$uing for million$

NEW YORK TIMES photographer Robert Caplin is suing celebrity blogger Perez Hilton for $2.1 million. According to court documents, Caplin claims Hilton (whose real name is Mario Lavandeira Jr.) used 14 copyrighted photographs of *Glee* actor Darren Criss without seeking permission after Caplin published 32 of the photographs to an online gallery (the photographs were originally published in a *New York Times* story about Criss' Broadway debut). In addition to publishing the photos, Hilton slapped a "PEREZHILTON.COM" watermark onto the photographs and linked the images to a store selling the clothing worn by Criss in the images.

In a separate case, Kai Eiselein is suing website Buzzfeed in the New York District Court for $3.6 million after it distributed one of his images – which was then used without authorisation by dozens of others.

The cases rely on the ability to claim "statutory damages" for works registered with the US authorities – rather than having to show actual damage from the unauthorised uses. Buzzfeed is claiming that their distribution of the photo was "fair use". See **http://tinyurl.com/fairusetest** for a round up of recent cases that test the "fair use" concept enshrined in US copyright law.

Setback for Google Books authors' claims

BOOK AUTHORS pursuing Google over its unauthorised scanning of 17 million or more books suffered a setback on 1 July. The United States Court Of Appeals for the Second Circuit in New York overturned an earlier ruling by Judge Denny Chin that the case qualified as a "class action". The Appeals Court said that Chin must consider Google's defence that its copying was "fair use" – that is, that it met the vague criteria for "exceptions" to copyright under US law – before reconsidering whether compensation could be sought on behalf of the entire "class" of authors.

This means that the "fair use" case must be argued only on the facts concerning books by the named authors who stood as representatives of the "class".

University of Maryland law professor James Grimmelmann concludes that this suggests that "the judges on this appeal were convinced that Google has a winning fair use defense across the board."

For us in the UK, this reinforces the argument that Google's promotion of the "fair use" concept to Her Majesty's Government is merely seeking to promote its ability to do what it damn well pleases, because it can afford more expensive lawyers than anyone else.

Plagiarism survey

DO YOU FEEL as though you've been ripped off? The NUJ wants to know. You open a newspaper or magazine, or visit a website, and you see your work – exactly the same arrangement of written words or an image – copied without acknowledgment, any prior agreement, or (naturally) a fee.

It's not a good feeling.

Of course, in this wired world, it's easy for members' work to be copied and transmitted globally in seconds. At the NUJ's 2012 Delegate Meeting, members supported a motion calling for freelances to get their just reward for published work that has been copied illegally.

The NUJ has done outstanding work in clarifying the copyright situation, for example winning the creation of a Small Claims Court that can deal with UK copyright cases, now for amounts up to £10,000. It has backed members' justified claims for redress.

The motion seeks to to re-examine the situation regarding copyright abuses. In the autumn, therefore, the NUJ's Freelance Industrial Council (FIC) will organise a survey to elicit members' views on: a) the extent of the problem; b) where breaches have occurred and how they were identified; and c) how successful members have been in seeking redress.

In addition to the survey, FIC will look to see if new software solutions exist that could help to identify copyright breaches.

On that point, it must be stressed that writing an article that uses ideas from another piece is not in itself a breach of copyright. A breach only occurs under current UK copyright law when a members' work – or a "substantial part" of it – is copied word-for-word or when an image is used without a license or prior agreement. It's the copying of the exact *arrangement* of an author's words ("the expression", not the "idea", in copyright law terminology) that constitutes a breach. See **www.londonfreelance.org/fl/quoting.html** for more detail.

If you have comments or quotes on this subject, don't hesitate to contact John Chapman (**john.chapman@redandwrite.eu**) or Matt Salusbury (**mattsal@gn.apc.org**). And please answer the survey: we want to know the facts and depend on you to provide them.

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posal presented covers all works, and fails to address the "database right" in a collection of works.

So the proposal would allow lots of things that policy does not say should be allowed, but almost none of the things that should be.

In common with other organisations – and even some representatives of the real researchers who would benefit from the changes – the NUJ has suggested the government take a pause and come back with a "respectable" proposal.

The government intends to respond to the "technical consultation" in the autumn – when they will also produce detailed proposals on "extended collective licensing" and orphan works licensing.

For links to the proposed changes to "exceptions" on copyright, and to the full responses see **www.creatorsrights.org.uk/?page=xceptions**

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Spoils of quiz night victory

BEATING OFF the nearest rivals – three teams from NUJ London Magazine Branch – by more than a third, LFB's quiz team (chair Dave Rotchelle, Fiona O'Cleirigh, treasurer Jenny Vaughan, Pat Healy and *Freelance* assistant editor Matt Salusbury) achieved a runaway victory at the London Magazine Branch/LFB "pub quiz nite" in Covent Garden in July. The prize was a wad of Marks & Spencer vouchers, which the team have generously donated to the Branch to help with alcohol costs for our Christmas Party. (Shown here is the spread in 2012.) As Dave Rotchelle put it, "knowing all sorts of trivia about all kinds of nonsense is exactly what we do as freelances" LFB's superior knowledge of the big kahuna burger from *Pulp Fiction* and the discography of Billy Idol and Men Without Hats secured its dominance.

Photo © **Matt Salusbury**