

Trevor Jennis McDermott from GAP Photos:

“Licensing Rights Considerations. 101 of what to look out for”

In Rights-managed licensing, the cost of the image license is typically tied to the media, size, duration, print-run/circulation (for physical print) & territory. Each of these factors is an essential a metric that can be used to measure the level of exposure or exploitation of an image.

As a Copyright holder, you can utilise the information about usage to calculate an appropriate license fee.

Over the last few years, specifically in editorial licensing we have found an increasing number of publishers issuing their own “standard terms” / “rights agreements” - these terms are usually written from the perspective of the publisher and their legal team.

Such agreements will often provide the publisher with much wider rights than the project/product actually requires and use wording that is quite ambiguous as to the final use. Often catch-all phrases or wording, that on the surface sounds quite reasonable, can actually result in open-ended broad rights, that are more akin to a buyout or Royalty free licensing.

Such “rights-grabbing” should be in the forefront of any rights holders mind when negotiating terms, to ensure that you are left being able to utilise, monetise, control & protect the rights in your own creative works.

Defining a license by the specific product/publication, issue/edition, print-run/duration & territory is the best way to limit the rights granted to what's actually required for publication.

Things to be mindful of:

- **In Perpetuity** – This is short hand for a license that never expires, why would this be needed for a one-off print run, or single transmission, or a one-off annual calendar etc..?

This goes hand-in-hand with –

- **Model/Property Release/Permissions** – Bear in mind you may have these but legally can often be revoked, so a license in perpetuity would make it difficult for you to withdraw images from publication if your model/property release/permission is withdrawn.
- **For the duration of copyright** – Short hand for 70+ years, see above, why is this needed?
- **Non-exclusive Royalty Free** – If you are entering into an agreement over specific rights, a Royalty Free license may not be appropriate.
- **Sublicensees / 3rd Parties** – If the publisher is going to sublicense your work, are they getting paid for it, and if so where is your cut? Is this what you expected to be happening to your work? Would any sub-licensing be in the original context or a copy of the original publication.

- **Secondary Licensing / Extended Collective Licensing** – This is your right as a Copyright holder to claim from collecting societies such as PicSel, why hand that over? After all your work is being copied, you deserve to be paid!
- **Promotional Use** – What level of promotion, will your image be used out-of-context, could it end up on a bill-board, bus-stop display, online advert? Usually these are things that Copyright holders would be paid extra for.
- **Associated Brands/Publications** – If you are licensing to “Magazine X” or “Book Y”, do you really want your work appearing in another publication that you have not had the opportunity to approve, and what about additional payment for an additional publication?
- **Moral Rights** – These are embedded in your Copyright, why do you need to waive them? They are there for a reason, including for you to be properly attributed as the author of the work,
- **Entire Agreement** – If any terms in an agreement are explained or agreed by phone or email, they need to make it back into the written agreement. If the agreement has wording such as “entire agreement” or words to the affect of “superseding all previous agreements”, then anything not in the final agreement could be argued as irrelevant.
- **Linked T&C's** – A contract/commissioning form that links off to a “current version” of commissioning T&C's, can sometimes link to the latest version, not the version you read/agreed to. Wise to always download and keep a copy of the actual terms agreed.
- **Indemnification** – If asked to indemnify the publisher, what are you indemnifying for? Indemnifying that the images is yours / you had permission is one thing. But broad indemnity is a stretch when you do not have control over how your work will be portrayed or amalgamated with other works and/or context.

It is wise to always keep in mind what are the minimum rights actually required for the product/publication to be produced. Anything additional, ask yourself “what is that for?” - if it's not explained in the contract, ask for explanation and if you are happy to grant such rights as they seem necessary for the agreement, then make sure they are defined in writing within the agreement (see “Entire Agreement” above).

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