

NUJPhoto *Update*

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NUJPhoto Update is a monthly bulletin keeping NUJ photographers abreast of action taken by their union following debates on the NUJPhoto email list.

Other features on **NUJPhoto Update** include listings of forthcoming events, training programmes and meetings. Also, there will be a monthly conversation between two of your union representatives. This month **Andrew Wiard** tells Pete Jenkins about his many battles on behalf of photographer's causes.

SEPTEMBER ISSUES

Citizen journalism dominated September debates not just on list but throughout the media. The Chartered Institute of Journalists had already expressed deep concern over citizen journalists in the *Press Gazette* yet the NUJ's own National Executive Council dismissed a motion to vote on the issue. http://www.pressgazette.co.uk/article/020805/broadcasters_slammed_for_irresponsible_use_of_mobile_phone_pics)

The phenomena of citizen journalism has been encouraged by new agency Scoopt who distribute amateur photographs of news events on a professional basis. Scoopt's intention is to destroy the notion that members of the public should supply content free or cheaply. Research and editorial support would also be available to whistle blowers. Scoopt, whose present contract requires exclusive world rights for three months are willing to talk with the NUJ to make their terms and conditions more acceptable. <http://www.scoopt.com/default.asp>

Busy emergency services having to deal with amateur journalists lacking experience and appropriate insurance cover was thought a potential flash point.

One of the more extraordinary rights grabs of recent times came courtesy of Comic Relief who stated all photographs submitted to "**Picture an end to Poverty**" during their Make Poverty History white wrist band campaign become their property. See the grab at <http://www.makepovertyhistory.org/mph/campaign.do?code=pep>

Media independence was compromised when police applied for a court order to **seize TV footage** of trouble at the G8 summit in Scotland from the BBC, ITN and Sky. Not all tapes were handed over, but once again TV crews and photographers become more liable attack at demonstrations in the future.

The issue of **Freelance Strikes** brought criticism of the Union from photographers who felt poorly represented and rarely consulted. It seemed freelancers were often the last port of call when a strike was being organised and freelance photographers especially, had to look out for themselves. A constructive view was for action to be co-ordinated from the outset, and for there to be two separate ballots - one for the chapel and one for freelancers.

Although it was pointed out strike action since 2002 had brought an increase in rates of up to 30% for many low paid staff on local papers, freelancers claim to have rarely benefited from strikes. Good contacts were usually lost resulting in considerable loss of freelance income. It was suggested staff might strike for freelancers, although it was not possible to cite an incidence of this ever occurring.

The NUJ Rule Book states every Union chapel should have a freelance representative. It was proposed that a list of all these freelance representatives be compiled and made available so freelancers could "put their finger on the pulse" of any given organisation before entering negotiations.

The Scotsman dispute highlighted further problems for freelancers. A freelance strike would be illegal as it would be seen as secondary action. Individual NUJ members and agencies often cut their own deals. Desk staff ordered assignments through the Press Association, promised to drop bye-lines, and put additional pressure on freelancers by claiming other photographers had already signed contracts.

It was however pointed out that a ballot of freelance members would make any strike action by them lawful.

Employees have protection from dismissal during the first 12 weeks of lawful industrial action. Freelances have no protection against losing work.

Freelance rates should be included in all annual negotiations at all the national newspapers, as they are at *The Guardian*. Although Union policy states all pay claims must include a freelance element, this is rarely the case in practice.

Why ? Because recognition agreements are under the terms of the *1999 Employment Relations Act* which only grants the NUJ recognition for a specific bargaining unit, a unit which rarely includes freelances. In effect, management are not legally obliged to discuss freelance issues.

For example, *The Independent* recently agreed to increase staff rates but not freelance ones. However, as the Independent Chapel raised the issue of freelance rates, Independent Newspapers did agree to meet Freelance Organiser John Toner for the first time. John is awaiting a second meeting in which the company is expected to respond to issues of low pay and rights grabs.

Exasperation was expressed of clients who chose to buy a digital camera rather than commission professional photography or who remain ignorant of the difference between high and low resolution images. Also of "dump and run" photographers supplying free CDs of uncorrected files. Such concerns brought renewed calls for an **updated Digital Fees Guide** and for any client agreements, and submitted invoices, to include and explain post-production charges.

