

# THE BRITISH PHOTOGRAPHIC COUNCIL

## **Results of the 2009 Survey of UK Photographers.**

### **Methodology.**

The survey was carried out between February 19<sup>th</sup> and 25<sup>th</sup> using the online survey website SurveyMonkey. Survey invites were sent to photographer or picture agency members in the eight organisations which currently comprise the British Photographic Council. These are: The Association of Photographers (AoP), The British Press Photographers' Association (BPPA), BAPLA, Chartered Institute of Journalists (CIoJ), Editorial Photographers UK (EPUK), Pro-Imaging, National Union of Journalists (NUJ), and the National Association of Press Agencies (NAPA).

In total, 1038 photographers responded to the survey.

### **1. Do you ever have clients seeking to acquire copyright or a license equivalent to copyright?**

Answer Options		
yes	81.7%	848
no	18.3%	190
		1038

*Below are a small but representative sample of additional comments made by respondents:*

- “Re-use for no payment is how it is approached – ‘but you retain copyright of course’”
- “One client thinks that because he paid for my time he owns my copyright and keeps telling me this even though I show him the copyright act!”
- “This is quite common now - I have 2 editorial clients who demand copyright. One for everything I shoot on an assignment, the other just for the pics they publish. I have tried to negotiate but they refuse t work otherwise.”
- “Increasingly more often, and sometimes from clients who either have little understanding of the difference between non-exclusive, exclusive or copyright. But there are others who know absolutely what they are doing and wish to pressurize authors to give up their rights.”

**2. Over the past year, this has happened in:**

Answer Options		
most negotiations	14.6%	111
some negotiations	46.0%	349
few negotiations	39.4%	299
		759

*Below are a small but representative sample of additional comments made by respondents:*

- “Normally magazine publishers [want copyright] - reason being that they see the resell of a total feature as part of "their" revenue streams”
- “Most of the time clients assume they have the rights to use the images anyway and don't even negotiate.”
- “Many of my clients are unaware of copyright legislation or prefer to present themselves as such. Most want to acquire full buyout without additional payment and choose to ignore the impact that this has on a photographers long term income let alone their rights. My response would have been most negotiations had I the nerve to discuss copyright with all of my clients, should I do this I know that I would loose a certain number of my clients who under no circumstances are prepared to pay for copyright or usage. At a time where income is diminishing due to many factors this is unfortunate.”

**3. Looking at the pressure to give copyright or an extended license, have you seen this increase over the past 5 years?**

Answer Options		
yes	73.9%	561
no	12.0%	91
don't know	14.1%	107
		759

*Note: This question was asked to all respondents, and from the additional notes given, it was clear that many who answered “don’t know” had been in the industry for less than five years. See also Q22, where 16% of respondents say they have been in the industry for five years or less.*

*Below are a small but representative sample of additional comments made by respondents:*

- “It has increased to a dramatic degree, to the extent that some companies will ONLY consider you for work if you agree to sign over copyright. And that's 'company policy' which cannot be over-ridden by individual art buyers”
- “There seems to be a trend toward trying to give more copyright to commissioners but little increase or offers to pay higher fees at outset for such exclusivity.”
- “I think there is a general ignorance of the implications of copyright, as most punters think that the pictures become theirs upon delivery, to do whatever they like with...”
- “I feel the concept of IP is increasingly under threat from the free for all culture that the internet breeds.”

**4. When faced with demands for more rights than you expect to give, do you (tick all that apply)**

*By number of respondents:*

Answer Options	always	sometimes	never	Response Count
comply with request as presented	30	362	234	626
negotiate better fee and or fewer rights	195	451	39	685
refuse to deviate from your standard pricing structure	69	402	125	596
	294	1215	398	1907

*By percentage:*

Answer Options	always	sometimes	never
comply with request as presented	4.8%	57.8%	37.4%
negotiate better fee and or fewer rights	31.2%	72.0%	6.2%
refuse to deviate from your standard pricing structure	11.0%	64.2%	20.0%

*Below are a small but representative sample of additional comments made by respondents:*

