Unfair contracts: new laws

THE EUROPEAN Union looks likely to introduce at least some measures to combat the imposition of unfair contracts on journalists and other creators. At a Creators’ Conference in Brussels on 31 May, EU Commissioner Andrus Ansip said: “this is not negotiation between equal partners: some partners are too powerful – we have to change this situation to protect the weaker partner”.

The event was organised by the European Federation of Journalists with composers’, directors’ and fiction writers’ organisations. NUJ General Secretary Michelle Stanis-treet spoke, and was asked: “What one thing helps against unfair cre-ators’ contracts?”! She replied, to applause: “Collective bargaining for freelancers”!

The European Commission is due to produce proposals in the autumn. Mike Holderness had a round of meetings around the event, which produced other encouraging state-ments from officials and MEPs. Of course, whether this has a direct effect on the UK depends on what happens in the referendum on 23 June. Not anonying newspaper pub-lishers just now may be important.

The Creators’ Rights Alliance (of which Mike Holderness is chair) has met the UK minister, Baroness Lucy Neville-Rolfe. She heard the argu-ments about why unfair contracts need to be dealt with and gave the impression that this was a matter for the European Union to take on.

Meanwhile several countries in Europe have new laws or proposals on unfair contracts. In Germany the government has put forward a limited version of an earlier draft law. Collective agreements now include minimum payments, while unions can bring collective actions if these are violated. But industry lobbying watered down a clause improving the right to end a contract if a publisher is not actively promoting a work, and get more from another. This now only covers authors paid a flat rate, excluding authors who get royalties – which is most.

A law that passed the French Sen-ate on 25 May would mean some improvements in contracts for musi-cians and contributors to films. It also includes a fee for thumbnail im-ages on search engines, distributed to photographers through a collect-ing society.

Even the Freelance’s Dutch-speak-ing editor’s still trying to understand a new law guaranteeing fair payment for freelances in the Nether-lands. “Fair” isn’t defined and it appears to be in practice unenforceable. The effect on Dutch freelance journalists of a new tax law – to stop companies firing everyone and hiring them again as self-employed – seems negligible.

There’s a longer version online, which links to a new campaign on fair contracts in the UK – still in Eu-ropem at the time of writing!

Yes, you can get compensation for not being credited

YOU HAVE a right to be identified as author of your work – so long as it’s not used in a newspaper or magazine or otherwise for reporting news and current affairs, and so long as you have “asserted” that right. But what does that last about “asser-tion” mean?

It is the rule in the law of England and Wales that Parliament can pass an Act, but no-one knows what it means until a senior court has ruled on it. Because the law on your right to be identified is so vague, no-one has funded a case to find out, so it remains unclear, so…

Now we have some help from a ruling in the “Intellectual Property and Enterprise Court” – which we often refer to as the copyright small claims court. Though this does not set a precedent that other courts have to follow, it helps.

John Walmsley took photos of Al-exander Neill, founder of the famous Summerhill School, for his book about Neill, published by Penguin in 1969. Recently, he found the photos, twice, on a blog run by a company Education Limited. He claimed £250 for each instance of each photo, dou-bled for breach of his “moral right” to a credit, uplifted by a further 100 per cent as a “flagrant” breach, plus VAT and interest.

District Judge Clarke accepted that John had “asserted” his author-ship by the copyright notice in the 1969 book – though the phrase “as-sert your moral rights” didn’t enter UK law until 1988. He had strength-ened the “assertion” by distributing photos with a “watermark” saying “all rights reserved” since then. The defendants had no excuse for not crediting him: they admitted they had found his photos through an in-ternet search which also threw up many instances of the same photos with the watermark.

This is an important clarification of what “assertion” means – basically, a plain English reading with no clever technical limits – bearing in mind again that this is a lower court. Judge Clarke found that the head-lines on the website pointed to the same article, and that though the defendant had shown a “shockingly low level of understanding”, its actions were “naive and possibly one might be inclined to say pretty stu-pid”, there was not an “element of intent or wilful negligence” so no ad-ditional damages were awarded for flagrant breach. John came away with £250 for each of two breaches, dou-bled for failure to credit him: £1000 plus VAT plus costs.

Judge Clarke suggested that the defendant could have avoided this stupidity by looking at advice from the NUJ. John told the Freelance he is “very happy” with the result: “That was my first ever [Small Claims] case. They do take time, to get all the details right. I was surprised the infringers didn’t settle before it went to court. They wouldn’t agree to pay the amount I claimed – so they ended up paying most of it, and their le-gal costs on top. The point that Judge Clarke on ‘assertion’ is important, and I hope it will help other photogra-pher and authors.”

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John Walmsley told London Freelance Branch about his experiences pursuing copyright thefts through higher courts in May 2004

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Freelance May/June 2016 • 5

New members meet

LFB members new to freelance journalism are invited to meet other people new to the Branch, and members with more experience of freelance journalism, at the Camera Café, Museum Street, London WC1A 1LY on Thursday, 28 July from 6pm. These meetings happen there on the last Thursday of every third month. The Branch hopes to resume inviting new members who come to their first Branch meeting to have their photo taken and give a few words about themselves: see them at www.londonfreelance.org/lfb/intros.html

More online!

Somewhere we had details of awards and petitions that you should be aware of, but it’s been a heavy week and there are thousands of emails… For these and regular updates visit www.londonfreelance.org/fl