

Dear Mr Gowers

I saw the article in the CBI's magazine, Business Voice and would like to give you feedback about major issues on copyright in our industry.

1 Photography

We are a PR and marketing consultancy and commission work on behalf of our clients - ranging from public sector bodies such as the Learning and Skills Council, regional assemblies and regional development agencies; to large corporates and smaller entrepreneurial businesses.

As the law currently stands, photographers and designers can retain copyright in their work, unless specifically assigned to a third party.

(http://www.copyrightservice.co.uk/protect/p16_photography_copyright)

At a practical level, we have managed to find photographers who will agree by email to give copyright to a client for a particular job but will not sign a formal supplier's agreement to cover all situations. Sometimes the only photographer available for a job will agree to assign copyright verbally - but not even by email - or just say 'the client will be OK'. As you will appreciate this is a constant time-wasting battle and a fudged job.

As a body, photographers are holding out the right to retain copyright in their photos - they have almost formed a closed shop on this subject. They say that, theoretically, if we commission a photograph on behalf of a client for press purposes and then later decide to use that shot on a billboard - they can come back and charge different rates for a photo being used for different purposes or in different ways later on - which the client may not even have envisaged when commissioning the shoot.

The same problem occurs with some designers and artists who have been commissioned by a client.

It seems that the law needs to make more distinction between

- 'speculative' work that a designer creates in their own time and studio without having any idea if anyone will like it or buy it, and
- accepting a specific commission from a client who pays for their time, materials and travel expenses. Who also comes up with the brief, the idea and organises the people and props to make it all happen.

In this latter case, how on earth can anyone say that the photographer retains copyright in the photos? The client should be entitled to use their photos whenever and however they like without ever having to go back to the photographer. It is up to the photographer to charge a one-off initial commercial rate for the job.

Of course, if a photographer or artist has worked speculatively, they should be entitled to retain copyright in their work however they want to set the terms.

2 'Intellectual property'

I came across an extraordinary extension of the above issue last month. We have taken over a contract from a previous PR company and asked if they could give us the names and contact details of the journalists they have been working with.

They gave us the names of the publications but said the journalist names were their 'intellectual property'. Despite the client having paid them a monthly retainer to carry out their PR, part of which was to contact journalists for them.

We have long lists of our own contacts so the client took a commercial decision and let this go. I daresay the client could have taken them to court and legally would have won the battle to get the names if they had wanted to - in this case it was not worth it.

However, it is another example of how any new legislation needs to ensure that work carried out on behalf of a client must belong to the client who is paying!

3 Newspapers

As a former FT editor, I am not sure what your views on this next one will be!

You will appreciate that a large part of every newspaper is now made up of articles taken partly or entirely from press releases and photographs sent in by PR people who have produced them at their client's or employer's expense.

Yet the Newspaper Licensing Authority charges us for every copy we take of a newspaper article - most of which we have written and organised for them! (PR people are generally copying the articles that they wrote which have got into newspapers!). The terms of the NLA licence are so tight and expensive we end up not being able to afford to do much copying or circulating (aren't the newspapers shooting themselves in the foot on this one?!). And the cost impact on the newspaper cutting agencies is such that we are no longer able to afford a cutting service for most clients. It simply is not worth spending this much money.

I appreciate a lot of this is a commercial rather than a copyright issue and I do not have an easy solution to offer on this topic. It just seems outrageous to pay the newspaper to copy an article that we wrote for them!

4 Bias against small firms

I know that you have wondered if there is an in-built bias against small firms in current copyright law.

I am sure you were thinking more of patents and the costs of protecting infringement. However, the photography, design and newspaper issues are all affecting smaller firms more than larger companies. Larger companies have more clout and people to negotiate the terms they want (the LSC for instance has a supplier tendering process and only appoints agencies who will give them copyright). Smaller businesses cannot do this - particularly if they only use a photographer once or twice a year, for instance.

Again, with the NLA licence, large corporates just pay the NLA a fat fee and pick up the tab for a huge press cutting agency fee. Smaller companies struggle to pay these costs as a proportion of their total marketing budget.

5 Next steps

I would be happy to be involved further or talk to your colleagues about these issues if that would be of help.

I know you asked for tangible examples - I hope I have given you enough specifics but if you want more details, we can do this.

I am delighted you are picking up this review - I have been wanting to champion the copyright issue for about ten years. I feel passionately that our clients are not getting best value for money and that poor copyright law is hampering British business.

Yours sincerely
Victoria Tomlinson

Northern Lights PR
www.northernlightspr.com