A simple **Introduction to Digital Fees** was thought a useful tool to provide clients with an explanation of the work flow of photographers who edit, post-process and caption their own work. It must not be forgotten that digital photographers are frequently un-rewarded for post-production and prepress work that, in the days of film, was happily paid for by commercial clients.

Images are the photographer's intellectual property by default, therefore the photographer should maintain control of

editing and digital processing of his or her own work before supply.

Responsibility for the Digital Fees Guide lies with the Photographer's Subcommittee. The Subcommittee report to the FIC, but in practice have direct contact with the Guide's authors.

NUJ Guide For Charging For Digital Imaging is available at http://www.nujphoto.co.uk/nuj_guide_to_charging_for_digital.htm

There was victory for photographers at the Labour Party Conference when all 47 conference photographers walked out in protest at Labour Press Office handling of floor passes for Tony Blair's speech. **Solidarity** of the lucky few granted passes with the majority of colleagues who had been denied brought about a swift u-turn, and all conference photographers were permitted to photograph the Labour leader from close quarters.

AUTUMN EVENTS

NEC Full Meeting : 4 & 5 Nov 05

DEADLINE for submitting motions for ADM 2006 : 7 Nov 05

AUTUMN TRAINING

- Adobe Photoshop CS, £ 205 : 22/3 Oct 05
- Getting Started as a Freelance, £55 : 17 Nov 05
- Pitch and Deal, £65 : 18 Nov 05
- Freedom of Information Act, £ 55 : 21 Nov 05

To book, and for a full list of NUJ training courses see http://www.nujtraining.org.uk/show_courses.phtml?category=calendar. All courses are in London.

ANDREW WIARD tells PETE JENKINS about his Union career and discusses many of the issues debated on NUJPhoto in the past month

PJ : Hi Andrew, thank you for agreeing to be interviewed for the benefit of NUJ Photographers. In many respects you have become one of the leaders of photographers in the National Union of Journalists over the past years. You have been involved in many groundbreaking initiatives, which have been very important to us, including the 1988 Copyright Act and the introduction of the 'gatekeeper' Press Cards.

You've been a member of the Union for a long time, and belong to London Freelance. What sort of photography do you do, and what are the key changes you've experienced?

AW : I've always done a lot of work for the trade union movement. I also do general magazine work, PR work, and run my own library.

Key changes? Decline of the editorial market, the transfer to digital technology, and the destruction of our business by Gates and Getty, and by royalty free. Each of these is worth a book by itself, each has been written up extensively by numerous commentators, and I don't think this is really the place for me to give you my thoughts too, unless you insist! Perhaps "citizen journalism" will now become another key change - we're about to find out.

There is one other major change I should add, though it did not affect me personally, and that is the scandalous removal of the finest staff photographers from British newspapers. By accountants! They are like Mark Getty minus the strategic vision. At least Getty created something which never existed before, however much we might wish he hadn't. All the accountants do is destroy. Now many of the best news pictures come from the wires.

I should also mention not a change exactly, but a constant war, which has been fought back and forth for my entire time in this business, starting with the campaign throughout the seventies to the mid-eighties for what became the *Copyright Designs & Patents Act 1988*, and was followed by the inevitable reaction - rapacious clients trying ever since to steal

back what is rightfully ours. Actually, that's not quite right. The *CPDA 1988* was in itself a key change, in fact the single most important achievement for photographers in the whole of the twentieth century. And the only strategic advance in the recent years of disastrous decline.

PJ : You've held a number of union posts over the years, could you please tell us some more about your work with the union?

AW : Well that was the most important thing I ever did, campaigning for copyright reform. The campaign was pioneered by London Freelance Branch member Ann Bolt who should never be forgotten. Sadly Ann died not many years after the Act became law.

Those were the days when Real Men Went On Strike. But sitting alongside Ann (and the then Legal Officer, Bob Norris) as an NUJ rep on the British Copyright Council, I soon learnt the power of a few well chosen words instead. It also became obvious to me that becoming the owners of the copyright in all our own work would be worth far, far more than any number of disputes for percentage pay rises. The consequences are incalculable. The Act has won British photographers millions of pounds, and will continue to do so. Sadly the rest of the NUJ hardly noticed.

