



**Professional Photographers
of America**

**“Protect Your Copyright through Licensing Agreements”
Questions & Answers**

General Copyright

Q: What do you do when you find a photograph with your copyright logo across the front being used on someone’s website or social networking page, like Facebook?

A: As the copyright owner, you get to define how and where your work is used and displayed. In any case of online infringement, you can always enforce the Digital Millennium Copyright Act (DMCA). The DMCA allows you, as the copyright owner, to contact either the Internet Service Provider (ISP) or the copyright agent of a website to request the removal of infringing uses of your photographs.

Of course, when dealing with clients’ personal and professional websites, you will want to have a discussion with them concerning their copyright needs and, if you are ultimately comfortable with their use, offer to extend them a Licensing Agreement for a nominal fee. Remember that even though they’ve erred, they’re still your clients.

Q: If you hire an independent contractor, who owns the copyright? Is it the studio that did the hiring or the independent contractor?

A: Copyright ownership will depend on whether or not a work-for-hire agreement was signed. “Work-for-hire” typically refers to work created under an employer-employee relationship (i.e., a staff photographer) or when the creator assigns those rights to a collaborator or employer. Remember that independent contractors, just like it sounds, are separate entities from the studio. These are photographers who either freelance or own their own studios and are entitled to own the copyright to works they create, just like the studio that hires them. As a result, you want to ensure that copyright ownership is discussed before taking on a contractor. If you need a sample independent contractor agreement, PPA has one available in the Resources section (Contracts and Forms category) at www.ppa.com.

Q: My understanding is that copyright is difficult to enforce unless the image has been filed with the U.S. Copyright Office. Is this true?

A: Ensuring that your images are registered will improve the success of your legal suit. In addition to giving you leverage in resolving an infringement issue, registration must occur before you can file a lawsuit in federal court. One of the main reasons federal registration of your photographs is important is so that you can seek statutory damages, legal and court fees, and lost income. To an infringer, the idea that a judge and jury might side with you, as the copyright owner, encourages them to work amicably toward a resolution.

Q: When do you consider an image “published” when registering with the U.S. Copyright Office?

A: When classifying your images for registration, it is up to you to determine whether or not the work is deemed “published” or “unpublished.” There is a fine line that is drawn with respect to photography since images may be distributed to clients along with their friends and family members. Whether or not you consider this a public or privately distributed work is at your own discretion. Photographers are also allowed to determine whether or not works that appear on studio websites, blogs and other online locations are considered published (since they are available to a wide range of viewers).

Works are always considered “published” when they appear in works that have a clear publication date or schedule like newspapers, magazines, books, journals, etc.

Licensing Terms

Q: When we give image files to a client, do we as the photographer still own the copyright to the image, or is the copyright transferred to the client when the files are given?

A: Clients often assume that when digital files are exchanged, you are granting them a usage license. Photographers, on the other hand, assume that the client understands they are not receiving any copyright privileges by accepting a CD of image files. Always take the time to explain to your clients, whether in person or in an e-mail, their ability—or inability—to use these files. In addition, you will want to accompany them with a written usage agreement or other statement concerning your copyrights.

Q: How do you work with the cropping of, or any changes to your image (color change, style change, etc.) while working out a license agreement?

A: These post-production tasks should be discussed with your client and can be included in the licensing agreement. As the copyright owner, it is important for you to retain your rights and also account for the quality of the images that leave your studio. To do this, you want to make sure your client understands what it takes to deliver the type of images they've requested. You also want to make sure you understand how your client intends to use the licensed work. Once both these points have been discussed, you can effectively decide if you will retain the right to edit and alter your work or if these are rights you are comfortable sharing with your client through the licensing agreement.

Q: Can the licensee place restrictions on your (the photographer) use of the image?

A: Yes, it is possible for licensees to request certain restrictions be placed on the images they will receive. This often depends on the nature of the images and how the licensee intends to use them. One example of these restrictions is exclusivity. Exclusivity or extending "exclusive rights" to an image means that you will be prohibited from re-licensing the work to anyone else. This might be limited to the course of the agreement and under some circumstances can extend beyond the agreement. Although this is the case, it is still up to you, as the copyright owner, to determine if you are comfortable with those restrictions and whether or not they come at an additional cost to the client.