- “[I try to] negotiate better fee and or fewer rights – but rarely succesfully”
- “This depends on the 'uniqueness' of the shots, the value of the client in terms of future work and the day-rate. For example I have given copyright for simple cut-out shots that I could easily replicate for a publishing company who I have worked for for many years. With new clients I take a less flexible route and will either negotiate or refuse. The refusal normally comes as a result of the client refusing to deviate from THEIR standard pricing structure”
- “Most PR clients don't see negotiations over license as an option now. Some newspapers seem to be taking their lead from such attitudes by issuing letters demanding rights for no further payment.”
- “I try to negotiate a better fee. In one case I didn't work for a client until I submitted to their onerous terms.”
- “In the past I would never have deviated from my standard pricing structure. Depends on the image in question if it's one that might have limited future sales then yes. Times are tough, buyers know it and expect more for less.”

**5. Have demands to give clients more rights had a significant effect on your income?**

Answer Options		
yes	59.4%	451
no	40.6%	308
		759

**6. In light of these pressures to provide more rights, has your income over the last 5 years...**

	marginally	moderately	significantly	Response Count
increased	11%	11%	2%	24%
decreased	21%	37%	19%	76%

*Representative sample of comments to Q5 and Q6:*

- “Lost business due to my refusal to comply with rights grabs where the client refuses to budge from their own standard terms - which often involve the acquisition of rights they don't need and will never use. These rights grabs are usually imposed by people with little knowledge of the creative business and who simply want to grab whatever they can in the hope it will have some value to them. In the process, they erode relationships with creative people.”
- “In some cases, some clients will say you will effectively be 'blacklisted'. One major publisher at least has told staff not to hire me/use my work due to not giving all rights/copyright for no extra on single usage.”
- “I have found that where a magazine has asked (normally hidden in their T&C's) for copyright and I have questioned it then I do not get more work from them.”
- “[Accepting deals to hand over copyright] has increased my income from commissions, but decreased income from resale as stock. In the long run I've probably lost out.”
- “Clients seek to use "weaker" suppliers who agree to assign more rights to them. We therefore receive less business from some regular clients.”
- “Unless there is a legal precedent set to stop clients from trying to obtain extended licenses for no extra fee, then making money full time as a photographer (and being able to offer a fair, professional and high quality service to the industry) will be impossible.”

**7. At what point in your negotiations do you find an attempt to gain greater rights is mentioned? (tick all that apply)**

Answer Options		
At the first point of contact	17.8%	161
Not in the first conversation, but prior to the commission or sale	35.9%	325
Subsequent to the initial agreement but before payment	21.1%	191
On the payment itself - whether a remittance advice or 'conditional' cheque	8.4%	76
too variable to say	16.8%	152
		<b>905</b>

*Below are a small but representative sample of additional comments made by respondents:*

- “Even though I try to approach the subject at first point of contact it normally gets pushed to the 'oh we'll talk about that later', or the 'dont you want the job?' or 'what!!! so much ?”
- “None of the above - more usually later as an afterthought when the client realises that they can get more miles out of the images than originally envisaged”
- “Clients never mention up front what they expect, they usually try to grab rights either on a cheque or remittance”
- “I find that businesses/clients often try to reel you in and then revise the price/rights just before completion of the sale.”

**8. In the last year, have you ever felt pressured by the client to supply a more extensive license (than than your normal practice) for no increase in the fee ?**

Answer Options		
Never	6.8%	47
Occasionally	50.7%	353
About half the time	12.1%	84
Frequently	27.3%	190
Always	3.2%	22
		<b>696</b>

**9. In what form did you feel pressure was placed upon you to grant a more extensive license for no uplift in the fee ? (tick all that apply)**

Answer Options		
The offer of future work if you accepted	23.3%	193
The loss of future work if you refused	60.8%	505
other (please specify)	15.9%	132
		<b>830</b>

