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When Rights go Wrong

What's this all about?

For one reason or another, you failed to clear the rights prior to publication. But you can just pay a 'reasonable fee' later, right? Wrong.

Why should I care?

- breach of copyright is costly
- there is rarely a 'reasonable' defence
- publishing a disclaimer is legally worthless
- due diligence is valuable but open to uncertain legal interpretation
- the compensation you pay may be MUCH higher than you think!

Many publishers, broadcasters and museums imagine that failure to clear rights is unlikely to be very damaging.

Working in educational, documentary and heritage sectors does not provide our Clients with any kind of immunity, regardless of charitable or not-for-profit status.

Judges will always rule in favour of the injured party and will also award compensation that might make your eyes water.

A perfectly boring backstage photo of a Who? celebrity was recently used in publicity by a small venue. Small beer, therefore, you might think. But the two parties, predictably, disagreed on what would be a fair licence fee. Bearing in mind that such measures can only be determined if one party is a "willing licensor" and the other a "willing licensee" it is just a short step to the court house where the fee will then have to be determined.

In this case the photographer was able to convince the judge that a reasonable fee would be between £2,450 and £14,667, he was awarded £5682. The judge, I suspect, thought differently from the real market.

Conclusion

- Judges generally award the weaker party.
- Ignorance will not be accepted as an excuse.

- Do not depend on disclaimers
- The biggest fish in the chain of supply will ultimately bear the burden (regardless of any indemnities down that chain)
- The fee is likely to be much higher than you expect –and way higher than a regular licence
- The owner of the rights will achieve even greater compensation if they can demonstrate any potential loss of earnings (which they often can)

Richard Philpott
ZOOID PICTURES LIMITED

Other related Zooid papers:

[Copyright and IP + Due Diligence, Orphan works and Cheap Stock](#)

- [Zooid white paper 090323](#)

[Taking Care of Orphans](#)

- [Zooid white paper 090717](#)

[Demonstrating Due Diligence](#)

- [Zooid white paper 090731](#)

[Legacy & Integrity](#)

- [Zooid white paper 090801](#)

[Outsourcing, Offshoring & Outlaws](#)

- [Zooid white paper 090810](#)

[Orphan Works – new parents?](#)

- [Zooid white paper 120816](#)

[Illustration Pitfalls](#)

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Please call me on +44 20 7267 9990 if you would like to discuss any of the above

Richard Philpott

Tuesday, 18 June, 2013



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