Q: Is there a checklist that is available for going through the licensing procedure? There are a couple on this webinar, but is there a thorough checklist available someone like myself could use to make sure all of the points of licensing are addressed?

A: You can indeed follow the thought process proposed in this webinar when discussing licensing possibilities with your client. As for a standard list of questions that you should be sure to ask, licensing discussions are very fluid and individual to the client's needs and your comfort level as a photographer. To devise your own "licensing checklist," we would recommend considering what level of copyright permission you are comfortable granting your clients. This may vary based on price (i.e., more permissions granted = higher licensing fees) so you will also want to have your fee structure in place as well. Once you have established your licensing offerings, your conversation will be based on setting and meeting the client's expectations.

Q: Do you recommend outlining licensing restrictions on CD labels?

A: Yes. Any time you have an opportunity to remind your clients of the licensing agreement or otherwise mark your work to ensure your copyright is protected, take advantage of it. Keep in mind that even if you print a licensing reminder or summary onto a CD or CD liner, or place an electronic version onto the disk itself, you should still present your clients with a written licensing agreement that is signed by each of you.

Q: Can you recommend a source of sample license agreements?

A: There are a variety of sources that make licensing agreements available. As a PPA member, you can download sample documents from the Copyright Resources section at www.ppa.com. You can also purchase books containing sample documents and other licensing advice through any major bookseller. (Remember that PPA members get a discount through Barnes & Noble). If you're interested in purchasing one of these guides, you might consider *Pricing Photography* by Michel Heron and David MacTavish. This book not only contains sample contracts, it also includes pricing charts to help you establish your licensing price points. A second option is the more general *Legal Guide for the Visual Artist* by Tad Crawford. This book contains licensing documents along with other legal documents and advice for photographers.

Copyright Infringement

Q: If you've licensed an image through a stock agency and then see it used, how can you be sure that the use is legitimate? Do you approach the stock agency or the user?

A: How you address the infringement will depend on the contract you negotiated with the licensing agency. It will ultimately depend on the individual photographer and the contract negotiated with the stock agency, but here are two possible ways to proceed:

- 1) Some agencies may require photographers to enter into a “buyout” agreement in which you are transferring your copyright 100%. Under this scenario, you will want to notify the stock agency if you believe the use of the image constitutes an infringement. It will then be up to the agency, as the copyright owner, to pursue.
- 2) On other hand, some agencies license images from a photographer and require that you share the responsibility of policing your copyrights. If this is the case, the agency may require that you take steps to actively address the infringement while they attempt to collect on lost licensing fees.

Q: How can I enforce a license?

A: Every infringement is unique and must be dealt with in different ways by each photographer. Remember that clients may infringe on your copyright because they simply do not understand the difference between your copyright and the print or digital file they own. The best way to ensure a license is followed is to put it in writing. Giving the client a license makes it easier for you to control how your client uses your image since it establishes boundaries.

Should a client use an image in a way that is not included in or is expressly prohibited by the license, it is an infringement of your copyrights. We would recommend addressing this with clients in a non-confrontational manner. Remind them of the licensing agreement, and engage them in a discussion on copyrights. If you are able to come to a consensus on resolving the matter, get it in writing. In some cases, it may mean redrafting the license to include a new use and, of course, ensuring you are paid for it. If you find that you are at an impasse with the client or are uncomfortable having this discussion with them, contact the Copyright & Government Affairs Department at 800-786-6277 or copyrightdefense@ppa.com.

Pricing & Invoices

Q: I generally include licensing restrictions as part of the invoice. Is that okay or should the license be separate?

A: You can include your licensing language on your invoice. Payment of that bill is your clients' way of acknowledging they are in agreement. Ideally, you will present your clients with a formal licensing agreement both you and they will sign. Exchanging a written assignment of rights (whether a license or transfer) is not only a statutory requirement under U.S. Copyright Law, but it is also an opportunity for you to ensure your clients clearly understand the rights they are receiving.

Q: What is an average cost to charge for licenses if a client wants to be able to reprint images?

A: In general, the cost of a copyright release will depend on the type of use, the length of the license, and the terms of the agreement among other factors. The same would apply when offering clients a license to make reprints on their own. While there is not a fixed rate that can be applied to every license, there are many helpful books and calculators that can assist you in setting your rates based on the factors mentioned above.