

PHOTOGRAPHIC COPYRIGHT AND LICENSING EXPLAINED

A client's guide

COPYRIGHT gives a photographer the right to control the ways in which their photographs may be used. Under the UK Copyright, Designs and Patents Act 1988, copyright in any photograph automatically belongs to the photographer. Similar laws also apply in other countries.

LICENSING allows photographers to keep the copyright in their work whilst giving their clients the freedom they need to use their photography in a range of contexts. A license specifies the precise circumstances under which photographs may be used, including:

- type(s) of media
- geographical area
- time limits

Licensing means that photographs are effectively 'hired' for use under terms which can be as broad or as specific as necessary. For example, a license could cover once-only use in the UK press, or allow unlimited use in the media, for advertising and PR in several countries over a period of a year or more. Specific terms may also be included – a client may request exclusivity, for example.

In all cases, however, the copyright in the photographs remains the photographer's. If a client uses photographs outside the terms of the license, they are breaking copyright law.

FAQs

I'M WORRIED ABOUT COST. HOW DO I KNOW WHAT THE FINAL PRICE WILL BE?

One big advantage of licensing is that the photographer and client can draw up a license that offers the best combination of flexibility and value for money. In general, the broader the terms and the longer the period of a license, the more it will cost. This is because photographers charge on the basis of both the time taken to do a job, and the use to which the resulting photographs will be put.

IF I PAY FOR FILM AND PROCESSING OR CDS, SURELY I OWN THE PHOTOGRAPHS OUTRIGHT?

No. You've simply paid for some essential consumables. Copyright relates to the image, not to the material on which it's recorded. A photograph is copyright-protected regardless of whether it's in the form of a negative, print, slide or stored electronically. In law, copyright automatically belongs to the photographer unless, in very exceptional circumstances, they agree (in writing) to transfer its ownership to their client. In many countries even this rare exception does not apply and the copyright in an image is inalienable from the photographer.

I NEED FLEXIBILITY IN HOW I USE THE PHOTOGRAPHS. WHY CAN'T I BUY THE COPYRIGHT?

Most photographers retain the copyright in their images partly because it gives everyone involved – including the client – more flexibility. Licensing has a number of advantages, one of which is that the client doesn't pay for any use that they don't need. This helps keep the cost down whilst leaving open the possibility of negotiating extra usage at a later date. Licensing also allows photographers to spread the cost of running their business, giving better value to their clients and allowing a higher quality of service.

BUT I'VE USED PHOTOGRAPHERS WHO ARE HAPPY TO SELL THE COPYRIGHT IN THEIR PICTURES...

A minority of photographers are ignorant about licensing and copyright law, and may not set out a license agreement clearly, or issue a license at all. Unless you have written agreement to the contrary, by law the copyright in any photograph still belongs to the photographer, regardless of any verbal agreement. Using copyright-protected images with no clear licensing agreement leaves you, the client, open to all kinds of potential disagreements later on. It's in the interests of both client and photographer to be clear about the terms of a license, thereby protecting both parties from any further dispute.

CAN I RE-SELL PHOTOGRAPHY THAT I'VE COMMISSIONED?

Not unless the photographer has explicitly agreed to allow syndication. Selling copyright-protected images without the consent of the copyright owner is illegal.

WHAT ABOUT USE ON THE WEB?

Copyright applies regardless of the medium in which photography is stored or published.

IF PHOTOGRAPHS ARE SUPPLIED TO ME ON CD, CAN I MAKE EXTRA COPIES?

Only if doing so doesn't infringe the terms of your license agreement with the photographer. Regardless of what format a photograph takes – CD, digital files, prints, slides or negatives – possession doesn't automatically grant the right to reproduction. This restriction includes making copies of digital files or colour photocopies. It is the licensee's responsibility to ensure that they're aware of the terms under which the photographs may be used.

WHY ARE PHOTOGRAPHERS SO CONCERNED ABOUT COPYRIGHT?

Copyright has always been important, because it acknowledges the right of a photographer to be recognised as the author of their work. Recent advances in technology make it more difficult for photographers to prevent copyright violation. In the days when most photographs were taken either as black and white negatives or as colour slides, it was easier to control the limits of usage. With the advent of the web, colour copiers and desktop scanners, illegal copying and reproduction of copyright-protected material is on the increase. Copyright law, combined with effective licensing, allows photographers to retain their rights, whilst licensing allows their clients to reduce costs by only paying for the usage they need.

Thanks to Seb Rogers