



PHOTOGRAPHIC RIGHTS

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Copyright law can protect your photographs from unauthorized use. Unless they are in the public domain, or the use can be considered "fair use" under U.S. copyright laws, no one can legally use your photographs without your consent. European copyright laws go further and protect a photographer's "moral rights" in their work, including the rights of presentation, attribution and alteration. The concept of moral rights is recognized only to a limited extent in the United States under the provisions of the Visual Artists Rights Act.

Despite the extensive protection provided by copyright ownership laws, they are a poor substitute for a written agreement spelling out specifically how and under what circumstances your photographs may be used by others. Like writers, composers and other creative artists, photographers usually prefer to license, rather than sell, the right to use their work for a particular purpose. In this way, they retain a degree of control over how the work is used as well as ultimate ownership of their creations.

The extent to which you can license rights in your work is subject to negotiation between you and the person who wants to use your work (the "licensee"). Like other forms of property ownership, intellectual property – including photographic works – consists of a "bundle of rights," any piece of which can be licensed. While there are a wide range of photographic rights which can be licensed, it is useful to be familiar with some of the more standard ones.

Exclusive rights give the licensee the right to reproduce the work for a specific use in a given geographic area for a specific time. The exclusive right may be broad: "For all uses worldwide in perpetuity," or narrow: "For use in a TV program entitled "Cooking" distributed in the U.S. for a term of three years." The photographer agrees not to license any other uses which may infringe on rights granted by the exclusive license while it is in effect.

First rights typically give the licensee the right to publish the work for the first time in one edition of a publication, such as a newspaper. The photographer agrees not to allow any prior publication of the work and may agree to limit subsequent licensing for a certain time as well. First rights are usually limited to specific geographic areas and are usually granted for a limited time, after which the licensee may be given one time rights, and the photographer may license the work to others.

One time rights are non-exclusive rights to publish the work in one edition of a publication. One time rights are less restrictive than first rights because the photographer is not prohibited from licensing the work for other non-competing uses during the license period.

Distribution rights delineate where the publication or production (newspaper, TV or film, for example) containing the work may be distributed. Typically these rights are defined in terms of language or geography.

Promotion rights involve the use of the photographic work to promote the publication or production in which they are reproduced.

Electronic reproduction rights cover the use of photographs on television and other electronic media. The use of photographs on the Internet offers a new source for publication, but the licensing issues are essentially the same as in traditional media, with some added twists. The enhanced capability of digital imaging technologies to manipulate original photographic images does raise serious copyright ownership issues, for example.

Buyouts usually mean a complete transfer of all rights from the photographer to the buyer, including copyright ownership. In a buyout, the photographer will be required to assign all copyright ownership to the new owner. The assignment must be in writing to be effective.

Work-made-for-hire arrangements are, in effect, a transfer of rights to creative works and, as such, deserve mention. In a work-made-for-hire situation, the photographer is hired to take photographs of a particular subject or for a particular purpose. The person hiring the photographer owns the photographs and the copyright in them. In a typical



employer/employee relationship, the copyright in any work created by the employee during the employment is automatically owned by the employer. However, if the photographer is an independent contractor, he or she retains copyright ownership unless a written work-made-for-hire agreement is signed. This requirement is often overlooked, and copyright ownership is not transferred despite the fact that the photographer is being paid to create the work.

Open Licensing arrangements are becoming increasingly popular. Organizations such as Creative Commons (www.creativecommons.org) have established standard open licensing agreements for use with works in various contexts. Although these licensing arrangements provide a simple, streamlined way to license your work, they require you to commit to a specific licensing structure for all users of the subject work. This prevents you from negotiating separately with individual users. These arrangements are not appropriate for all circumstances – you need to carefully consider the ramifications of entering into these arrangements.

Experienced photographers rarely agree to buyouts of all rights, work-for-hire arrangements or open licensing arrangements. Like musicians and visual artists, they tend to prefer to license only limited rights and to retain the ability to exploit the work in other markets when the opportunity arises.

The types of rights that can be licensed vary widely. Ultimately it is up to the photographer and the licensee to negotiate the most suitable license for each particular situation. Successful photographers try to work with their licensees to create win-win deals. They recognize that creativity in negotiating and structuring licenses benefits both the photographer and those wanting to use their work.