July 2014

FREELANCE

Chase thieves: win

HOW I PAID off my mortgage by pursuing copyright thieves through the courts – that was the subject of the London Freelance Branch meeting in May, with educational photographer John Walmsley, who has "been a freelance photographer since I left art school in 1968" and "never earned more than £25k a year, and it fell to £10k a year recently… my accountant said, 'either you give it up or you tackle it head on'." There is, says John, "no future unless we all fight back."

He started by pursuing book publishers that had bought the rights to use John's photos in one edition. One publisher did give John figures for their print runs including new editions for all his books. John then asked the authors who wrote the texts for some of these books. These said "the figures are about right – but what about the other countries?" It turned out that there had been "editions of several thousands" in other countries, that were not included on the publishers' lists.

Now John has moved on to tracking down further abuses of his copyright, mostly by looking online. He gave the meeting a demonstration of how he has sought out copyright abuses online.

One "nice publisher in Switzerland," on being informed of their breach, "said 'Oh my God! How much do we owe you?" but this is rare. John gave them a discount for their honesty when settling. And when he found that another infringer who'd used his portrait of an avant-garde composer on their CD was just "two men and a dog," he accepted just a free copy of the CD in compensation.

Some "95 per cent will be lying through their teeth," however, on such basic questions as how long they've had his photos on their site.

How much work does this all take? "An hour a week," says John, One case opened with an offer of £25 – a common opening gambit. Then came an offer of £600. It ended up in court: the judge looked at all the evidence, and told the infringer that what they had done "in this age of copyright awareness… was just stupid." After two months, John walked away with £1000 plus £300 court costs.

Cases of this kind are now heard at the new Intellectual Property and Enterprise Court, with hearings often taking place in the judge's chambers round a table. While John can "prove my rates, the courts accept this," these are his rates for "editorial photography." One judge said, "No, this is commercial", thereby doubling everything – to £2300 including costs. One copyright-infringing government department has paid John £11,000.

The worst that can happen, should you lose a case, is that you pay the other side's costs, and in the Small Claims track these are limited to £250. "It's down to the judge to work out how much they need to pay you," John notes.

Then there's US copyright. If you have registered your work with the US Register of Copyrights, and someone uses it, you can claim "statutory damages", up to $100,000, rather than proving the loss you have incurred as actual damages. David Hoffman, an NUJ freelance photographer in the audience, regards the US as "the biggest source of infringement recovery": he won $15k in one case there, after sending "a couple of emails."

Freelance Organiser John Toner recommended that NUJ members call the Freelance Office before launching proceedings, to ask for advice on whether they have a case. Assistant Freelance Organiser Pamela Morton said the NUJ has already run a seminar on the Small Claims track, and if there is demand the NUJ can run more. We're following up the issue at the July meeting (see page 6).

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A 2500-word version of this with lots of "how-to" is at **www.london-freelance.org/fl/1406scc.html**

John Walmsley explains: image © **Hazel Dunlop**

Copyright chaos again

THE GOVERNMENT'S plans to extend the "exceptions" to copyright – the conditions under which your work may to be used without permission or payment – descended into chaos in mid-May.

Following representations by the British Copyright Council and the Creators' Rights Alliance – to both of which the NUJ belongs – the parliamentary Joint Committee on Statutory Instruments (JCSI) told the government, as we understand it, that it did not believe the proposed measures on quoting and parodying works, and on making "private copies", were well-formed or in accordance with European or international law.

The NUJ wrote to the JCSI on 12 May, querying the proposals for "quotation" of photographs. The point on the latter is that no-one knows what it would mean. So if the measures were passed as is, photographers and illustrators would have to fund court cases to find out what the law meant.

Three sets of changes to copyright law were passed:

- extending the exception for the benefit of people with disabilities;
- extending the exception for "public administration" to allow the government, for example, to put copyright material submitted to committees of inquiry online; and
- extending the exception for educational use, for example to allow use of extracts of works in media other than print for illustration.

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LFB meetings

14 July

What to do when someone breaches your copyright? Plus NUJ insurance offer

August

No meeting!

See back page & www.twitter.com/NUJ_LFB