

# NUJPhoto *Update*

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Welcome to **NUJPhoto Update** where we review issues debated on the NUIPhoto list in January and talk with **Chris Tofalos** who with tenacity and a little help from his union won an out of court settlement of £ 45,000 following serial unlicensed use of his images by English Basketball.

## **JANUARY ISSUES**

The new year started as it ended with **copyright** at the heart of our debates. Yes, remember Chris Wheal and his call in the January/February *Journalist* for the abolition of the law whereby most photographers earn a living ? Yes indeed. We soon learnt that this was the same Chris Wheal who had performed so memorably during last year's ADM arguing against a Photographers Organiser. But when Mr Wheal's own interests are threatened by copyright grabs he seems to have a different view ...

<http://www.holdthefrontpage.co.uk/behind/analysis/050204doc.shtml> and here <http://www.lrb.co.uk/v21/n02/letters.html>

All this at a time when we are undergoing the acquisition of intellectual property by corporations on a scale similar to the loss of communal land following the enclosure acts of the eighteenth and nineteenth centuries. Yes. It's that bad.

The cavalier independence of the *Journalist* was brought into question, and a call was made for an intelligent investigation into the Authors Rights that are enforced in Europe. Another proposal was for an **NUJPhoto** leaflet to be produced for distribution at ADM explaining how copyright is fundamental to freelance income, and thus an integral part of the democratic and independent media of this country. Amazingly many staffers remain unconvinced about the importance of protecting copyright. Some well written leaflets might persuade them.

But it was believed the article had most damaged the union's image in the outside world especially with regard to recruitment, and that it had undermined the considerable effort put in on the behalf of freelance photographer's by the NUJ's own Freelance Office and the newly formed Photographers Sub-committee.

Two relevant **motions** for ADM 2006 came to light : Motion 32 forbidding reporters from taking photographs (although SOC say this is out of order), and Motion 98 proposing a rule change to allow virtual branches and meetings.

The Final Agenda for ADM 2006 can now be downloaded as a PDF from <http://www.nuj.org.uk/inner.php?docid=1072>

A PDF of the revised **NUJ Rule Book 2004** is at <http://www.nuj.org.uk/binshow.php?id=863&bin=3>

A first meeting and the establishment of an ongoing dialogue with Alan Capel at **Alamy** was one of the month's most valuable developments ... for Alamy contributors.

The *Independent* being consistently three months in arrears with it's self-billing system is to be addressed by Alamy as is the fallibility of a team of people scouring all the daily papers for unpaid usage. Also Alamy's Member Services should be pressed to reply to photographer's queries with more than standard responses. Alan Capel said he would address member's problems personally if Member Services provide inadequate answers. Undercharging by Alamy seemed to actually be legitimate discounts for reuse or use of an image as part of a larger feature.

Online keywording has been improved, and Alamy are working on a system that ensures full Metadata stays with images downloaded from their system, and Alamy also promised to review the low payments charged to some overseas clients, especially when third party agents become involved.

Confusion over late payment by Alamy it was pointed out was actually a misunderstanding of Alamy's system. Alamy's system is to tell contributors at the point of sale, not at the time of payment. FTP though seems to be something most Alamy contributors will have to wait a little longer for.

Alan Capel can be contacted at [alan@alamy.com](mailto:alan@alamy.com)

Editable versions of documents such as the NUJ's **Confirmation of Commission Form** would be very useful. A fill-in-by-hand version of the CCC Form is at <http://www.londonfreelance.org/forms/cccform.html>

A warning for anyone **sending spec images** to the *Independent* - ensure your terms and conditions are embedded in the IPTC profile of all your images and that said terms and conditions state reproduction is not permitted until rates are agreed.

During the **Photographer's Sub-committee** meeting of 16 January Freelance Organiser John Toner reported that although he was still in dialogue with Adobe over inclusion of NUJ photographers in Adobe Bridge he was only making slow progress. But there was better news from John concerning *The Guardian* agreement where it was recognised he had put in a lot of hard work. However what was agreed is not seen as a model agreement and requires further discussion by FIC. Why, for instance should the operators of *The Guardian's* web syndication system receive something like 30% of sales income ?

Feedback from NUJ photographers especially with regard to self-billing and *The Guardian's* present attitude to journalists would be welcomed by the Sub-committee.

John Toner also informed the Photographer's Sub-committee of a successful meeting he and the CIOJ and BPPA had with the Metropolitan Police. The Met solicitors agreed a comprehensive list of guidelines and a final amendment stating that the Police were obliged to uphold journalists (photographers) rights was being put past them. The Nottingham Police Guidelines have now been distributed to police officers and press throughout the county.

