

Warning signs to watch for

"I'M NO lawyer but..." As freelance journalists all of us need to know how to complete that sentence with a clause such as "I do know what 'assign copyright', 'warrant' and 'indemnify' mean". – because we'll be very lucky to get through a freelance career without encountering a fair few corporate contracts full of tortuous phrasing and, often, torturous intent. Here's a glossary to help at least spot when the amber-to-red lights should be flashing.

• There is a longer version at www.londonfreelance.org/contracts with advice on how, by negotiation, the wording might be revised so that you don't lose ownership of your work and/or your shirt.

Copyright: Ownership of a piece of work. Under UK law freelance/self-employed creators, including journalistic writers, photographers etc, own copyright in their work. Staff creators do not – their employers do.

All rights: All the rights contained within copyright, plus any other rights connected with your work. They want it "all", whatever it is).

Author: Any maker of a piece of creative work, including journalistic writers and photographers etc. This term is used in the 1988 Copyright, Patents & Designs Act, but also in some corporate contracts.

Assign: Transfer ownership of your copyright – all rights in your work – to the company. You no longer have any rights to it (unless the contract says otherwise; sometimes syndication payment to the freelance is contractually guaranteed despite the company taking ownership).

Licence: your permission to use work in which you retain copyright.

But beware. If you read "The freelance shall remain the copyright owner of the material..." it's looking good, but always read what comes next, in case it's something like: "but the company shall have the exclusive right to use, publish, syndicate and/or license all other rights in the material... for the full term of copyright."

Exclusive licence: The above is one, and leaves you with the shell of copyright ownership, scooping out all the contents, sneakily achieving the same result as an all-rights assignment – you cannot resell your work so, unless the contract specifies further payment, you cannot make any further income from it.

Full term of copyright: in journalistic work this is the author's life plus 70 years after their death.

Non-exclusive: "The company shall have the non-exclusive right to use, publish etc" means that it can re-use your work in any way the contract specifies (with further payment to you, or not, as per the contract), but you have the same rights of re-use yourself: you can do whatever you like in terms of further sales of the piece of work where the rights you have agreed to license to the company are non-exclusive. One caution: if you have sold one publisher non-exclusive rights in a piece of work, you cannot sell another publisher exclusive rights – the two are, erm, mutually exclusive...

Syndicate: to sell your work on to other publishers. You can do this yourself, negotiate fees and so on. But if you license either the original publisher or a syndication agency (a photographic agency is in effect a syndication agency although they're not called that, they're called pho-

tographic agencies)... to syndicate your work you should be paid at least 50 per cent of the gross fee the purchaser pays (sometimes this may be a lot more or a lot less, but 50/50 is very common).

Waive: "You irrevocably waive any and all moral rights you have in the work..." Try to resist this. It means you give up the right to "identity" – to be named as the author, in a byline or credit – and the right not to have your work treated in a "derogatory" manner (such as having the meaning distorted).

Warranty: a guarantee or promise. Look out. You're about to be really held to account, potentially blamed for... all sorts. The rest of the sentence will probably say any or all of: "the work will not infringe the copyright, moral rights, rights of privacy or any other rights of any third party. Nor will it be defamatory, obscene, blasphemous nor otherwise actionable by law." No sensible person could sign such a warranty – except under duress, of course, which happens – because only courts of law, in retrospect, could determine any of these breaches.

Indemnify: The full-on warranty really bites when it's followed by... "You indemnify us from all claims, proceedings, costs, losses, expenses, and any other liabilities [arising from your work]" This we know as the "lose-your-house" clause. Many editors/publishers aren't bothered, however, if you delete this clause in its entirety – ask.

If you see any of these wailing-siren words and aren't sure what to do, the NUJ Freelance Office has immense knowledge and experience.

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Getting paid abroad

NUJ Freelance Organiser John Toner reminded freelancers in July's LFB meeting of "the scary bit" in selling your work abroad – getting paid abroad. "Be warned," he warned, "that 'abroad' is much closer than you think."

John reminded us that for the purposes of getting paid, "abroad" starts North of the Solway Firth: Scotland is legally "in another jurisdiction." John recalls one freelance owed several hundred pounds by a Scottish client who decided that going to court in Edinburgh to get paid wasn't worth the considerable train fare, overnight stay and loss of a day's work.

Then there's "withholding tax", which sounds like a scam but isn't. Talk to your "friendly revenue people" at Her Majesty's Customs and Excise about legitimately getting round this and forms to make this happen.

"We tend to think it's better abroad, where authors' rights are better in most of the EU", John cautions: "but in the US, you sign a pact with the devil, and you don't get to play the guitar."

Recently, journalists' unions in Austria, Germany, Norway, Switzerland and the USA have helped NUJ members. After ten years' work, John can report that finally "we are persuading journalists' unions to bring in a mutual assistance scheme... so that if someone is owed money by a client in Switzerland we can go to the International Federation of Journalists (IFJ) affiliate union there "and get them to take over the work" of extracting money from clients.

So far, the Swiss and German IFJ affiliates are formally signed up, and there's a separate arrangement for France via NUJ Paris Branch.

Banks can charge hefty commissions for converting payments made in foreign currencies. It's tempting to let clients pay you for several months' worth of work in one go to save bank charges. But, John cautions "being owed a lot of money is always a bad idea."

"Prevention is better than cure," John concluded. "Please come to the (NUJ) Freelance Office (www.londonfreelance.org/nujone.html#Freelance) before signing the contract – instead of us having to dig you out of a pit of misery."

What to do when work in progress is cancelled

When it comes to knowing your rights, most freelancers have learned that we're owed a 100 per cent kill fee if we deliver our work in line with the brief and on deadline and it's not used – it's contract law and enforceable as long as we've put it or got it in writing. And emails count.

But what if a client cancels a job when only part of the work has been completed? Contractually we might be able to jump up and down and demand full fee, especially if it's near completion. But in an existing or hoped-for long-term relationship a compromise can be looked at.

It's not unknown – but pretty damn rare – for the client to complete the cancellation sentence by

saying something like, "So we'd like to negotiate a fee for what you've done so far". That means we have to get right in there and bring it up – assertively, but politely, despite the frustration of the moment.

A nice example just came the *Freelance's* way. A member is commissioned to write a magazine profile feature for £450. They do the prep, do the interview, and just then get the oh-sorry call. Fast on their feet, the freelance starts talking compromise fee at once, workings with the editor – who never cancels normally and hadn't thought it through – to conjure up a way of getting something civilised through the books. A payment by the hour works for

his accounts department, it seems, and they come up with a notional "three hours' editorial work" (listed as "interview and travel") and a fee of £225 (yes, £75 an hour: "Why?" is not an important question at these moments; money is the subject in hand).

Whatever works is good. And the tailpiece here is that, interview done, whatever the contract said about usage doesn't apply because the company didn't stick to their end, but the writer said out loud (in an email) to be clear and sure, "No worries about me using the interview somewhere else I presume? Good, pleasure doing business with you."

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