I'm in favour of strikes, of course. But if, and only if, there's a very good chance of winning, which is very rarely the case. But as the FIC member responsible, I did take part in organising the most successful freelance strike I've ever seen, led by (striker) one Phil Sutcliffe. The strike was against Morgan Grampian (a long and complicated story) which resulted in the best deal I've ever had a hand in negotiating. We won photographic day rates where none existed before, and (years before the passing of the *CPDA 1988*) a clause giving us copyright in our own work. Years later I met one of the Morgan Grampian photographers on the tube and he told me the day rate was neither here nor there, but what had transformed his life was the copyright clause, which had been worth many thousands of pounds to him in resales.

Which brings me back to the overriding importance of copyright reform. The Morgan Grampian agreement no longer exists because the company no longer exists. Now the law of

the land gives photographers copyright in our own work, which is a bloody good thing. The Morgan Grampian strike was won because photographers were in a position to apply tremendous pressure on a single very profitable title. Freelances alone are hardly ever in such a strong position - and nor can we rely on chapels to fight for us, by the way.

The strike had started as a staff dispute with freelancers in support. The chapel then did a deal and left the freelancers to fight on on our own (not the fault of the MoC who did all in her power to help). But it was a lesson I've never forgotten. As Bob Dylan said, " You shouldn't let other people get your kicks for you! "

There are two other major campaigns I've been involved in. One was the replacement of the Metropolitan Police Card with what is now the National Press Card. Tim Gopsill (then an LFB member) and I went to ADM to inaugurate a boycott of police cards. The NEC recommended voting us down, even the General Secretary stood up to speak against, but we defeated them all ! It took some organising, but it can be done. What then ensued took over a decade (as had copyright reform), with no obvious hope of success. But when the endgame arrived it was a bit of a surprise (and another very complicated story) but we did get the result we wanted.

The other campaign was resistance to the seizure of press film. That term is a give-away (harder to fight now with digital files flying in all directions) but we were trying to establish the principle that press photographers are not the fingers on the end of the long arm of the law. Myself and three fellow photographers ended up in the Old Bailey challenging an application for a court order for our negatives, and then when it was granted, and we did not deliver the goods, thus facing prosecution for contempt. The prosecution was unsuccessful, but it was a close run thing.

What we had done was initiate the "Brussels Run" - getting rid of our negatives through the Union to Europe. The law on this point is, yet again, a very complicated story, but simply put we managed to demonstrate that we were not " in possession, custody or control " of the photographs in question.

This particular battle was the start of what has now become a long interminable war, with each side giving and then retaking

ground. But if we had not made a stand then, I think we would have lost the entire battlefield. It was at this point that I learnt to appreciate just how powerful and valuable the NUJ can be in support of individual members. The Union poured money into our legal defence. We were given our choice of barristers. And the Union's international connections were essential. The case ended up with the IFJ going into an English court to say yes they had the pictures, and no the court couldn't have them !

This success is one reason why I found it hard to accept that, during the nineties, the NUJ was becoming increasingly useless to freelancers ... but I'll come to all that in a minute.

Incidentally I was briefly on the NEC. But I as quickly realised I was achieving nothing, there's nothing to report.

What I have found though is the really important work for freelancers is - or was - done at industrial council level (no longer the case right now, because both freelancers and photographers have to fight for resources, and that battle takes place mainly on the NEC - but again, more of that in a minute).

One of the most important jobs the FIC does - and only the FIC can do - is produce the Fees Guide, and one major area of work I have concentrated on over the years is sorting out the photographic section. Although I'd left the FIC to become an ordinary member by then my advice was sought to look at the photographic rates and they were all over the place. Literally. The guide mirrored the Union's industrial structure, with photographic rates to be found in "Magazines", and again in "National Papers", and yet again in... you get the picture. This was clearly bonkers. The only sensible way to lay out the Fees Guide was to divide freelance rates by skill, not by industrial sector, and I said so. That then left me free to concentrate on drafting a stand-alone photographic section which is what we have today.

Whatever its numerous shortcomings, the new Fees Guide was a dramatic improvement. What it also needed was funding for serious research, but that was not forthcoming. By this time - the early nineties - the Union was on the edge of bankruptcy, so there was little point in pressing for it.