In Bristol the picture desk and sports desks of the Bristol Evening Post and the Western Daily Press were **merged**. More Northcliffe papers are planning the same in Plymouth, as are Archant publications in Norfolk.

Meanwhile in the USA the inclusion of logos in photographs could become illegal. See <http://www.stockphotographer.info/content/view/77/98/>

## WHO IS YOUR NEC REPRESENTATIVE ?

President	TIM LEZARD
Vice President	CHRIS MORLEY
General Treasurer	ANITA HALPIN
Black members	ROTIMI SANKORE, ALEX PASCALL
Book	NICK BARDSLEY
Broadcasting	DIANA PEASEY
Freelance	JOYCE MCMILLAN
Magazines	MARTIN CLOAKE
Newspapers & Agencies	MICHELLE STANISTREET
Public Relations & Information	ANITA HALPIN
New Media	DONNACHA DELONG
Disabled Members	VALERIE SWEENEY, STEPHEN BROOKS
Continental Europe	MINDY RAN
East Anglia	JOHN BARSBY
London	NICK SERPELL, MOLLY COOPER, JIM CORRIGALL, TIM DAWSON, CHRIS MORLEY
Midlands of England	GERRY CARSON, KEVIN COOPER
Northern Ireland	ADAM MURRAY, GEORGE MACINTYRE
North East England	CHRIS FROST
North West England	CHRISTY LOFTUS, KEVIN MOORE, BARRY MCCALL
Republic of Ireland	JAMES DOHERTY, FRANK MORGAN, FORBES McFALL , PETER MURRAY
Scotland	JIM BOUMELHA, ADLI HAWWARI ANDY SMITH
South East England	TIM LEZARD
South West England	MEIC BIRTWISTLE, ANDY COLLINSON
Wales	

For contact details of NEC reps go to

<http://www.nuj.org.uk/inner.php?docid=112>

If you are not already logged in to the NUJ site you may need to log in at <http://www.nuj.org.uk/login.php> first.

## SPRING MEETINGS

The next Photographer's Sub-committee meeting is at 4:00pm on Monday 13 March 2006.

The NUJ's Annual Delegate Meeting at the Liverpool Adelphi is from Thursday 23 to Sunday 26 March 2006

## WINTER TRAINING

- Pitch and Deal, £ 65 : 24 Feb 06
- Copyright for Journalists, £ 35 : 1 March 06

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

## The NUJPhoto *Update* interview

**This month NUJPhoto spoke to Bolton event and sports photographer Chris Tofalos about his successful case against English Basketball and his new battle against the restrictive practices of the Premier League. Interview by Pete Jenkins**

**PJ:** Could you please tell us what sort of work you currently do?

**CT:** Mainly PR & commercial event work, with most of it intended for publications in newspapers, magazines or websites.

**PJ:** How did you initially get into photography?

**CT:** In 1980 my two eldest sons began playing football at school. I tried to get action shots of them with a Zenit SLR but it was far too slow and I only had a 58mm lens. I bought a Pentax ME Super with 50mm and added a 75-150 zoom. There then followed an odd set of circumstances which saw me being roped into running the new photography section at my local Lads' Club (now Lads' & Girls' Club), joining my local camera club and some freelancing for local papers. I purchased innumerable photo mags and devoured everything I could read about photography and was well and truly hooked.

For a couple of years I supplied the *Bolton Evening News* and *Bolton Chronicle* with pictures from the club and eventually was allowed to join the NUJ. Stan Royle, who sadly died in mid-January, gave me a chance as a freelance in late 1983, covering Bolton and Bury, and I went on to spend 17 years with the MEN. I was the last of 'Stan's Babes' (he brought in a number of hopefuls) to stop working for them in 1990 (a long story but no-one with a knowledge of MEN working practices will be surprised!).

**PJ:** And what inspired you to join the National Union of Journalists?

**CT:** Basically, I couldn't get regular work with the MEN unless I was a Union member. Hardly what one might term 'inspired'!

**PJ:** The question we all want answering of course is how you

got involved with English Basketball, and what went wrong?

**CT:** Basketball is a wonderful sport and I have been involved in photographing it since 1981. I think Stan Royle used to send me to as many Manchester Giants games as he could, to help me out when I first started (it was the only thing I was really good at!).

Unfortunately, the sport isn't run by very imaginative people and, regrettably, some who rise through the ranks are only in it to line their own pockets (Note: evidence for this was actually once published on the England Basketball (EB) website – and I have print-outs of the pages!).

In 1997 I got together with Mike Shaft, the radio and TV personality, who was also a basketball enthusiast. We put together a proposal to revamp England Basketballs bi-monthly newsletter, *Zone Press*. My eldest son, Deno, a qualified graphic designer (and now photography degree student and MEN freelance) looked after the design, Mike the editorial content and I the picture editing, photography and production. The restyled magazine was a great success but the appointment of a new chief executive at EB brought problems.

