that the promise by Minister of Culture that journalists would be involved in such talks has not been met, and observes that under a law passed in 2009 journalists must share in any income from re-use of their work.

- In Belgium, the search giant has settled with newspaper publishers and the collecting society that represents journalists, following the 2011 (Belgian) Supreme Court decision that Google News Belgium infringed authors’ rights. The terms of the settlement are confidential.
- No such talks are known in Germany, where publishers are promoting a law to give them a share of online income – see above.

**The Rate for the Job**

A ROW has broken out over assertions that Irish newspapers were claiming copyright in internet links to their stories online. A blog posting from a solicitor at McGarr, which represents Irish Women’s Aid, reported the group receiving a demand from Newspaper Licensing Ireland Limited (NUL), a collecting society which has gathered cash from those who photocopy newspapers. NUL wanted €300 to license five links to newspaper articles about them, €500 for up to 10... or €1350 for 26-50.

National Newspapers of Ireland, issued a clarification: “NNI members never object to their newspaper content being used by others for personal use. Licenses are only required when newspaper content is being used by another party for commercial purposes.” Where this leaves Women’s Aid is unclear.

Ireland is of course in the middle of a review of its copyright law, propelled by the interests of Google.

German newspapers are lobbying for a so-called “neighbouring right” (a right connected to authors’ rights but not a right of an author) – to extract money from Google News. This would be analogous to the record producer’s right in the recording of a choon – whoever has rights in the words and notes, anyone wanting to copy them needs the permission of the holder of the “neighbouring right” too. German journalists have spoken to want a guarantee that they would personally get a fair share if it were implemented. German law provided for such guarantees: UK and Irish law doesn’t.

In the UK the Newspaper Licensing Agency (NLA) is reported to be asking musicians for £1250 a year to quote reviews of their work. The creators’ rights alliance, of which the NUJ is a member, will be seeking musicians’ views on this.

The NUJ has so far been unable to discover the mechanism by which the NLA channels payments to individual journalists who retain copyright, as distinct from paying newspapers for the reuse of content. XX: Economist 400-word blog @ €160 all rights £400.

Words, other: Q magazine 2880 words, Bauer “Tier 1” terms – author retains copyright, grants various 6-month licences €876; Cycling Active 1500 words + pics, map, info boxes, £400.
Pander to quality demand!

APPARENTLY, even the people at Google are uneasy at the vast oceans of “content-farm” dross out there in cyberspace, some of it computer-generated. Their “Google Panda” robot is cruising the internet as we speak, downgrading in its search result rankings unreadable content that’s obviously been produced solely with the intention of fooling search engines and their users. More importantly, it is claimed that Panda will upgrade in Google’s search result rankings “quality” content by someone who can actually write (demonstrating humanity). This may be worth mentioning when pitching online written content to website people who may be hesitating about whether to outsource their “content” to the Philippines for $5 per short article, or whether paying actual money to a proper journalist might prove more effective in the long run. Other search engines are available. © Matt Salusbury

Conviction at last for Gongadze murder

A FORMER Ukrainian Interior Ministry surveillance chief was convicted by a Kiev court in January for the murder of journalist Georgy Gongadze, founder of the internet journal Ukrainska Pravda.

Gongadze was kidnapped in 2000 and his body was later found beheaded. He had been investigating corruption at senior levels in former President Leonid Kuchma’s Ukraine government.

General Oleksiy Pukach – who headed the Interior Ministry’s surveillance department – was sentenced to life imprisonment after being found guilty of strangling and then beheading Gongadze, a crime he confessed to in 2009. Pukach then told the court the murder had been ordered by former President Leonid Kuchma, his chief of staff and a former interior minister.

Prosecutors brought charges against in 2011, after secret tape recordings emerged of Kuchma ordering Interior Ministry people to kill Gongadze. These charges were later dropped for “lack of evidence”.

The International Federation of Journalists (IFJ) has welcomed the conviction, which comes at the end of a trial held behind closed doors, and “after more than a decade of tireless pursuit of justice for Gongadze,” said Jim Boumelha, IFJ President. He described the decision as “partial justice, as others involved in his murder are still being shielded.”

The press after Leveson: a debate

WHAT NEXT for press regulation and ethics after the Leveson Inquiry? How, for example, can conscience clauses in journalists’ contracts work and be enforced!

This is the topic of a meeting on Thursday 28 February with speakers including NUJ General Secretary Michelle Stanistreet and Helen Goodman MP, the Shadow Minister for Culture, Media and Sport, who has specific responsibility for media reform. The meeting is called by the NUJ PR and Communications Branch, London Freelance Branch and London Magazine Branch and is at 6:30pm, at NUJ headquarters, 308/312 Gray’s Inn Road, London WC1 8DP – nearest Tube King’s Cross. Refreshments will be provided. Space is limited: registration is essential, to freelanceoffice@nuj.org.uk with subject line “After Leveson”.

Better bargaining: courses for freelances

THE RECENT “Pitch & Deal” course, sharpening freelances’ bargaining skills, saw 15 enthused NUJ freelances geared up to put their all into pitching and dealing. The course will be repeated on 24 May, again in London and again at the hefty-reduced price of £70 for the day to NUJ members, £130 to non-members and £60 to student members.