Shortage of cash is one thing - refusal to seize the

opportunities open to us quite another. I was appalled to see, at one particular LFB meeting, the strength of the opposition to a sensible and timely proposal to "wire up" the branch. Email organisation was cited as "undemocratic" and all that bollocks. The motion was in fact passed but... LFB was proposing to pay for outside help, I think the head office chapel objected so everything just ground to a halt.

The main job inside the NUJ was now to make it capable of actually doing the job. The job itself, I now had to do outside. So I and a few others founded EPUK, the UK email network for the business of editorial photography, and very successful it was too ! While most of the moderators were in fact NUJ members, we didn't waste our time trying to get EPUK past an institution so highly resistant to change. It is only now, some years later, that a similar group have managed to start **NUJphoto** within the union, which will make it easier for us all to work within it too.

While wanting to concentrate on the problems we all face, I can see for the near future a considerable amount of time and energy will still have to be diverted into making the National Union of Journalists capable of doing the job it is supposed to do.

PJ : During last year (particularly) you championed the cause for a Photographers Organiser. We know that ADM voted against the motion for the Organiser last year, but the General Secretary himself said he was impressed by the dedication of NUJ photographers. With our editorial clients still paying the same rates as ten years ago, and the changes in our working practices brought about by digital imaging, our need for an organiser who understands Photographer issues is presumably is as high as ever?

AW : Someone once told me the job of an army officer was "to take the right decision, quickly, and see that it is carried out". This job is essential, even if we are the ones giving the orders. I would add one more attribute - the ability to focus all day every day on what matters to photographers. We photographers can't do that because we spend all day every day taking pictures.

Just look at our Union's shambolic reaction to citizen photographers. Reaction? Actually, we didn't react at all!

And weeks afterwards we still haven't ! But the Chartered Institute of Journalists put it straight on the front page of the *Press Gazette*. Good for them. Someone had to. Am I to assume that their reactions are so fast simply because they are so small? I refuse to accept that the inevitable consequence of impressive size, a large membership and considerable resources is that we are condemned to plod about like a dinosaur with its brain in its tail.

A Photographic Organiser would make the NUJ focus right now on what matters to us, and do something about it. We also need a Photographic Industrial Council and a photographer's seat on the NEC. Unfortunately trade unions are notoriously conservative organisations. Given that we are trying to change the world, it's extraordinary that we are seemingly incapable of changing ourselves, but until we do we won't change much else.

PJ : Photographers regularly find that their own specialist difficulties are not understood by the rest of the Union. The change from film to digital media has altered our corner of the industry beyond recognition, and has indeed caused many photographer members severe financial difficulties, with rates either frozen or lowered, and our expenses rocketing. Both our clients, and our writer colleagues often fail to understand digital imaging; and this is also causing photographers many problems. How do you think the Union can help educate both colleagues and clients to the realities of 'Digital Imaging'?

AW : The NUJ has produced the *Digital Fees Guide*, but this should really be printed as well as being made available on the web. Also, it is nearly a year old now and already needs a rewrite. What we could do is use the new online Fees Guide which is presently in development. Obviously, one of the advantages of an on-line guide is that it can be updated and expanded as and when. But I do think the most important thing is for us to develop some consistency in the way we charge for digital services - the Digital Fees Guide attempted to do that - because if clients are getting conflicting messages from us, we shouldn't be surprised that they just don't get it. I'm not saying we should prescribe one way and one way only, but photographers right now are just making it all up as they go along. Which we all had to do of course - but it's time to codify it insofar as it is possible. The point I feel most strongly about is that we should charge for the services we

provide. Not "film replacement", or a digital surcharge on commissions but the actual services themselves.

Why after all, should a client pay for something we no longer use or, when digital photography becomes universal, a surcharge on every commission? We have to charge for what they're getting, not what they're not getting! That means digital services provided - digital contacts, web galleries, the digital files themselves of course, and digital delivery. Ideally the total invoice should be much the same as what it was before. We're not offering a cheap service. We are offering a much better professional service, at the same price. Which is a win/win deal. The lose/lose alternative is the client pays bad money for shoddy goods, and good photographers go bankrupt. Clients may look for a win/lose deal but there ain't one, at least not one that's sustainable over the long term. Photographers providing good work for bad money will simply go under.

