



Why freelancing isn't just a question of 'finding a niche'

Special points of interest:

- *Freelance contracts*
- *Intellectual property*
- *Non-competing clauses in employment contracts*
- *Restraint of trade clauses on termination*
- *Employment rights and entitlements*
- *Safeguarding personal property*
- *Structuring a business*

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An important decision facing journalism students nearing completion of degree courses is: Do I want to be work for someone or to run my own business?

It is a question that seasoned tutors would be hard-pressed and often ill-placed to answer.

Graduates have opportunities to make money from internet ventures, community publications, press and public relations commissions, portfolio work and ultra-local news — as well as opting for the more traditional 'employer-employee' route.

Web, social media and iPad application design-savvy students have a distinct advantage in the job hunting stakes with employers keen to tap into the latest digital communications



trends. But students with such expertise and transferable skills may prefer to offer their services on a consultancy, freelance or agency basis.

Having identified a viable cash-generating niche, media graduates (and journalists currently in staff positions) opting for the 'go-it-alone' enterprise approach face a further difficult choice.

It is whether to be:

- Self-employed
- In a formal partnership
- A company director

Each business model presents advantages and disadvantages.

This ONB briefing considers issues that can arise for media students preparing for the world of work.

Three problem-based scenarios are tailored for seminar use on media employability modules.

The brief also covers some of the key contract, commercial, and employment law rules and principles, affecting rights and liabilities, which can be overlooked when graduates assess their career options.

The three business models — at a glance

Choosing the most appropriate business model for a freelance venture has implications for personal and professional tax liabilities, exposure to financial risk from creditors, and entitlements to benefits, personal possessions and protection from insolvency proceedings.

Self-employment is a simple

step involving less formality and bureaucracy but all income is subject to tax, and all business and personal properties are prone to debt recovery action.

A business partnership enables colleagues to invest in a venture and pay tax on any share out of profits, as opposed to everyday costs and expenses. But the

partners are personally and jointly liable for each other's actions and relationships can be put under strain.

Setting up a company entails more paperwork but directors only pay tax on dividends and salaries, and personal property not owned by the firm is usually out of reach of creditors.



Further reading:
Equality Act 2010
Employment Rights Act 1996
Agency Workers Regulations 2010
Companies Act 2006
Unfair Contract Terms Act 1977
Partnership Act 1890
Insolvency Act 1986



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Employment law — at a glance

Employment status is dictated by the reality of the relationship, not simply by the labels used by the parties. Employees are entitled to paid holidays, sickness benefits, maternity/paternity rights, and redundancy pay. Contractors are not. Employers may try to avoid these additional costs by treating staff as ‘self employed’. The Equality Act 2010 defines the employer/employee relationship as a contract of service (for a wage), and employer/contractor relationship as a contract for services (for a fee). If the individual is under a duty to perform work ‘personally’ then it is likely to be the former. If not, or the individual has freedom to send a substitute to work, then it is likely to be the

latter. Freelance journalists may fall into either category, depending on the circumstances of each case. Courts look for the ‘mutuality of obligation’ between the parties to decide if there is a personal obligation to perform the work. Factors include whether the firm deducts tax at source, instructs the individual how and when to do the work, permits a substitute to tackle the job, exerts supervisory control or subjects the individual to internal rules and disciplinary codes, provides holiday and sickness benefits reserved for employees rather than contractors, insists an individual provides work on an exclusive basis or agrees not to work for any other employer without permission.

Contract law — at a glance

Formal agreements between parties willing to enter into legal relationships (eg: to provide work in return for a wage) are generally binding and an employment contract is a sophisticated document. It is likely to contain written clauses, setting out terms and conditions, but courts also tie parties to terms which might not be in writing. These include the employer’s duty to provide a safe working place, not to subject employees to bullying or unfair treatment, and the employee’s duty not to steal, breach company rules, or disclose sensitive information and trade secrets. Unilateral, unfair

changes to the agreed terms by the employer may entitle the employee to sue for breach of contract, seek to renegotiate, or accept the change. Employers are entitled to require that employees do not disclose legitimate commercial secrets to rivals, and can insist on ‘restraint of trade’ clauses preventing departing employees from setting up in direct competition. Courts disapprove of these restrictions being applied to individuals neither senior nor with access to sensitive commercial data or client lists etc. Any geographical or time-limited restriction must be reasonable and precise.

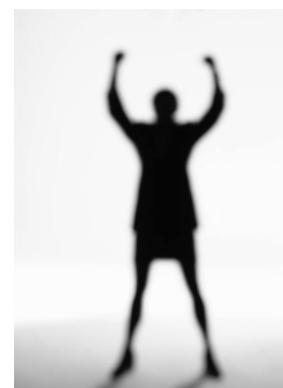
Business law — at a glance

Statutes concerning partnerships and companies are comprehensive. An advantage of establishing a company is to safeguard personal property such as homes, cars and possessions, should the business fail. But directors and partners are not immune from civil court action, and insolvency practitioners have powers to hold individuals accountable for ‘asset stripping’ or failure to cease trading at the point the business is unable to pay its bills. Successful enterprises run by two directors with equal shares run risks. The ‘model articles’ in the Companies Act effectively impose a requirement

of unanimous agreement for key changes to the venture and stalemate can ensue. Individuals may be engaged by a firm as ‘agents’, with authority to commit the business to contracts with third parties. There are pitfalls with IP rights. Employees automatically assign copyright to an employer where IP is generated in the normal course of duties. Directors, sole-traders, business partners and freelancers may assign IP to an employer, contractor or media client — regardless of any payment — simply by uploading an image to an internet site or failing to read the small print on a contract.

