So you've understood the basics of copyright in your own work: see **What you should know about copyright**, overleaf. Now you want to know when it's OK to use other people's work.

Maybe you've just been commissioned for a rush "cuttings job" biography. Of course we couldn't possibly recommend anything other than thorough original research and talking to sources directly… but these things happen. And the rules setting out what you can and cannot do are surrounded by enough urban legends to build an edifice of ghost law.

We have **highlighted** some of the terms you may come across in discussion: see the link at the foot of the page for a glossary.

0 Copyright exists in words and pictures and sounds – not in facts or ideas, but in their **expression**. So it is in general OK to read a source document, understand it, and write what it says but in entirely different words.

1 There are no "magic numbers". There is no rule about quoting 23 words for journalism, or any specific amount.

All this briefing has to say about "quoting" pictures is: always get a licence. The law changed on 1 October 2014, but no-one knows what this change means yet.

2 Copyright in interviews likely belongs to the person who spoke. But if you point a microphone at someone and they answer your questions without demur, they give you a **licence** to use their words. Before you use direct quotes from an interview someone else did, you need their permission and you need to know that the interviewee did not prohibit the use you plan (so they didn't say "no way is this going in the *Stun*!").

3 Don't be bullied. Spin doctors and PRs for music and film stars may sometimes make threatening noises about something being absolutely protected by copyright when they're desperate to suppress it. UK law is clear that if what their client/puppet said is a matter of genuine public concern, it can and should be quoted.

4 Attributing quotes – saying who and where you got them from – is a good idea, and courteous. You'd want other journalists to do it when they lift your quotes. The law encourages attribution, and requires it when, for example, you quote a book in a review. Doing so may make people less likely to think "lawyer!" But doing so does not, by itself, stop the use you make of the material being a breach of copyright.

5 The main legal test in the UK is whether the amount you quote diminishes the market value of the original. After all, that's what's going to impel someone to sue. So, like everything else in the US/UK "common law" system, an awful lot about the decision on the amount of damage depends on what the judge had for breakfast, if it goes to court.

And we don't know what any part of an Act of Parliament means until it's been through the courts, at least to Appeal level.

In UK law, **exceptions** to the copyright in the material you quote are quite clearly defined. They explicitly allow you to use quotes for the purposes of reporting news and current affairs; or of criticism and review; or, since 1 October 2014, for "quotation" in general and for "parody". The news exception does not allow you to use photographs. You must give "sufficient acknowledgement" – unless this would be "impossible for reasons of practicality or otherwise". What that "impossible" means is unknown – and it may never be known if no-one can afford a trial.

If challenged, you have to show that your quotation was "**fair dealing**" – in essence that you didn't rip off the author. The US concept of "fair use" does not apply anywhere outside the US. (It is loosely defined: *everything* depends on the judge, if it goes to court.)

6 There may be no copyright in facts, but in the UK there most certainly is in collections of facts, particularly trainspottery collections of facts like bands' gig lists and, er, locomotive numbers. Mentioning that locomotive D666 was scrapped on Friday 13 August 1982, or that the Dead Goths played Dunstable on that dread day, is OK. Reproduce a significant chunk of the list, and you're in trouble. Reproduce it complete with mistakes, and you have no defence worth speaking of.

7 You're on much rockier ground with unpublished material than with, say, borrowing small quotes from published interviews. The law on confidentiality may be more relevant than copyright.

If you're quoting from correspondence that fell into your hands, for example, you need to ask whether a court would find that what you do is **in the public interest** – and not just interesting to the public.

8 Be particularly careful with material created by people outside the UK. French and German authors, for example, have an absolute right to be credited and could in theory drag you over to French or German courts for forgetting to identify them.

9 It is a very, very bad idea indeed to sign a contract **indemnifying** a publisher or broadcaster against legal fall-out from your work. That means that if you foul up – or, in some contracts, even if they foul up in the editing process – you pay. Bye-bye house! It is anyway a good idea to look into getting the **professional indemnity insurance** that the NUJ offers for members.

What if this doesn't answer your question? Probably, then, your question was "and what is the magic rule?" And, once more, the answer is: there isn't one. There isn't even much legal precedent in the UK. It's a judgement call.

Had your *idea* ripped off?

So you're annoyed that your story has been written up by other papers? Once more, with feeling: there is no copyright in the story itself – it's all facts (and ideas). If they have ripped off a **substantial part** of your *actual words*, contact the NUJ for advice. Anyone who re-interviews your sources can use the new interviews.

And if a publisher or broadcaster has ripped off your programme format proposal, that's a matter of confidentiality, not copyright. See the *Code of Practice for Submission of Programme Proposals* agreed between the NUJ, our sister union BECTU, other creators' groups and programme producers.

