

## Licensing Your Copyright Text Copyright by Carolyn E. Wright, all rights reserved

When you own the copyright of a photograph, you have complete and exclusive control of how it is reproduced, displayed and distributed. These rights may be assigned, sold, transferred or given away. But if you give a slide to a publisher, email a digital file to a client, or sell a print at an art show, you have not transferred your copyright unless stated so specifically in a written agreement that you have signed. Instead, you have given the recipient "non-exclusive rights" - you still own the copyright to the image. But when you transfer the copyright in writing to another party, you relinquish all rights to the image. It is as if you never took the photograph.

Non-exclusive rights may be transferred without a written agreement. However, just as it helps to have any agreement in writing so that all parties understand what is being agreed to, it is beneficial to also grant non-exclusive rights in writing. When you grant specific, limited rights to an image while maintaining ownership of the copyright, you have licensed the image. You can license the same image over and over again but keep the copyright.

If you decide to authorize others to use or to license your copyright, you should consider the following:

- Who are you giving the rights to?
- What specific rights are you granting?
- Are you authorizing print rights, electronic rights, or both? If you grant electronic rights, are they for CD, web, or other uses?
- For how long are you granting the rights?
- Will the rights be exclusive?
- How will the rights be used? In what markets or industries?
- What territory is covered by the rights? North America? English-speaking countries? Worldwide?
- Are there any work-for-hire implications?
- How will you be paid? By a flat fee? By royalties? If paid by royalties, how will the royalties be calculated?
- When will you be paid?
- Will you allow certain alterations of the work to be made?
- Will you require that a copyright notice or a photo credit be included?
- Who will be liable for loss, damage, or theft of the work?
- Specifically retain all other rights to your copyrights: "All rights not specifically granted herein remain with the photographer." You never know what future usage technology might bring.
- Make the license subject to being paid in full: "Until we have agreed to the terms included here and you have paid the agreed-upon fee, you have no right to use the work. Any unauthorized use shall constitute infringement."

Clients often give photographers a license to sign. While it is best to hire an attorney to review it, some photographers don't want to dispute the terms of the license for fear of losing the clients or are just happy to be published. But to best protect your work, you should know what you are agreeing to.

To help with your understanding of contract terms, the PLUS Coalition (Picture Licensing Universal System) has developed a free searchable glossary at <http://www.useplus.com/glossary.asp> with more than 1000 licensing terms, definitions, and uses. Consult the glossary to find the meaning of words often used in a license agreement.

Following are some common terms and conditions used in licenses along with a brief explanation of what they mean.

1. Photographer shall defend, indemnify, and hold harmless The Company from and against any action, suit, claim, damages, liability, costs and expenses (including reasonable attorneys' fees), arising out of or related to the use of the photo by The Company.

You should examine your legal exposure carefully before agreeing to a contract with this provision. Your agreement to "defend" a company means that you must pay for its legal representation against claims and lawsuits, which can include expensive attorneys' fees and high litigation costs. While many companies will want to choose their legal

counsel, you will have to pay for those fees as long as they are reasonable.

When you agree to "indemnify" a company, you must pay for any financial loss it incurs, such as a settlement or a court award, either directly or through reimbursement. "Hold harmless" means that you will not make a claim against a company if claims are made against you for events related to the agreement.

Agreeing to these contract provisions can be costly in the long run. In reality, however, a company rarely will seek defense costs or indemnification from the photographer unless you have done something wrong and you have significant assets worth seizing. Nevertheless, you should accept these types of risks only when you understand them, given any special facts and circumstances, and are willing to accept the consequences.

2. All disputes arising under this Agreement shall be submitted to binding arbitration and settled in accordance with the rules of the American Arbitration Association.

Agreeing to binding arbitration means that you are forfeiting your right to file a lawsuit in a state or federal court of law and your claim will not be decided by a jury of your peers. Instead, you present your case to an arbitrator who will decide your case with no right of appeal.

The pros with arbitration are that the overall litigation costs are less and the case is usually resolved more quickly. Often the arbitrator has special knowledge about the subject as compared to a judge or jury who must be educated on the issues. The cons are that it is usually more expensive initially (the filing fee is usually much higher than to file in a state or federal court and you have to pay at least half of the arbitrator's fee rather than getting a judge or jury at no charge). The damages awarded usually are less (there are no high "runaway/windfall" jury awards). Be sure that you have input into deciding who the arbitrator is (some organizations retain the right to choose an arbitrator who may be biased towards the organization). The American Arbitration Association also tends to be more expensive than other arbitration groups who may conduct arbitrations by AAA rules.

3. This Agreement constitutes the entire understanding between the parties.

Any discussions, agreements, or promises made by the licensing party are not binding. Instead, only those terms and conditions that are contained specifically in the license/contract are considered to be part of the agreement. For example, you can not later sue the licensee for its promise in an email or stated in person to give you a photo credit if it was not in the contract.

4. The Agreement's terms can be modified only by an instrument in writing signed by both parties.

After you sign the contract, you may modify it if both of the parties (you and the licensee) agree in writing to change the contract. It is, in effect, a new contract. Both are binding except for the new terms of the second contract that conflict with the first contract.

5. The laws of [state] govern this Agreement. By signing this Agreement, Photographer consents to personal jurisdiction by and venue in the state and federal courts of the [state].

Here you are agreeing to be subject to a lawsuit in the state listed in the Agreement, which usually is where the licensee is. If, for example, you live in Florida and the licensee, who lives in Oregon, sues you there for breaching the agreement, you will have a long way to travel to defend a suit. You also likely will be unable to sue the licensee in Florida (unless you can show the licensee has a presence in Florida) for breaching the contract.

6. Photographer and [client] intend this to be a contract for services and each considers the products and results of the services to be rendered by Photographer hereunder (the "Work") to be a work made for hire.

A photographer owns the copyright for images that they create, unless the creation of those images falls into the "work-for-hire" category. A work-for-hire relationship is created in two situations: (1) the photographer is an employee hired to photograph for the employer - an example would be a photojournalist who is an employee of a newspaper; or (2) the photographer is hired to provide photographs for collective works or compilations and signs a written agreement that specifically states that the work is to be considered a work made for hire. Therefore, freelance photographers are subjected to work-for-hire status only when they agree to it contractually. Work-for-hire provisions are usually negotiable and monetary considerations should be included when photographers are asked to give up their copyrights.

7. Either of the following in similar form:

"I hereby sell, assign and transfer in perpetuity to [client] all world-wide rights, title, and interest in all photographs, copyrights (including the right to register the copyright and any renewals or reversions thereof) derivative works, and any other material and/or intellectual property embodied in the material created."

“Exclusive worldwide rights to distribute, sell, and/or license distribution of the Submission, or excerpts of the Submission, or derivatives of the Submission.”

In the photography industry, these are known as “rights grabs.” Either of these phrases will, in effect, transfer your copyrights to the other party. Be sure that you intend to do so and get paid accordingly.

Ignorance of the law is no excuse. Once you have taken steps to share your work with the world, take those steps necessary to protect your work.



Carolyn E. Wright is a licensed attorney dedicated to the legal needs for photographers. Get the latest in legal information at Carolyn’s website, [www.photoattorney.com](http://www.photoattorney.com). These and other legal tips for photographers will be available in Carolyn’s book, *The Photographer’s Legal Guide*, available on her website and in the [NatureScapes.Net online store](#).

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