Photographers will have to look to improve the service they provide. If we are going to charge professional digital fees, we have to provide professional digital work. Last week I saw a digital picture produced for PR distribution by a competitor who has largely replaced me at half the price - the technical quality was indescribably awful! Nothing in "File Info" of course. Even citizen journalists do better. Now, if I ever get the chance to justify my prices to that client, I will say that from me they get colour corrected, appropriately sharpened, captioned digital files that could run to a colour cover ... and which won't destroy their reputation when they send them out for PR!

This is why the course/s you Pete, and I are suggesting to the NUJ training department will be so important. If they materialise, they will be designed to ensure we can all do that. We should be able to say that NUJ photographers charge professional fees, but only for professional work. But we just can't say that right now!

As well as appropriate training, we also need digital standards - a *Digital Standards Guide*, or something like that. We can point to guides produced by others, but we also need to produce our own, targeted at the work editorial photographers do (and I know you've been working on this!).

But coming back to what clients should pay. We could and

should, both collectively through the NUJ, and individually to our clients, explain the horrific investment costs in equipment and software with a short life cycle and so on... but ultimately the client does not care whether it cost a million pounds or tuppence to make a can of beans. They look around the shelves and see what they have to pay. We do not have time for a thousand and one freelance agreements with every client. The world just doesn't work like that. What we need to do is create a critical mass of professional photographers who know what they ought to charge and why, and are confident both in their own worth and that their immediate competitors are equally confident, and prepared likewise to charge professional fees for digital work. Then clients will look at what's on our shelves, and see what they have to pay.

PJ : The NUJ's current Five Year Plan is well on its way to completion. New Media have an organiser and an industrial council of their own. The current Union structure seems incapable of assisting freelance photographer members beyond a certain amount of fire fighting; what many photographers will want to know is, will we get our own organiser and council as this the only way that the bulk of photographer members feel that their specific problems will get tackled?

AW : Short answer yes, but it's the wrong question. WHEN will we get our own organiser etc.? We don't want to lose yet another generation of photographers while we are waiting. So many of the photographers who joined the NUJ around about the time I did have now voted with their feet. Although some are now coming back I don't know how long will they will stay.

PJ : With the Union working hard to increase workplace/chapel representation with employers at the moment, freelancers frequently feel left out of ongoing pay negotiations, and freelance rates (where they exist), seem mostly not to have increased for approximately ten years. With this large pool of journalists (50%?), not on staff, this presumably could undermine the Unions efforts in any kind of action. What do you think the Union can do to make itself more attractive to what would appear to be 50% of the work force in our industry, and the small proportion of these (freelances) that form more than a third of current NUJ

membership?

AW : I take it we are talking about freelances in general now, not just those who are photographers. The answer is all kinds of things could and should be done, but as few can be achieved without adequate resources, the first job is to make those resources available. That's the way - we need the will. Both are absent.

I first confronted this problem giving the keynote speech to the first ever NUJ Freelance Conference in 1999, and that itself was a classic illustration of the problem. LFB proposed the idea, needed money and help to organise it, but the NUJ quite simply just did not want to know. So LFB just went away and did it anyway - organised and paid for the whole thing itself, which was the last thing they expected, and then sudden they all wanted to come too! Now why couldn't they have just said it was a great idea in the first place? And paid for it?

Anyway, I made the point that there were vast numbers of unorganised freelances (which was news, apparently!) and that we needed a massive shift of resources into the freelance sector to deal with this. Which would of course pay off in the long term, but the problem was how to make funds available then. The Union was coming out of bankruptcy, but we were clearly not their priority - so the obvious thing to do was to call for incremental change over a period of years. Now that was six years ago. Time enough to have effected considerable change by now, if anybody had been listening. But nobody was listening, and nothing was done. So here we are today, exactly where we were back then.

Remember, freelances (like everybody else) spent the nineties pouring their subscriptions into the Union to clear its debts, taking next to nothing out. Once the debts were cleared the Union then began pouring new resources into restoring the power of staff chapels. Essential job, laudable goal. But what about the freelancers who were still pouring their subs into the Union? We were just being taken for granted.