What you should know about…

'QUOTING'

A briefing for members of the NUJ: updated August 2017

★ **For links, documents & more on authors' rights see** www.londonfreelance.org/ar

What you should know about…

COPYRIGHT

A briefing for members of the NUJ: updated August 2017

MANY OF the problems that freelance journalists face involve copyright. Some of these problems stem from editors and publishers being frightened that copyright is complicated, or believing myths about it.

It is not complicated: everything you need to understand is here, unless your question resembles "I did some work in 1955…"

Note that these notes apply to the UK only. They now cover small changes in UK law in 2014. Irish law is similar; but check. The law in joined-up Europe is very different, and much friendlier to authors. Again, check.

Why would you want to understand these principles? Because doing so can increase your income: by a third, one survey said.

We have **highlighted** some of the non-obvious terms clients and contracts may use: see the link at the foot of the page for an expanded glossary..

0 What you create as a freelance, you own. Photo, news story, radio feature, crossword clue… if you made it, it's yours.

1 What you own is the **expression**: the actual arrangement of words in the article, or objects and people in the photo, or whatever. There is no copyright in facts or in ideas. If an editor or producer commissions you to produce work based on a particular idea, in law this has no effect on your ownership of the work. You make it, you own it. For **exceptions** that allow some uses despite this, see over.

2 Standard practice is that what you sell to an editor or producer is a **licence** – that is, your permission to use your work, once, in one territory, in one medium. Examples are First British Serial Rights, World Wide Web Reprint Rights… or Japanese (second edition) translation rights.

3 Publishers and producers are vigorously trying to get freelances to **assign** our rights – for no extra money.

"Assign" is jargon for "sell outright". This means that they want the freehold in your work, for the price of a month's rent.

Publishers with smarter lawyers may generously allow you to keep copyright in your work, then demand a licence to do anything with it, anywhere, forever. This means that they want a 999-year lease, for the price of a month's rent.

Often, they don't pay their lawyers enough to think about what they actually need. So the lawyers do what lawyers do when they're confused: they put in everything, including but not necessarily limited to the kitchen sink. Or, ironically, they "borrow" the text of someone else's contract, often one intended for consultancy.

4 Some freelances ask why they shouldn't hand over their reviews for *What Fridge*? Some writers do accept that web republication is part of the deal for use of their words.

But we ask: why is the publisher going to all this trouble to get the right to re-use your work for free? If you license only first-use rights you can get extra money – perhaps from syndication in translation to *Quel réfrigérateur*?

And you can get money from **secondary use** of your work for example when colleges, libraries and businesses photocopy it. To do this, UK freelances need to register with ALCS (for writers) or DACS (for photographers, illustrators, etc). This is free to NUJ members. See the link below to sign up for each online.

5 One reason for the publishers' rights grabs is that they want to put stuff on the Web, and sell content to database archives. The Web often is, and databases clearly are, separate editions, with separate income to the publisher. Why not negotiate separate payments for these uses? Databases syndicate your work to individual readers. If they pay $3 for a single article, shouldn't you get a share?

Some publishers complain they're spending money to give work away on the Web: but they want you to assign rights so they can keep all the proceeds from advertising and from future pay-per-view schemes – as well as from old-fashioned syndication.

6 So wherever possible, do not assign your rights. Ask the editor or producer what they actually want to do with your work. Negotiate a specific payment for each use. See the *Freelance Fees Guide* at **www.londonfreelance.org/feesguide** for suggested rates and the Rate for the Job at **www.londonfreelance.org/rates** for what journalists have reported being paid.

By long-standing tradition, if your work is **syndicated** – used in another publication – at your publisher's initiative, then you get half the fee. If you arrange syndication you get the whole fee – so long as you haven't assigned all rights of course.

Put what you agree in writing. This stops your client claiming what is called an "**implied licence**": that is, one that can be inferred from your actions.

7 If you as an NUJ member find unauthorised use of your work, contact the Freelance Office for help objecting in writing and taking it further if need be. If a stiff letter doesn't do the trick, the Freelance Office can help members use a Small Claims Court that was set up after an NUJ campaign and can deal with copyright claims up to £10,000, at reasonable cost.

There is a guide to tracking down online pirates in the online *Freelance Fees Guide*.

8 The **moral rights** are the right to a by-line or credit – to be **identified** – and the right to object to distortion of your work – to defend its **integrity**. In UK law, you do not have either of these moral rights in work which appears in newspapers or magazines, nor in work which reports "current events" anywhere.

Publishers often demand you **waive** – that is, give up – moral rights anyway, maybe in case the law changes later. Resist this.

You do have moral rights in, for example, a book – so long as it contains the magic phrase "Moral Rights Asserted".

Remember: you still initially own everything you produce as a freelance, even if you don't have moral rights. The moral rights are separate from the economic rights.

9 You do not own work which you produce under a **contract of employment** (as against a freelance or casual contract). There are no moral rights in work done "in the course of employment" in the UK.

★ **For links, documents & more on authors' rights see** www.londonfreelance.org/ar