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Usage Statement Guidelines for Photographers

BASIC INFORMATION

With the current US copyright laws as they are applied now, artists own all rights to their created images and sell/transfer rights to agencies and their clients. All questionable negotiations have historically defaulted in favor of the artist. Technically, even minor modification of the art requires your permission. You are RENTING out, not selling an image unless explicitly stated on the contract.

Generally, think of usage costs reflecting the amount of exposure a particular image may receive. The more exposure, the higher the price. Exact terminology may differ, but the semantics remain the same if all of the information is included in each negotiation. You can phrase it any way you want, but be clear about the INTENT by including information from all categories outline below.

Also, consider the VALUE of the image to you: a shot of a Coke can on white may have a more limited value since it features a licensed product and requires less of your creative input. How unique is the shot? How much of the creation of the shot was your concept?

Talent usage is similar, but there are differences in how each medium is priced out: talent usage tends to be much more specific. Again, it is based on exposure. {If you are responsible for talent usage, be sure the usage matches what you've been contracted to cover.}

European terminology will differ from US terminology, particularly in the "Print" category. In Europe, "Print" includes anything that is not broadcast.

Although category headings may vary ("Time Period" vs "Length of Time") usage is defined by the following:

TIME PERIOD or LENGTH OF TIME

This is the length of time an image or images will be used: one year, two year, one time, etc. To avoid confusion, it is best to specify "from date of first use" or "from shoot date" when negotiating a contract for an image. Standard use generally defaults to one year use {from shoot date} in a specific medium unless terms are otherwise negotiated.

RIGHTS/QUANTITY

This is the number of times WITHIN THE TIME PERIOD that the image will be used.

LIMITED: A limited number of times such as "2 insertions" or "run of 5,000" within the time period sold. By the time you reach multiple insertions in publications such as *People* or *USA Today*, you may as well call it unlimited rights.

UNLIMITED: Can be used an unlimited (unspecified) number of times within the time period sold. This does not allow a transfer of copyright to the agency or to their client, nor does it mean the same as "unlimited time." You have sold only the rights to use the image, not for your client to resell it or allow a third party to use it.

TOTAL BUYOUT OF RIGHTS, USAGE AND COPYRIGHT: You have sold the copyright to the image and the client has full rights to do whatever they want with the image. They own it, basically. In the case of illustration, you own the rights, but you do not necessarily own the final art. That usually requires a very specific, carefully worded purchase agreement. Expect to charge a high price for this usage!

EXCLUSIVITY

You may sell exclusivity of all images, which will not allow you to resell any of the images during the time period your client purchased. Unless otherwise stated, an artist has the right to sell an image to another client at any time---even if it is one currently licensed to a client. I recommend using discretion if you chose to do so, however. Usage defaults to non-exclusive of the selected images only if not otherwise stated.

EXCLUSIVE: The image {and the outtakes, if specified} cannot be sold to anyone else during the time period sold.

EXCLUSIVE TO INDUSTRY: The image cannot be sold to anyone else within the same industry {Liquor, Banking, etc.}

NON-EXCLUSIVE: The image {and the outtakes} can be sold to other clients at any time

GEOGRAPHIC REGION

This is the geographic area in which the images will be seen.

NATIONAL: US only. Includes provinces of the US such as Puerto Rico and the Caribbean.

NORTH AMERICA: Includes the US and its provinces, USUALLY Canada and Mexico.

GLOBAL OR INTERNATIONAL: Throughout the world {internet is automatically global}.

LOCAL: Specific city or area {San Francisco Area, etc.}

REGIONAL: Specific region {Midwest, Southeast, etc.}

EUROPE: Europe is often negotiated as a neat little package that includes Great Britain, Spain, France, the Netherlands, Scandinavia, Germany, Italy.

BY COUNTRY: Specific countries can be sold, but if the exposure is large, such as Europe, it may be wiser to go with Global to make sure you are covered.

MARKET

This category also gives the artist an idea of the degree of exposure. Consumer advertising generally receives more exposure and at a premium cost. Trade is not as expensive, nor as far-reaching in exposure. Editorial is relatively cheap.

CONSUMER: Markets to “people who buy things”; it is purely for commerce {sells things} and the artist should have a piece of the action because of the high degree of exposure.

TRADE: Markets to “people who sell things to others”; it is lower down on the food chain, and therefore not as expensive.

EDITORIAL: Informational in nature, not for commerce. Magazine layouts and textbooks fall into this category.

USAGE CATEGORY

This category further defines how the images will be used. These categories are then segmented even further by defining specific mediums for each.

ADVERTISING: A medium that sells something, like an ad or an outdoor board.

PROMOTIONAL: A medium that promotes something, like a poster for an event like a concert.

PUBLIC RELATIONS: Similar to Promotional, but more awareness-driven and less commercial.