Essentially, he thought he'd save a bit of money by taking our designs (which I'd foolishly lent them for proofing purposes) and numerous CDs full of basketball stock pix (ditto!) to a cheap printer.

After a year I discovered what was happening and John Toner helped me 'extract' £7,500 in compensation. EB's chief exec also signed an agreement that they wouldn't use any more photos – or pay hefty compensation if they did.

I didn't think they would be stupid enough to carry on but another year later I discovered they had been freely helping themselves within weeks of signing the agreement (but then, we are talking about people who, for years, have managed to stifle a terrific prospect). According to the agreement, they had run up a bill in excess of £100,000. Disclosures forced on EB during the legal wrangling raised the total to £218,000!

**PJ:** John Toner was the Northern Organiser when you initially sought Union advice, can you please tell us what happened next?

**CT:** John Toner gave me his full support during the three years it took to settle the matter. I have to say, he was almost the only person who did. Weeks before we were due to go to court I felt I had been badgered so much into accepting a low settlement that I was prepared to represent myself in the High Court. Thankfully, I was spared this ordeal when the other side paid £45,000 into court. It wasn't an ideal settlement but was enough to tempt me and I accepted.

**PJ:** As a result of the case have you changed the way you work with clients, and have you any advice you can pass on to the rest of us?

**CT:** Too right! I'm now much more aware of the possibility of copyright infringement and everything I supply carries copyright information in one form or another. That doesn't stop newspapers helping themselves to pictures with no intention of paying. With the notable exception of the MEN, almost every newspaper I have dealt with reproduces pictures without automated payment facilities.

I've found pictures of mine used in *The Guardian*, *The Observer*, *The Times*, the *Independent* and *The Daily Mail* and haven't received any payment until I've had to complain months or even years (!) later. Three of the aforementioned STILL owe me for pix reproduced a year or more ago. I've had my hands full with the legal battle but will be pursuing the miscreants in the near future!

There are two things urgently needed to protect photographers (and writers) from theft of their work: Firstly, copyright should not be transferable UNDER ANY CIRCUMSTANCES. Secondly, a body equivalent to the Performing Rights Society needs setting up for writers and photographers (Writers' and Photographers' Copyright Society – WPCS). Might as well drop a big hint that the NUJ should be lobbying for such an organisation and helping in setting it up – NOW!

Publishers should be REQUIRED BY LAW to supply details of every picture and story on every page and indicate the fees paid. Legally enforceable spot checks by the WPCS should be allowed, with infringers facing hefty fines and even jail for persistent offenders.

If that sounds draconian, it's about time the issue of the wholesale and deliberate theft of copyright was properly addressed. We do have a Labour (as in socialist and 'of the people' ) government in power, don't we?

**PJ:** If you had not been a union member what do you think you would have been able to do about English Basketball.

**CT:** Bugger all! I wasted £5,500 of my own money with a solicitor who, at times, had me wondering who's side he was on!

**PJ:** What is in the future for Chris Tofalos?

**CT:** Good question! Recently I've asked the NUJ to look at the matter of the FA Premier League's licensing scheme. I used to be licensed to shoot Premier League soccer in the four years I spent as Bolton Wanderers' official photographer. When I left the club in 2000 the FAPL refused to give me a licence because the work I had had published was in the MEN, a regional not national newspaper.

I have been prevented from earning a living in football and, whilst this was at first a minor concern, this season the situation has gone from the sublime to the ridiculous. Bolton Wanderers have signed a number of foreign players. At the start of the season I was approached by a Japanese soccer mag, Israeli national newspaper and Mexican sports photo agency to supply photos from home AND away games. This is clearly worth quite a lot but the FAPL are resolutely refusing to grant me a licence.

The Union's solicitors have consulted a barrister and he has advised that the FAPL may be in breach of the Competition Laws (I can supply answers to the questions that made him state maybe – and there's no maybe about it!).

However, there seems to be a shortage of photographers with similar experiences to mine. That should read, there's no shortage of them, it's just that not many have come forward. I suspect the dozens of snappers I've heard cursing the FAPL are either non-union members or are working for agencies and don't want to risk their already diminished incomes by complaining.

That leaves me the only option of asking the Union to explore

the possibility of Restraint of Trade, which was not covered by the barrister's advice. If there is such a thing as Restraint of Trade (which there is!) then I can't see a more obvious example of it than my circumstances.

As to the future, Chris Tofalos is looking at portraits and weddings; it's got to be an easier way of making a living!

**PJ:** Thank you very much indeed for a most interesting set of answers. I hope that at least some of what you have said will inspire others to come forward

We hope you found the February 2006 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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