*Representative sample of comments to Q8 and Q9:*

- “The answer would be "frequently" if I did not avoid rights-grabbing publishing companies”
- “The situation on the Internet seems much worse than with print journalism. I'm being forced to work more on the Internet as there are so many redundancies in magazines and newspapers.”
- “Some companies demand a 'Worldwide Buy Out' for every single job for your normal day fee. If you want the work from them that is the conditions.”
- “As an editorial photographer whose basic business model is selling publishing rights to work produced without direct commission, magazine publishers exert pressure by demanding web usage rights but are willing to pay for print usage only”
- “The classic is that they have "have never had such issues with other photographers and that even the biggest photographers we've worked with have usually just given us copyright" - honestly, it happens SO often, playing one creator off against another. The sad thing is that the amateur photographers then get drafted in because THEY always give over copyright for pathetic fees - vanity publishing at its worst. I have NO hesitation in turning clients down if they get silly about copyright. There are always better clients.”

**10. In what industry sectors have you encountered this? (tick all that apply)**

Answer Options		
Editorial (working for newspapers, magazines or contract publishers)	29.8%	427
Editorial (working for news agencies)	6.0%	86
Public relations	22.1%	317
Design agencies	7.1%	236
Advertising	15.6%	223
Other (please specify)	10.0%	144
		<b>1433</b>

*Note: The most common industry mentioned by respondents under “other” were government and government funded bodies. Also mentioned were NGOs, book publishers and the private sector. Magazine publisher Haymarket was frequently mentioned throughout the entire survey as an example of a publisher wanting more or all rights for no increase in the fee.*

*Below are a small but representative sample of additional comments made by respondents:*

- “PR and lower end design/marketing agencies are the absolute worst for wanting “all rights”. Not content with marking my services up 100% they want the flesh too. Honourable mention for the insidious Haymarket Publishing though and their rights grabbing cheques.”
- “Direct clients. Most ad agencies worth their salt actually know what they're doing & what the rules are.”
- “Local councils as clients seem to think that they need to have copyright as mandatory and they are being ripped off if they don't have it to 'protect' themselves.”
- “Local government commonly have a policy of acquiring copyright.”

**11. What is the approximate value of work in GBP (including expenses, but not including vat) that you estimate you have lost in the last financial year through refusal to grant either a more extensive licence or an assignment of copyright for no change in the rate? (Leave unanswered if you cannot say.)**

154 respondents entered an answer to this question. The mean value of answers was £13,349, with figures ranging between £100 and £150,000.

**12. Are you VAT registered ?**

Answer Options		
Yes	54.0%	376
No	46.0%	320
		696

**13. In the past 3 years, have you become aware of one or more copyright infringements of your work?**

Answer Options		
Yes	71.5%	631
No	28.5%	252
		883

**14. How many infringements have you become aware of in the last 3 years ?**

The mean number of infringements was 25.9, and answers ranged from 1 to 3,000.

**15. After you became aware of these infringements, did you attempt to pursue the infringer for payment?**

Answer Options		
Always	27.5%	167
In most cases	29.3%	178
In some cases	28.9%	176
Never	14.3%	87
		608

**16. In the cases where you did not pursue payment, why was this? (tick all that apply )**

Answer Options		
I am not concerned by my work being infringed	1.0%	5
The infringement stopped when asked.	26.9%	130
I could not trace the infringer	29.6%	143
The infringer was in another country and it would have been prohibitive to bring an action against them	35.4%	171
The infringer was in the UK but I was put off by the legal process.	35.8%	173
Other (please specify)	27.7%	134
		<b>483</b>

*Below are a small but representative sample of additional comments made by respondents:*

- “The infringer was a local journal who would stop using our services if we attempted to charge them”
- “Typically only a very small fee would be achievable so not felt to be worth the aggro and time.”
- “Not enough time (and energy) to pursue what may be uneconomic to legally chase and collect damages”
- “It is very difficult for a small business to take a large company to court financially when you have a good idea that they will drag out proceedings until you have run up very high costs and have to withdraw.”