CORPORATE: Annual reports or internal materials like sales kits.

EDITORIAL: Again, informational in nature, not commercial. May accompany a newspaper or magazine article or be included in a textbook.

MEDIA

Media usage describes where an image will be seen and can be defined as precisely as you choose. As with your photography, negotiating with talent for the specific media will directly affect your costs. Broadcast use is seldom needed, but can be sold if necessary.

ANY AND ALL MEDIA: Covers EVERYTHING: all print, OOH, POS, Electronic and Broadcast. “Any” and “All” are somewhat redundant, but it drives home the idea that everything is covered.

ALL PRINT: Generally, anything printed onto paper that you can hold in your hand: newspaper, magazine, collateral, direct mail. You may expand your negotiations to include POS or OOH by adding it specifically, otherwise they are generally not included under this category. Exceptions may include GO cards or similar limited exposure items.

NEWSPAPER: Use this category in conjunction with Geographic Region. Size is also a factor.

MAGAZINE: Use this category in conjunction with Market and with specific publications.

COLLATERAL: Includes anything in print that “goes along with” the campaign but is of secondary importance. Things like brochures, some mailers and bill stuffers fit under this category.

DIRECT MAIL: Pieces that are mailed to people. Quantity of pieces and Geographic Region affects pricing. Where the image is seen also makes a difference, whether it’s on the cover, envelope, etc.

ISM {IN-STORE MARKETING}, POINT-OF-SALE {POS} OR POP {POINT-OF-PURCHASE}: Things that will be seen where the product is sold. Banners, signage, counter cards, displays, in-store posters, table tents, hang tags {hang tags could also be considered Packaging, so clarify during negotiations}.

PACKAGING: Something that contains or is attached to merchandise during its sale.

OUT-OF-HOME {OOH} OR OUTDOOR: Virtually anything seen outside of your home: outdoor boards, bus sides, trans stops, rail cards, GO cards.

TRADE SHOW: Trade show booths or materials used in a trade show. Show attendance and how the image will be used must be discussed.

ELECTRONIC: Media that is not printed: Internet, C Ds for distribution, Asset Management System, screensaver. Unless rights are specifically sold, images cannot be resold.

INTERNET: Global internet use. Where it will be seen (home page or inside page) may affect pricing. Sometimes numbers of hits makes a difference also.

BROADCAST: Television

MISCELLANEOUS: Things like Ad Planners must be negotiated apart from the other media because of the potential for wide-spread, undetermined use. Items for resale {limited edition posters, t-shirts, etc.} must be negotiated separately.

BODY OF WORKS

This includes all of the images shot for the project, not just the selected image or images. You may often automatically sell rights to the entire body of works, but be sure to specify if you decide to sell the rights to only the selects. You will need to clarify at the beginning of the negotiation so there is not confusion later. You will also want to include a clause regarding whether or not outtakes may be sold as stock until the rights on the selects expire.

REUSE

Because the exact date of first use may not be known at the time rights are sold, it follows that the date of expiration may not be exact. Factoring in the average time it takes to put an image through production after it is created, a rule of thumb is that first use generally begins about 2 months after the shoot date.

With the proper verbiage, you can create a checks-and-balance system to give your client an opportunity to decide if they want to purchase reuse. I recommend stating that your “client reserves first option of reuse upon expiration of current rights.” If your client does not renew the option, then at least you have given them the courtesy of first right of refusal and you can eliminate the “I wonder if it’s okay” situation. And you may end up with a reuse fee!

MISCELLANEOUS

Just to be clear, you will want to include the right to use the images for your own self-promotion during the rights period the client has purchased. Although it's usually not a problem, it doesn't hurt to have it stated officially.

Also, be sensitive about showing images that have not been made public yet. Clients get very upset if an image is seen before their big launch, especially with confidential products.

EXAMPLES OF USAGE VERBIAGE

Here are some samples of how to phrase your usage statement:

One year unlimited exclusive international advertising and promotional rights and usage in any and all media for entire body of works, effective date of first use. Artist retains self-promotion rights forever, as does the agency. Client reserves first option of reuse upon expiration of current rights.

Two years unlimited exclusive regional {Minnesota, Wisconsin and Illinois} advertising and promotional rights and usage in direct mail for entire body of works, effective date of shoot. Artist retains self-promotion rights forever, as does the agency. Client reserves first option of reuse upon expiration of current rights. Image may be digitally enhanced in post-production.

Unlimited exclusive global advertising and promotional rights and usage in any and all print for an unlimited time. Includes entire body of works. All images, including outtakes, will not be sold as stock until all usage expires. Client reserves first option of reuse in additional media. Artist retains self-promotion rights forever, as does the agency.

Total buyout of rights, usage and copyright. Artist retains self-promotion rights. {The word 'buyout' by itself is meaningless and has not been proven an acceptable legal term.}