Before that, the popular and self-explanatory Getting Started as a Freelance course returns on 17 May, at £60 for members, £100 non-members and only £40 for student members. To book on to the course, email training@nuj.org.uk

One example of good bargaining practice is the experienced freelance who was foaming after a feature idea was enthusiastically received by an online mag – which asked for 2500 words for £200. He cooled down, then told them he wouldn’t do it for less than £450. They said “all right then” so quickly he thinks he should have asked for more: hence the emphasis in these courses on asking for more as a first move – and letting them suggest an amount.

Using the Small Claims Court – course

THE NUJ is organising a one-day training course for members on taking copyright claims to the Patents County Court (PCC) Small Claims Track: it’s on Thursday 28 February at Headland House from 10:00 and is all day. It will be tutored by Isabel Jamal, an IP Barrister at 8 New Square Chambers, and Kate Fox, Solicitor at Thompsons, the Union’s solicitors. It’s intended for members who want to take claims to the PCC Small Claims track, and also activists who may be interested in supporting others.

There is a charge of £10 for members, to cover refreshments and course material, and numbers are limited, so book via freelanceoffice@nuj.org.uk

More online:

• Guess who’s paying to give away photos?
• ‘Educational use’ Gangam style: Economist sues
• Work Your Proper Hours Day is Friday 1 March
• Photographer Daniel Morel wins against Agence France Presse in New York District Court
> www.londonfreelance.org/fl

Payout for Guy – after nine-year battle

GUY SMALLMAN, the NUJ freelance photographer injured by a flash-bang grenade thrown at him by Geneva police while covering the G8 protests in Geneva in 2003 – has finally won 75,000 Swiss Francs in compensation. He stands to get around £40,000 after legal costs. The settlement follows a 2009 court ruling in Switzerland in Guy’s favour. Back in 2003, Guy was with London Freelance Branch which, together with the Union’s General Secretary and Freelance Office, arranged support for Guy when he was in hospital with his injuries. This included mobilising the NUJ’s sister union in Switzerland and NUJ members in Geneva, including outgoing Committee member Penny Quinton, supporting Guy in hospital, laying on a driver to meet him at Gatwick on his return to take him straight to his GP and organising NUJ hardship pay for him when he was ill off work.

Guy Smallman speaking at last year’s LFB “New Ways” conference:
photo © Tony Rizzo
LONDON FREELANCE BRANCH MEETINGS

After Leveson; then numbers count

IN ADDITION to our regular monthly LFB meetings, there’s also a special meeting on “The NUJ after Leveson” – organised by London NUJ Branches – on Thursday 28 February.

Speakers include NUJ General Secretary Michelle Stanisstreet, who was a key Core Participant witness at the Leveson Inquiry, and Helen Goodman MP, Shadow Minister for Culture, Media and Sport with specific responsibility for media reform. Lively input from the floor is very much encouraged.

All are welcome, and refreshments will be provided.

This meeting is called jointly by the NUJ PR and Communications Branch, NUJ London Freelance Branch and NUJ London Magazine Branch.

Kick-off is at 6.30pm at Headland House, the NUJ HQ, 308/312 Gray’s Inn Road, WC1 (nearest Tube is King’s Cross). Capacity is limited, so you’ll need to register in advance for this event: email freelanceoffice@nuj.org.uk.

LFB’s next regular monthly meeting is on Monday 11 March at our usual Friends House venue (see below for more info).

The topic will be “Numbers count”: we will look at how not to be bamboozled by statistics, and how to avoid (inadvertently or otherwise) bamboozling our own audiences with misleading applications of things numerical. We expect to have details of speakers – from the world of science writing and statistics-based journalism – very soon. Watch www.londonfreelance.org/meetings and the LFB Twitter feed (https://twitter.com/NUJ_LFB) for imminent speaker details.

At some point in 2013 we also hope to hold an LFB meeting on a distinct but related subject: data journalism. How can you produce, and get published, stories based on the three places. This is just to say thanks for all that support, and that I hope to go on working for authors – especially in my own field of non-fiction for young people – in whatever way I can, both through the NUJ and through the Society of Authors.

Jenny Vaughan LFB Treasurer and moderate of www.londonfreelance.org/NibWeb

GETTING THE FREELANCE

MEMBERS should note that if you respond to messages from the NUJ suggesting you save postage and paper by not getting the printed Journalist, you won’t get the printed freelance either. It’s entirely up to you. If you do take the digital plunge, remember to visit www.londonfreelance.org regularly for the latest news affecting freelances.

BRANCH COMMITTEE

FOLLOWING January’s elections, we welcome as new LFB Committee members Emma Boyes, Geraldine Hackett and Claire Colley, who’s also our liaison with the Campaign for Press and Broadcasting Freedom.

And we thank those standing down from the committee – Penny Quinn, Mark Watts, Sonya Thomas and Janet Awe, who remains LFB Twitter account moderator (twitter.com/NUJ_LFB). John Spencer, becomes Branch Welfare Consultant. A Committee, list, with contacts, is at www.londonfreelance.org/lfb/contact.html.