**17. In the cases where you did attempt to pursue payment, were you successful?**

Answer Options		
Always	23.0%	135
In more than half of cases	22.0%	129
In less than half of cases	24.9%	146
Never	30.2%	177
		587

*Below are a small but representative sample of additional comments made by respondents:*

- “The UK legal system is loaded in favour of the infringer and getting a legal judgement in your favour does not follow through that you will get the actual cash”
- “Recovery of payment is extremely time consuming and uneconomic and represents a further loss, given values [of infringement] in a typical £50-200 range.”
- “The magazine concerned admitted blatant ignorance and the use of material was stopped. But then they changed their license terms to All Rights and I refused to work for them ever again.”
- “The infringer flatly refused to pay, the amount was £400 and the process of pursuing the matter would have cost more than the fee.”

**18. Where you have been successful do you feel that the amount you received for the infringement was fair compensation for the cost of the original infringement, your time and your legal costs in pursuing the infringement ?**

Answer Options		
Yes	26.2%	130
No	73.8%	367
		497

**19. Do you feel that the amount paid by the infringer served as an adequate penalty to stop similar infringements in the future ?**

Answer Options		
Yes	11.8%	69
No	88.2%	518
		587

*Representative sample of comments to Q18 and Q19:*

- “The infringer only has to pay the fee they would have paid if the image had been licensed properly. There are no punitive damages”
- “There should be a punitive element as standard in court settlements, otherwise infringements will continue as they'll see that they only have to pay for use if they get found out.”
- “I feel many editorial publishers will just try and get away with not paying. Unless I see my photograph published without payment, how can I pursue it?”
- “The fee rcovered rarely matches what I would have charged, let alone the time & hassle of chasing down the infringement. The practical impossibility of bringing a criminal case means that infringers generally don't care about being caught.”
- “One TV company told me 'they take pictures from the internet, use them without getting permission and if they get caught, they pay up !'. But because they get away with it a few times, they are still on a winner...”
- “The current level of penalty and costs positively encourages infringement as a sound business practice and method of limiting their expenditure. There is no deterrent whatsoever to penalties that are identical to what the infringer would have paid had they sought permission, and the real business costs of pursuit are borne by the rights owner.”

**20. What percentage of your images are identified or credited as your work on publication ?**

Answer Options		
More than 75%	25.9%	214
50-75%	25.0%	207
25-50%	21.8%	180
0-25%	27.3%	226
		<b>827</b>

**21. In your opinion should all your images automatically (by law) be identified as your work on publication?**

Answer Options		
Yes	83.2%	691
No	7.0%	58
Unsure	9.9%	82
		<b>831</b>

**22. How long have you worked full time in photography (enter your answer as a whole number of years)?**

Answer Options		
1-5 years	16%	136
6-10 years	14%	120
11-15 years	15%	125
16-20 years	17%	140
21-25 years	15%	121
26-30 years	10%	82
31-35 years	4%	33
36-40 years	3%	28
40+ years	5%	43
		<b>828</b>

**23. How many people work in your company?**

Answer Options		
One	73%	364
Between 2 and 5	24%	122
Between 6 and 20	2%	9
Over 20	1%	5
		<b>500</b>

**24. What is your approximate annual turnover in pounds before VAT?**

Answer Options		
Under £10k	2%	5
£10k-£20k	10%	26
£20k-£30k	17%	45
£30k-£40k	16%	43
£40k-£50k	12%	31
£50k-£60k	7%	18
£60k-£70k	3%	7
£70k-£80k	6%	16
£80k-£90k	4%	10
£90k-£100k	5%	13
£100k-£110k	0%	1
£110k-£120k	2%	4
£120k-£130k	2%	5
£130k-£140k	0%	1
£140k-£150k	5%	12
£150k-£160k	0%	1
£160k-£170k	0%	0
£170k-£180k	0%	0
£180k-£190k	1%	2
£190k-£200k	2%	6
£200k+	8%	20
		<b>266</b>

*Note: Only around one in four respondents entered their turnover. Given one assumption might be that those on lower turnovers would be less likely to respond than those on higher turnover, it could be argued that the data collected is skewed towards those with higher turnovers. Also note that these figures are for turnover, not profit or salary, which will be lower.*

**25. Looking at the year ahead, do you expect your turnover to grow, shrink, or stay the same ?**

Answer Options		
grow	20.5%	168
shrink	46.9%	384
stay the same	32.6%	267
		<b>819</b>