Fashion team seek business tips before magazine launch

Carol and Jon have graduated with degrees in photography and fashion studies. Amanda and Jon are engaged and have bought a house jointly using a £125,000 mortgage from the Royal Spa Bank, with Carol as their tenant, paying £110 per week. They intend to go into business together, and seek your advice on the venture. They will need to attend to their employment status and tax affairs. For the time being they are living on savings and expect to obtain venture capital worth in the region of £10,000 from a wealthy friend – subject to a satisfactory Business Plan based on your report. They plan to launch a glossy magazine, dedicated to ‘fashion, lifestyle and culture/entertainment’ circulating in selected leisure centres, hotels and restaurants across the north west. They have ‘signed up’ university friends on social network sites willing to supply news, listings, concert reviews and “lifestyle gossip culled from contacts and social network sites” for a fee and by-line credit. Amanda’s contacts are prepared to submit pictures in return for reasonable expenses. Carol is assured her friends will assist with reviews of fashion events and trends across the region. Their contacts and knowledge of the fashion and lifestyle ‘scene’ is impressive and there is nothing to suggest that they lack anything in terms of expertise, enthusiasm or ideas. They have no prior experience of setting up a business. Advise them.



Questions:

What business model best fits

C.J.&A.’s plans?

What IP issues arise?

Where do S. & L. stand with the restraint clauses?

What is T.’s status?

What is B.’s status?

What are B.’s entitlements?

Will the ‘small print’ frustrate Chloe and Jake’s plans?

Sam and Lee have worked for the Westhampton Herald for three years, but have received notice of redundancy due to declining sales. Sam was a crown court reporter and Lee was deputy news editor. The redundancy payments will tide them over for four months. Both are considering options. Tom runs a sports website and has emailed Jake to offer £25 for reports of the city’s football, cricket and rugby matches submitted and carried on the website. But Tom cannot cover expenses or pay for match reports which are not published because “we get a lot of contributions in from fans who’ll do it for nothing”. The notice of redundancy sent to Lee reminds him that he agreed when he was appointed to the news-desk post not to offer ‘journalistic services’ within 20 miles of the city, within six months of leaving. Sam has received a 0.5 FTE job offer to work in the PR department of ‘Sunlight Hotels’, which specialises in honeymoon holidays in Dublin, Cork and Douglas IOM. A clause in the contract states Sam must not work for any competitor of the company ‘located or conducting business in the British Isles’, for a period of 18 months after the termination of the contract. Advise Sam and Lee.

Last minute contract review gives Bill the holiday blues

Bill works as a ‘freelance sports commentator’ for ‘Saturn FM’. He has a six-month contract and is paid £140 per day, subject to the condition that he works for the station on an ‘exclusive’ basis. The deal is that Bill invoices the company each month for days worked, and the company deducts tax and national insurance from the ‘fee’. He has worked for the station for five months and is keen to re-negotiate a further six month contract. Ben, the station manager, has been instructed by the directors to remove a clause which appeared in the original contract which provided for two days of paid leave entitlement for every month served. Bill has six days of holiday time remaining and wishes to either take a full week before the existing contract expires or alternatively claim additional fees in lieu of surrendering the time owed. Ben explains that Saturn FM has recently reviewed its policy (after Bill started ‘shift work’) and does not allow ‘freelance journalists’ to take more than two days’ owed leave at any one time. Additional payments will not be made for holiday time not claimed within the relevant period. Bill is unhappy and wants to know his rights. You are a ‘media consultant’ and Bill’s friend. Advise him.



ORCHARD NEWS BUREAU LTD



Media Consultancy and Publishing, Est. 2000
orchardnews@journalist.com
www.orchardnews.com
07557 902120

DIRECTOR
RICHARD W ORANGE
BA GDL

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Available Online:

ONB briefing no.1: Briefing on Data Protection and Copyright
Issues for Journalism Schools (Sept 2011)

ONB briefing no.2: Briefing on How to be a Winter Sports
Correspondent (Feb 2012)

ONB briefing no.3: Briefing on Freelance, Employment and
Contract Issues for Journalism Students (Sept 2012)

Orchard News Bureau Ltd — at a glance

Orchard News Bureau was established as a press agency by political journalist Richard Orange in 2000, covering local government and legal affairs.

We have grown into a media **training** consultancy, advising journalists and editors on access to information held by public bodies, providing **advice** on professional accreditation for journalism training courses, and supplying **news** stories and pictures to the national media.

We also publish **travel** guides, and run media training workshops on a variety of topics.

News agency clients include

- **Guardian Newspapers**
- **Telegraph Newspapers**
- **Times Newspapers**
- **The Sun**
- **BBC**
- **Press Gazette**
- **Private Eye**
- **MJ Municipal Journal**

In recent years, ONB Ltd has provided media law-related advice and assistance to:

- **Broadcast Journalism Training Council**
- **Centre for Investigative Journalism, London**
- **Centrex Police Training, Cambs**

- **Press Association**
- **Centre for Broadcasting and Journalism, Nottingham**
- **Wilmington Media Group**
- **Archant**
- **BBC Training Centre, White City**
- **Johnston Press**
- **Newsquest Media**
- **Times Newspapers**
- **ITV Central News (East)**
- **Amicus**

