



the whitepaper series

#1

image rights

“ Copyright in **YOUR** photographs... Are you fed up with the way some advertising agencies and production companies try to limit the usage rights on photographs that you've paid for? ”

Copyright in YOUR photographs... Are you fed up with the way some advertising agencies and production companies try to limit the usage rights on photographs that you've paid for?

If you are, then we can understand why... and now's the time to put an end to this unnecessary practice. We recently came across an example that prompted us to almost blow a gasket on behalf of the company that became our client.

The company wanted a pack shot. Albeit a great pack shot, one which would really sell the product to the consumer, while reinforcing all the brand's values and the strength of the product proposition. The brief was clear, the product great and more than capable of living up to the brand promise. The packaging was smart. And the job was a pleasant one to be involved with.

We weren't shocked by the fact that our client's advertising agency quoted a big price. It might be unnecessary, but it happens all the time*. What left us gobsmacked was that as well as a big price the agency was trying to limit the client's usage of the shot to six months in store and 12 months on line, coupled with restrictions on which territories the shot could be used in.

**ask us about decoupling production... we've a white paper on this too. It explains how to secure huge savings on advertising production and marketing operations.*

Why for heaven's sake? There's no model in the shot. So there's no chance of anyone being exploited or over-exposed. It's a pack shot. The only thing that appears in the picture is the client's product. And it's the client's decision, and theirs alone, about how much exposure they wish to give to their own product... and where that exposure should take place

So why would the agency seek to limit rights. There can only be one explanation. They, or their photography supplier, hope the client will want to come back and buy more usage,

“ WHY HIRE A WORKMAN WHO HAS NONE OF THE TOOLS HE NEEDS TO DO A JOB? ”

thereby providing the agency, and/or the photographer, with extra profit for doing absolutely no more work.

We think that's shameless. Totally and absolutely shameless. What's more, it gives our industry and the many highly professional people who work in it a bad name. It's rare that we rant, but as we've got the chance we're now making the most of it. The story gets better.

In addition to the ridiculous rights clause, the agency in question went on to quote for the photographer's fee – fair enough, he's a day's work to do. And then for studio hire. A photographer who does pack shots but who doesn't have a studio we thought ... not unique, but rare. And then for camera hire, and lighting hire, and computer hire and, and, and...!

Why hire a workman who has none of the tools he needs to do a job? Think about that the next time you hail a taxi driver and he tells you it's 10 quid for the journey but that you'll have to rent him a cab at a cost of 60 quid, and pay the congestion charge for him, before he'll do the work. Plain bonkers.

And in case you're wondering, at Hangar Seven we have our own studios (all 80,0000 sq ft of them), all our own lighting gear, our own cameras and more than 120 of our own people. So, if you need a job doing, by people who take the profession and the trade seriously, and you don't fancy paying margin on top of margin to third parties you've never met, then pick up the phone to us.

Not convinced that we're right? Visit our website at www.hangarseven.co.uk to view our client list and to learn why many of the UK's leading high street brands trust us to deliver.

Types of Rights ... and their relevance to you.

We discuss below the issues around rights usage and how you can negotiate the deal you need. Most major companies in the UK insist that all elements of Intellectual Property (IP) are assigned to them on completion of (and payment for) a project. This isn't a bullying tactic, it's simply that, as a brand owner, it's necessary to know that you have control of all your marketing assets and can deploy them effectively in building the brand and its sales. To the extent that the IP right in question is copyright, it can only be assigned by a written agreement, which you should obtain before use.

There are certain circumstances in which a licence agreement rather than an assignment of the IP, will be appropriate. Licences will often include usage clauses which limit the amount that the photographs can be used.

Whether the rights that you have paid for should be assigned to you, or licensed to you, will depend on the circumstances; and this is the bit that so many people get wrong – and that we get cross about...

The Pack or Product shot: if you own (or control) the item that's being photographed and the brief is limited to a simple representation of that item, the copyright in the photo should be assigned to you. Why would a usage clause ever apply? At the highest level, the photographer applies a degree of artistic skill in creating a representation of the product that will mean a more powerful communication to the consumer.

He or she should be compensated for the application of this skill. But, once the skill is delivered, there should be no restriction on use.

The model shoot: shoots involving models (boys, girls, men, women... even cats and dogs) are more likely to correctly apply usage clauses. Their purpose is not so much to restrict use of the photograph, but to prevent over exposure of the model. A well-known model can only appear in so many shoots per year, is often restricted from working for competing brands, and, if over exposed, will find their livelihood affected.

Think carefully, as part of your shoot planning, where you might wish to use the images and for how long. Much tighter commercial deals can be struck upfront than after the shoot's been completed.

The location shoot: sometimes, and it should only be sometimes, where you wish to hire a location for a shoot AND the location is well-known, on or off private land and will be clearly identifiable in the resulting images, then in the agreement to let you shoot there the owner may be justified in trying to limit your use of it.

Otherwise you should resist agreeing to limit your use of images taken at a location. If the location is not clearly identifiable, then no usage charges should apply. Yes, you'll pay a fee to hire the location, but that should be it.

Useful links:

The Office formerly known as the patent office:

<http://www.ipo.gov.uk/>

IP advice for the creative sector

<http://www.own-it.org/>

A lawyer we like

http://www.brownejacobson.com/your_needs/services/intellectual_property.aspx

Photographers' rights: copyright will automatically subsist in most photographs, together with moral rights. This is and always should be respected. You will need an assignment of that copyright or a licence in order to use it. However, most photographers are commercial and understand that the client needs flexibility. Remind them that, for the most part, you are paying for their time and expertise, not for a "licence" to use their art.

Commercial photography companies, like Hangar Seven, have bought out the rights of all the staff that work for them. This means that we are able to automatically pass on all IP to our clients at no extra cost.

Names versus Results: if you're planning to hire a world renowned photographer, then remember you're hiring the industry equivalent of a rock star or a Picasso... and expect to pay proportionately. But, before you do, ask yourself, in today's disposable society, will the results have the longevity to warrant the cost?

For major above the line campaigns, the answer is almost certainly 'Yes'. For everything else, it is subjective. This said, the same principles of negotiation apply. Get it right at the start!

Studio etiquette: most commercial studios understand that their clients are seeking the result... not some form of long term mortgage. And most studios will price accordingly. Sure you can ask about rights and usage, but why not be more proactive and explain, upfront, what you want to achieve.

We're happiest when clients have taken the time to think things through. And we often work with great companies who provide us with a prescription of rights, in contract form, at the beginning of the relationship.

Contracts and the Small Print: while we're on the subject of contracts, it behoves us to come clean. Our standard terms and conditions of sale do, automatically, transfer usage rights to our clients ... but only on receipt of payment. This, we think, is fair and reasonable. We know some great IP lawyers, large and small, who can advise you on the technicalities of: image rights, moral rights, copyright, patents, design rights, trade marks, and more.



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retail and consumer brands**

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