

Image Usage Rights

By Don Werthmann

As a Commercial Photographer I practice image usage rights with every project that comes my way. Although an uncomfortable topic for many people, especially the purchaser of your artwork such as Art Directors, Editors, and other clients, it's an issue that needs to be addressed during the initial phone call or meeting with you since it's the very foundation of a successful business' survival. It's important to make sure that your work doesn't fall into the "public domain" where it can get used without any monetary compensation for you.

My perception over the past few years, since I began to study this issue in depth, is that speaking about usage rights is like speaking a foreign language for many people yet, it's an issue every artist, regardless of discipline, needs to understand. In a nutshell, granting usage rights to your photographs are exactly like issuing a license to the purchaser. It's entering into a legally binding agreement -- meaning that signed documents are required -- not just verbal agreement and a handshake.

As the creator and copyright bearer of an image we tend to hold a lot of power here, so it's easy to see why there's a certain degree of discomfort and downright avoidance. Art Directors, Editors, and Clients are fearful to talk about them because they simply don't understand them and how a bottom line figure is arrived at. It is certainly not as simple as paying over-the-counter for goods and services and it takes some practice to get a handle on it. With a good command of usage rights language it's in our best interest to provide a dose of education along with a fair price quotation to the buyer.

Allow me to refer you to a book every photographer-for-publication should have next to their business telephone. It's called Pricing Photography, written by Michael Heron and David MacTavish. It's an Allworth Press publication that is distributed by Amphoto. Before you price another job for a commercial client, GET IT. It will give very clear guidelines to negotiate fair prices for estimating/pricing images, in the client's best interests and, in the interests of your business' survival.

If you can educate your client about how your pricing is structured and have legitimate justification as to why, it helps balance the power struggle and allows them to feel more comfortable with you. It's an investment of your time and money, so work on building trust and ultimately, building long-term business relations. This doesn't mean you have to do an initial job for free or "low-ball" an estimate just to get the job. It means establishing some credibility and integrity with your client.

War Stories

A few years ago, I had a client who informed me that he had never heard of usage rights prior to meeting me and that he simply bought all the images from the photographer after the shoot was completed. From my point of view this was alarming! It gave me a strong indicator as to how some photographers make money and is cause for considerable concern since, they're not playing with the same set of rules I am.

In other words, some photographers shoot for a "consumer market" where images become the product that is sold like any other over-the-counter commodity. This is fine if this is what they choose to do for a living, I don't have a problem with this. I however, as commercial photographer work for publications where what is sold is a LICENSE to use my image(s) for a specific period of time. Apparently, these consumer based photographers have crossed this "boundary" by shooting commercial jobs for publication and pricing/selling them with a consumer-based price structure.

This practice destroys the legitimacy of commercial price structures in the photographic industry and it becomes a battle to negotiate with some clients under these conditions. Pricing commercial photography takes a good amount of client research on your part in order to arrive at an accurate and fair price. Some of the questions you must ask are:

- What is the image being used for?
- How many images do you need?
- Will they all be used for the same purpose?
- How long do you need to use it for?
- Where will it appear?
- How large will it appear?

Find out for yourself how much it costs your client to run an ad in the space(s) that is described to you. i.e. Full page, half page, color, black & white. Will it be used on an outdoor billboard along your local interstate freeway or in newsprint, perhaps as a four-color magazine ad?

These questions are IMPERATIVE in how one prices the job. If the client is willing to spend \$12,000 per year on an outdoor billboard, on an interstate highway running through the heart of town and your image is appearing on it, you should charge say 10 to 12% of that since, your image IS the billboard (for one-year, exclusive usage). If they're willing to pay that much for that type of ad space, they MUST be expecting handsome revenues in return for it. Your image is what sells their product, therefore you should keep control of what rights are released and be properly compensated for your talent.

If the client asks for a "buyout" you should charge a substantially higher price. In fact, discourage them from doing that since it probably won't be in their best interest anyway. Ads change from year to year and the prospect of losing ALL your rights to re-sell the image in the future is not attractive. Heron and MacTavish's book provides great insight about this topic.

Usage rights violations shouldn't be a problem if everything is clearly spelled out on your invoice face, the terms of agreement on the reverse side, and as stated in a related delivery memo that is signed by the client and returned to you. Terms should include a clause that states "usage rights granted upon payment in full." In other words, you must be fully paid before the image appears in any type of publication. If a violation arises, you hold signed legal documents stating what agreements were made and you should be paid compensation accordingly.

I dealt with a client recently who balked at the prices I presented and threatened to have another photographer shoot images like mine, to get the price he was looking for. Unless he owned the rights to that image, he shouldn't even have thought of doing that. This is called copyright infringement. It's against the law, and photographers should be weary of A.D.'s or Clients who ask to have something shot, "that looks like this photo." Sometimes we have to explain specific copyright laws to keep things on track no matter how difficult or awkward it feels. You're running a business here.

Standing firm on your price is certainly not unreasonable if you've done your research and aren't being disingenuous. When was the last time you sat up in the examination chair and asked your dentist for a discount?

Students and semi-pros, take notes!

Image usage rights are one of THE most important aspects to your business' survival. Knowing how and what to ask your client is the key to quoting prices for your images, or for a job estimate and ultimately, your invoice. If you don't enforce these pricing concepts, nobody will do it for you. If we as a photographic community don't enforce them, nobody else will. Educate your fellow photographers even though they are your competition in the market place. It's the only way that we can keep a standard of living for ourselves. "Low-balling" an estimate, just to get a job simply brings prices down for everybody else. Say a client goes back to his office very satisfied with the low price he got on this year's photography. When it comes time for him to create the budget for next year's advertising photography he's going to say to himself, "I don't need anywhere near as much as I thought to get this photography done since Cheap Photo, Inc. gave me such a great deal." So, down comes his budgetary axe. Down went the possibility to make more money next time, not just for you but for all the photographers he deals with.

Forget about that new piece of equipment you really needed or, that money you needed to lease-out or buy your dream studio. This is called "rate stagnation" and it causes virtually zero business GROWTH. Low pricing to your client becomes self-destructive and industry-wide destructive. It becomes a vicious downward pricing spiral and might eventually lead to, gulp...bankruptcy for you and others.

When a client asks you "what's your Day-Rate," don't quote a figure unless you know the answer to how the image(s) will be used. Express your need to do some research and that you'll call them back to discuss your decisions. It's perfectly acceptable to say that you need time to think about it and do some research, at no cost. Tell them why, so that they feel more comfortable and that you feel more comfortable. After all, you're simply trying to provide the best price possible so that it becomes a win-win situation.

Photography created as an employee of a company, on their time, is called "work-for-hire" and is not subject to usage rights and pricing negotiations. The company owns ALL rights and the image itself, even though you created it. If you want to retain the rights to your images, be sure to never accept a "work-for-hire" agreement.

Look into your nearest chapter of:

- **APA** — American Photographic Artists www.apanational.com (commercial sector)
- **ASMP** — American Society of Media Photographers www.asmp.org (editorial sector)
- **EP** — Editorial Photographers www.editorialphoto.com (editorial sector)
- **PPA** — Professional Photographers of America www.ppa.com (retail sector)

These groups provide invaluable information, forms, and guidelines about these issues and numerous others. They are worth the price of membership alone, not to mention the superlative equipment insurance they offer. In some cases you can sign-up on-line. It keeps crucial standardization of our industry's business practices and allows you to make decisions with confidence. This in turn allows you to sound not only convincing to your client but, genuine in your negotiations.

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