

## Terror laws affecting journalism

As the state strengthens its powers to investigate investigative journalists, there's a talk on "Watching the Detectives" featuring freelance investigative journalist Shiv Malik – the subject of a "production order" forcing him to hand over source material to police. The investigative journalist Duncan Campbell (of Zircon and ABC trial fame) and Mischa Glenny, who reports on Southern Europe and organised crime, will join Shiv in discussing implications of recent counter-terror legislation for investigative journalism. The event is at 6:30 on **Monday 3 November** at the British Library St Pancras site, tickets £6/£4, book at [www.watchingthe.notlong.com](http://www.watchingthe.notlong.com)

## Visual creators confer in 2009

THE NUJ's second photographers' conference will be on **Monday 18 May 2009** at the Institute of Education, Bedford Way, London WC1, nearest Tube Russell Square. (This is not the date erroneously given at October's Branch meeting: change your diary if you were there.) This builds on the considerable success of the first NUJ photographers' conference in 2007 – see [www.londonfreelance.org/fl/0704conl.html](http://www.londonfreelance.org/fl/0704conl.html). Although the 2009 event is a long way off and the programme has yet to be finalised, one event that is already planned for the conference is an evening social event held jointly with the British Press Photographers' Association. Watch this space for updates, including details of how to register.

# Orphaned works: wait

IN THE USA, the "Shawn Bentley Orphan Works" Bill was passed by the Senate on 26 September – without debate, using a procedure entirely opaque to non-US policy wonks. We do not have a date for any action in the House of Representatives, Congress' other part.

If passed, this law would instruct the Register of Copyrights (a person) to produce guidelines on what constitutes "diligent search" for the author of a work. Anyone who followed the guidelines, failed to find an author, and went ahead and used their words or pictures or tunes would, in the event of the author showing up, have to pay only "actual damages". The use would still, somewhat bizarrely, be illegal. The user would be protected from the "statutory damages" that are available in the US to authors who register their works with the Register.

Back in the UK, we have a much more measured debate. The government's Intellectual Property Office called another informal meeting on 29 September, with representatives of authors, publishers and libraries. It presented three options for carrying out the recommendation of last year's Treasury Gowers Review to Do Something about orphaned works.

The first would be to go to Brussels to change EU law to provide an "exception" to copyright – "exceptions" are the jargon for rules allowing specified use of works, not interfering with their "normal exploitation", without the author's authorisation – for example to make Braille editions. This process would take several years.

The second would be to leave copyright law alone and treat orphaned works in a way similar to abandoned or unclaimed real property. This could allow an "extended collective licensing" scheme, in which would-be users demonstrate to a collecting society, such as the writers' ALCS or the image-makers'

DACS, that they had searched properly, and then pay a fee for a licence. It could equally provide a framework for a new UK law to implement the Canadian model, in which would-be users would apply to a government-appointed board.

The stinger with either of these options is that in current UK law on abandoned real property, cash goes to central government funds. The NUJ's position is that if anything is done about orphaned works, then it *must* involve users getting a licence in advance; the fee would go to the author if they showed up, and otherwise would go to the benefit of authors in general, for example for training – as happens to unallocated authors' funds in the Nordic countries.

The third option – which gained no support whatsoever – was the US model. The killer for the IPO's lawyers is that breach of copyright is a criminal offence under section 107 of the Copyright, Designs and Patents Act 1988:

we know of no prosecutions under this section, but there it is. This also rules out schemes such as the Copyright Licensing Agency's proposal to insure users against claims from authors who show up.

This advisory meeting did not reach a conclusion.

## Libraries say 'Shhh!'

The discussion on orphaned works in the UK and EU has been driven, publicly, by the libraries. They are under political pressure to digitise their collections in bulk –

and make them available online. Library organisations have signed up to EU-sponsored guidelines on how to search for authors – but under these they would still have to search, rather than just feeding books and magazines into a machine that scans and shreds.

One thing notably missing from the debate so far is this: what is a library supposed to do when it *does* know who the authors are and



Orphan Esther Summerton with Caddy Jellyby from Charles Dickens' *Bleak House*: graphic is not an orphan, but by **Phiz** (Hablot Knight Browne, 1815-1882).

where we are? How will they ask before putting our words and pictures online, and how will they pay? It seems that's what's really under discussion here is a redefinition of the word "library".

The other thing missing is explicit representation in the debate for the Google corporation, which has a massive interest in being able to put whatever it wants, from library holdings or elsewhere, online without asking, to drive revenue to its advertising wing.

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## Policing journos: ministerial meeting

INCREASING police obstruction of journalists in their work is the subject of an upcoming meeting between the NUJ and the Home Office. NUJ General Secretary Jeremy Dear will meet the new minister for security, counter-terrorism, crime and policing, Vernon Coaker – currently in their diaries for **28 October**, with a photocall at 2:15 outside the Home Office in Marsham Street, London SW1. The agenda for the meeting includes po-

lice surveillance and obstruction of journalists – especially those photographers and videographers who regularly cover protests. The NUJ will present a dossier of incidents involving the Metropolitan Police's Forward Intelligence Team and their interaction with journalists.

See examples of this in *Press Freedom: Collateral Damage*, the NUJ's short film featuring several London Freelance Branch photographers and videographers at

[www.collateral.notlong.com](http://www.collateral.notlong.com) Also under discussion at the meeting are "production orders" forcing journalists to hand source material to the police, undermining journalists' ability to get contacts to talk.

Freelance Shiv Malik was recently the subject of one such order to hand over to Greater Manchester Police his notes for a book for which he had interviewed a former "terrorist suspect" (See this page for details.)