

Copyright & Commercial Photography

The law relating to copyright of commercial photography was changed in Australian Federal Parliament in July 1998.

Copyright is often a misunderstood “grey area”. The information, which is not a legal opinion, is an attempt to shed light on the topic and to encourage photographers and clients to work together to understand and work constructively with Australian copyright law. A detailed explanation is available from the Australian copyright council – contact details appear at the end of this document.

Who Owns Copyright?

The law relating to the copyright of commercial photographs was amended in Federal Parliament in July 1998 and effects all photographs taken for commercial purposes on or after 30th July 1998. Its states in substance that, in absence of an agreement to the contrary, the copyright of a commissioned commercial photograph is owned by the photographer. This law applies only to commercial photography. Other conditions apply to private or domestic photography.

Does this change the way you work with a photographer?

Not necessarily. When you work with a photographer it has always been important to stipulate the use of the photographs. This way the photographer knows exactly what sort of pictures are required, and you have licence to use the pictures for that purpose. Worldwide, photographers use contracts, work agreements or terms of business to clearly establish the requirements of the job, the usage and the estimated costs involved before the shots are actually taken.

These are similar to the written agreements used in most industries, perhaps even your own, to clarify and define working relationships. Such professionals practice is encouraged by the ACMP and the AIPP to protect the rights of both clients and photographers, and to raise the professional standards within the industry.

Why these changes were made

The government had recognized that photographers were being disadvantaged in the market place and in the areas occupied by other artists. The amendments, fully supported by the Society of Advertising, Commercial and Magazine Photographers (ACMP) and the Australian Institute of Professional Photography (AIPP) have brought Australian photographers into line with the majority of international photographers and other Australian professional creators such as Graphic Designers, Artists, Actors and Musicians.

“But it was my idea in the first place”

Copyright does not apply to an idea, but to the “expression” of that idea. In this case, the expression takes the form of a photograph, but it could be an oil painting, illustration, video or even as a written story. Good commercial photography is usually the result of collaboration and teamwork. Client, designer, art director, writer, photographer and printer all work together to ensure that the final result is successful and meets its stated aims.

Ultimately however, the quality of this particular “expression of the idea” will depend on the expertise of your photographer.

By the time the job is completed it may be protected by a number of copyrights that related, for example, to the subject itself, the written words, the design, the photograph, right through to the actual publication the work appears in.

What do all the words mean?

In using written agreements you may come across a number of unfamiliar terms relating to the issue of copyright.

USAGE is the first consideration. This refers to how and where the image is to be used. Usage may be determined in a number of ways, including the following:

The **MEDIUM** is the form the final usage takes, such as a brochure, annual report, poster, website or whatever.

The **TERRITORY** may also be stipulated under usage. This refers to how widely the image

will be used, whether in one state only, throughout Australia or worldwide.

The **TIME** or **DURATION** that an image is used is also usually open to negotiation. This could be as precise as a particular issue of a newspaper, or you could expect to pay more to have the right to use the image as much as you wish for a pre-determined period before re-negotiation.

It is usual for you to have exclusive use of an image for an agreed period of time. (E.g. Exclusive right to use an image in an annual report in New Zealand for 12 months.

The **LICENCE** refers to your right to use the image under the usage terms you have agreed with the photographer. In general terms, the broader or more relaxed the conditions of usage, the more you could expect to pay. Alternatively, if the job has a tight budget, then accepting usage limitations may help in negotiating a fee with the photographer.

If that is the case, and then at a later date you wish to embark on a new usage for the shot, you can agree to pay **RESIDUALS** or **ROLL-OVERS** for an extension of the licence, or for a new licence. How much this costs will again depend on the usage and is usually calculated as a percentage of the original photographic fee or **BASE USAGE RATE**.

A **BUYOUT** is the complete transfer of ownership of the picture, including copyright, from the photographer to the client for an agreed fee after which the photographer has no further rights or title to the photograph whatsoever. In most commercial situations this is an unnecessarily expensive option. A client would very rarely require total ownership for their purposes. Buying the appropriate usage is usually the way to go.

Need more information?

Talk to your photographer before you start a job and everyone will know where they stand. If you'd like more information, The Australian Copyright Council has published an Information sheet called "Photographers and Copyright:" that states the legal position and answers most of the common questions. It's available on the web at

www.copyright.org.au. They have also published a book "Photographers and Copyright" ref. no. B064 which is available from the same source.

This information sheet may be copied for a non profit purpose, provided that it is copied in its entirety and without any changes or additions.

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