I've been saying this for years now, and all I've got back is disingenuous cant "let's end all this divisive talk", and "unity comrades!". Now, I've been reporting the labour movement for over thirty years, and I've learnt that calling for "unity" means one of two things. It is either a call to action, or more

often, an attempt to suppress dissent. And I know which it is in this case.

More than half those eligible to join the NUJ are now freelance. And how many of our organisers are dedicated to freelances? Just one - though we do now (I believe) finally have an assistant organiser as well. You can see the results in the figures. There is a dramatic increase in membership - all staff. So as freelances increase as a proportion of the workforce, they are now declining as a proportion of NUJ membership. Indeed, for a brief period our numbers were even declining absolutely, as well as proportionately.

I am not the one being divisive here. The first Freelance Conference was not divisive. Those who are are the ones who still consider freelances to be a kind of appendix to "their" Union, and its chapel structure, and who refuse to give us the resources to get on with our job. We need them. We've paid for them. Lets have them.

Anyway, assuming we get the resources, what is to be done? We need more organisers and a larger FIC budget (and more frequent FIC meetings), and we need to develop and extend our legal services - but these are only means to an end. Again, what is to be done?

Well for a start a big recruitment campaign. But you don't organise by recruiting. You recruit by organising. That means taking every opportunity to sort out the problems of potential members, not just the ones we've got already, both collectively and also individually. Our Freelance Organiser - who does a first rate job in the time available - just won't have the hours in the day, so I'm assuming he won't be alone!

How about this ...

"Been offered a contract? Whether for a one-off job or regular work, we'll give any potential NUJ member half an hour's free advice - Phone..." ?

Expensive? - not half! But there are thousands and thousands out there, and if they were ever drawn into NUJ membership, freelance organisation would be transformed while paying for itself at the same time. Now if that little idea - which took me all of thirty seconds - isn't going to work, I'm

sure you can think of half a dozen others that would, and would reach out to potential members in their daily working lives. The point is we can't say " Here's a leaflet, shows you what we do, you never know, you might just need our help in five years time - so why not pay up now?". We can't sell the NUJ to freelancers simply as disaster insurance. We have to make it relevant to their working lives today, tomorrow and the next day.

And if we don't know right now what's most important to potential recruits, we should organise and pay for professional research. We might be surprised by the results.

Besides, if the world of freelancing in general is anything like that of freelance photography, we won't have to go looking for problems. They will find us. Right now, there are a series of issues facing us which we are not on top of (and again that's no fault of our overworked Freelance Organiser). If we only had enough people to deal with these alone, we'd turn some of these at least into success stories we can shout about. We've had one or two, but we need a dozen more.

And then we need a big PR campaign. Adverts in the right places. I can't speak for writers, but I know exactly what to put in which photographic magazines.

Dealing promptly with immediate problems is essential. But we also need to do the exact opposite, tackling that which is "Important but not Urgent". We need to put a lot of organiser hours into long term campaigns that won't pay off for maybe ten years or more, but which bring about fundamental change. We will be getting a stream of laws and directives from Europe, on copyright, privacy, the rights of the self-employed etc. We shouldn't be reacting to this as they arrive, but shaping them in advance. It's not that we don't think about this - some of us do - we just don't have the time, energy and money to do the job properly. The last copyright campaign was fought in London, with the help of the Union's legal officer and £500 - yes, just £500 - of NEC money. The rest was done by activists at the cost of a tube ticket. Those days are over for ever. We need serious money for serious planning and serious campaigning.

I could go on adding to this list but its unnecessary - once the word gets out that the NUJ is really dealing with freelance problems, we'll get the members - and more problems - and

more members, until finally we really can claim to represent the world of freelance journalism.

Now, that would not just transform our fortunes. It would also transform the NUJ as a whole, and guarantee its financial future.

As you say, we're coming up to the next Five Year Plan. That would give time enough to phase in the necessary changes. All that is required is the political will.

But I'm not holding my breath!

PJ : Thank you, Andrew.

We hope you found the (slightly late) October edition of **NUJPhoto Update** a useful supplement to NUJPhoto, and that it will become a catalyst for further debate on list. NUJPhoto *Update* was produced by the moderators and list owner of NUJPhoto.

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