

Dear Sirs

With reference to your call for evidence in relation to the review of IP and Copyright law, I would like to submit some points for consideration, specifically covering copyright law as it affects photographers.

I am fully aware that not only is this review looking at all areas of current legislation covering copyright and IP law, but that as a freelance photographer I am but a small voice in a very large ocean of opinion.

However I believe that the outcome of this review has the power to either protect the futures of the creative individuals who supply the vast majority of images now held by relatively few photographic libraries and publishers, or to crush all future creative endeavor as good photographers will find it impossible to continue to trade if the likes of Getty, Corbis, News International, the BBC and even Government departments get their way.

Since the introduction of the Copyright, Designs and Patents Act (1988), photographers and other creative individuals have had to continue to fight to keep the right to exploit the works which they create. Too many photographers are still ignorant of that legislation and are easily persuaded to part with their copyright for no compensation for the loss of future earnings, and the advent of digital has compounded this problem further now that files are infinitely repeatable and easily moved from one electronic system to another. Very quickly they can become orphaned and untraceable at which point the photographer becomes totally detached from the exploitation of their work. They also lose control of the context in which that work is used and have no power to prevent misuse.

What I believe future legislation may need to do is separate more clearly IP and copyright law. IP law will need to take into account the complexities of inter-organisational cooperation on the development of new products and services, while copyright law needs to ensure that creators of artistic works don't have to keep losing their livelihoods to those who wish to exploit them purely for their own financial gain.

Photographers, especially good ones, cannot only make a living from taking pictures; they must be allowed to license them too. This in turn allows photographers to retrain in new techniques, new software and explore new creative possibilities. All this will be lost if we are left only with the prospect of making a living at the time of taking a photograph, which is apparently where we are already heading.

One solution which has been mentioned is the European model of Authors' Rights, which would be a step in the right direction, making

it impossible to separate an author and their right to exploit their own works. But that will not be the only answer, because those who commission works will be able to pressurise photographers into signing exclusive contracts, making it impossible again for photographers to use or sell their work elsewhere. Any new legislation must prevent clients from taking advantage of photographers who are not aware of their rights, and must prevent unfair contracts being forced upon those who would otherwise not accept such restrictions on their rights.

Why the photographic market has become so precarious stems from a number of factors;

1. A general misconception among clients that digital photography is cheaper than film-based (or wet) photography. In fact with the cost of digital cameras, computers, software and all the other requirements of running a competent photographic business, digital photography is in the region of three times more expensive to run.
2. There are too many photographers, encouraged by the misconception that digital photography is easier than film photography. That is an area in which we as professionals must learn to set ourselves apart from the masses of "photographers", but it does weaken our negotiating powers when dealing with clients.
3. The ease with which digital files can be reproduced has cheapened photography in the minds of many, and has taken away the reprint revenues on which photographers partly relied in the past.
4. The further result of point 3. above is that photographers can no longer effectively police the use of their images, which can be shared and stolen with impunity.
5. Clients do not see why they should pay extra for photography, even though the opportunities to exploit images has ballooned with the advent of the Internet and the ease with which images can be incorporated into so many different media. Rates are now largely as they were 15-20 years ago, despite the growing importance of the photographic image in selling goods, services and points of view.
6. Because clients do not wish to invest in image-tracking software they find it easier to take copyright from gullible photographers rather than deal with good, well-informed professionals and have to renew licences to use images as the need arises. This is also largely born of laziness.
7. Too many clients simply do not understand what copyright is, and are confused as to what their rights are, so they simply demand copyright in the belief it is the safest way to proceed when commissioning photography.

So what can be done? Whatever form future copyright legislation takes, it must promote individual endeavor. No agency, library, publisher or public organisation ever took a photograph. Photographs are taken by individual photographers, so by protecting their investment and talent all clients will benefit. At the moment we have a situation where all clients are lowering their rates and undercutting each other simply for short-term market share and profit. Giving them more copyright control over the work they commission will only lead to an accelerated downward spiral in terms of market value and the rates and rights offered to photographers.

Government organisations need to lead by example, negotiating fair rights and rates instead of demanding copyright at unrealistically low budgets.

Photographic organisations need to do more to educate all professional photographers that copyright is theirs, and that they need to deal with clients in a way that photographers would like clients to deal with them.

Government and Industry trade bodies and organisations need to educate their members that when they commission work, they are simply buying the right to use photographs for the uses they require, and not to brow-beat photographers into giving up rights they may later regret giving up.

Get the balance of the legislation right, and clients, photographers and the country will gain. The law may need simplification, but it certainly needs to be clearer and have more enforceability.

In conclusion, you will I'm sure be receiving information and lobbying from the big photographic organisations and publishers on this subject, but please bear this in mind; they are not interested in the future strength of copyright in the UK except for how it can benefit them. They do not wish to deal with copyright when it comes to commissioning work, but will be keen to acquire and protect the copyright in the works they have commissioned. Eventually, a number of unfortunate scenarios will prevail. Primarily the UK will gradually lose its reputation as one of the leading centres for quality photography in the world, as photographers will no longer have time to explore new methods and subjects as they struggle to make a living from commissioned work. Also a handful of publishers and libraries will control the cream of our national photojournalistic output to the point that the UK will no longer be a good market in which excellent photographers can thrive and we shall lose more to other parts of the world, primarily the United States, Europe and the emerging Asian economies, who will benefit from the influx at our expense.

Consider also that a photographer with a family is in a uniquely difficult position. Because of the unpredictable nature of the work, and the often unsociable hours involved, photographers' partners are often unable to take up work and so contribute to the household income because they cannot guarantee there will be sufficient child care. Copyright allows a photographer to expand their income beyond the time they spend taking pictures and this takes the pressure to work off the the partner. If we lose that to the benefit of big business interests, we will lose a great deal of talent and future talent will be stifled.

If I can be of any further assistance in helping the enquiry, please do get in touch.

Best wishes and good luck

Tim

--

Tim Gander

Photographer

Press. PR. Corporate