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‘Educational use’ Gangum style!

THE ECONOMIST magazine has filed a case with the prosecutor’s office in Seoul, Korea, over alleged illegal use of 54 articles by a private sector language school teaching English in the Gangum district of the capital, Seoul.

The case came to light in January, when police interviewed the manager of the language school (not named) and revealed they’d interviewed the paper’s lawyers in Korea in December. Court papers submitted by the Economists – which is seeking over £500,000 in damages – include photos of an anthology of articles sold to students of the school as practice material with a cover price and videos of the school’s CEO boasting about how much money the school chain makes.

It looks to the Economist as though this evidence was submitted in an attempt to knock on the head any “exceptions for educational use” the school may try to claim. Attacks on copyright using the pretext of “exceptions for educational use” are increasing globally. A member of staff at the school admitted using the Economist material, but said this was common practice among language schools in Korea.

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Agencies can’t snarf pictures off Twitter:

Daniel Morel wins a round

HAITIAN photographer Daniel Morel has won another round in his case against Agence France Presse and others including The Washington Post. On 14 January Judge Alison Nathan in the Southern District Court of New York gave summary judgement that AFP and the Post infringed Morel’s copyright, and that when they distributed and reproduced photos they found through Twitter.com.

Morel is a professional photographer who has worked in Haiti for over twenty-five years. He was in Port au Prince, Haiti, when an earthquake devastated the city on 12 January 2010. He photographed the immediate aftermath. He was able to access the internet that afternoon and, under the username “photomorel”, he opened accounts on Twitter and on Twitpic, a third-party application of Twitter.

Someone called Lisandro Suarez then copied the photographs onto his own Twitpic page and Tweeted that he had “exclusive photographs of the catastrophe for credit and copyright” and that he had “exclusive photographs of the catastrophe for credit and copyright.” AFP has claimed it got at least some of the photos from here, and certainly transmitted them to Getty Images credited to Suarez. They were used on front pages worldwide.

On 16 March 2010, it emerged at an earlier hearing, AFP deputy photo editor Eva Hambach emailed a colleague: “AFP got caught with a hand in the cookie jar and will have to pay.” The agency instead sued Morel for claiming copyright in his own pictures, saying this was “commercial defamation” and “an antagonist assertion of rights”. Morel was then left to counter-sue for abuse of his pictures. He was then exclusively represented by Getty’s rival, Corbis.

In defence, AFP claimed that “by posting the Photos-at-Issue on TwitPic/Twitter, Morel granted them a licence, as a “third-party beneficiary” of TwitPic’s licence to make images available on the Web – and continued to do so, despite an earlier hearing rejecting it (Freelance June 2012). Judge Nathan patiently repeated why this argument was desperate.

Judge Nathan ruled that AFP and the Post had infringed copyright in eight photos – entitling him to “not less than $750 or more than $30,000” per photo. She was not impressed by his lawyer’s argument that AFP shared liability for each unlicensed use of each photo, totalling “tens or hundreds of millions of dollars”. Other claims – notably against Corbis – will have to go to a full trial.

© Mike Holderness

● This case throws an interesting light on the practice of UK media, for example taking pictures of a helicopter crash in London off Twitter, and (sometimes) asking the pictures’ owners to get in touch.

Guess who’s paying to give away photos?

WHO IS paying to generate photos to give away? The Register’s report on WikiPedia’s seasonal fundraising drive notes in passing that:

Wikimedia Germany approved a €18,000 allocation called Festival-summer 2013 to send Wikimedians to pop concerts in Germany as “accredited photographers”. Nice work if you can get it. The budget includes travel to and from the gigs for the budding snappers. The photos would then be posted on the WikiMedia website for anyone to use – including those who might have engaged a professional photographer to take pictures of the people and events.

The short answer to the “Who’s paying?” question, meanwhile, is: in significant part, Google. The search engine gave WikiPedia $2 million in the last year for which figures have been dug out. Other donors include the Ford Foundation ($3m); the Stanton Foundation ($3.6m), in memory of the late president of CBS TV; and the Omidyar Network ($2.5m), a “philanthropic investment firm”. But it’s Google that has an active policy of undermining the right of creators – including photographers – to be paid.

A colleague in Germany, Rüdiger Lühr, comments: “Wikipedia, Google, Facebook and others are promoting Creative Commons – that’s the basis of their business. So now we have a big and growing ‘market’ of photos published for free. The market for our freelance photographers goes narrow and I’m in fear there is no stop and no return.”

Unsurprisingly, many of the photos from the project so far are, in the view of this part-time freelance picture editor, dire. Worth every pfennig to the user in other words.

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In your own time...

WORK Your Proper Hours Day this year is on Friday 1 March, and represents the day “the average person who does unpaid overtime finishes the unpaid days they do every year, and starts earning for themselves,” according to its organisers at the Trades Union Congress. This date is getting later every year – Work Your Proper Hours Day 2012 was 23 February. The website www.worksmart.org.uk/workyourproperhoursday has an online unpaid overtime calculator, based on your “salary” – we’ve asked them if there’s a way to calculate this based on hourly or daily shift rates.