

AOP GUIDELINES FOR COMMISSIONERS NEGOTIATING PHOTOGRAPHIC LICENCES

Negotiating Licences

Under the Copyright Designs & Patents Act 1988 copyright in images is vested with the author who licences the work to their client to enable them to publish the work for the purposes of the commission. When approaching a photographer with a possible commission, it is important that you have a clear idea of the media, countries and length of time for which you want to use the images. The photographer's fee usually includes the first use of the image/s, but extended duration of use, media and territories can affect this fee. The necessity of obtaining a 'buyout' (all uses licence) from the photographer will not normally be necessary, as frequently all of the intended usages will be included in the Initial Licence.

The Initial Licence

The original negotiated commission fee normally includes the following;

1 Year: UK or any single country - any two media
2 Years: UK or any single country - any one media

- The licence begins on first insertion and first insertion should be within 6 months of the delivery of the finished job
- Work is licensed for a minimum period of 6 months at the negotiated day rate.

Exclusivity Agreement

It is standard trade practice that the licence included in the shoot fee will be exclusive to you. We recognise that clients and advertising agencies are concerned that the photographs they have commissioned (and for which they have paid the origination expenses) should not fall into the hands of competitors or become associated with their products after the Initial Licence period has finished. To prevent this we suggest that, where appropriate, an extended exclusivity period is negotiated during which time the photographer should not sell the photographs (for example through a library) without your permission. On expiry of this exclusivity period, you should be offered first option to extend the exclusivity clause at a negotiated rate.

Confidentiality

It is expected that once any confidentiality period is over that the photographer and agency can use the image/s for their own PR purposes. This use includes entry into competitions by the photographer and the agency with credits to the photographer, client and agency.

Negotiating Re-usage

BUR (Base Usage Rate)

To prevent misunderstandings when negotiating additional usage fees, and to enable you to budget accordingly, a negotiating baseline known as the Base Usage Rate (BUR) should be clearly stated on the photographer's original estimate. The BUR is the starting point for negotiating use of the work over and above the Initial Licence. It is the figure to which the percentages in the Re-Usage Guidelines are applied.

Calculation of the BUR is generally based on the photographer's day rate, but may be a figure in between the day rate and the shoot rate depending on the amount of input and involvement required from the photographer. The BUR will not normally be less than the negotiated day rate. When a photographer is doing a 'budget' job at less than their normal day rate, then the BUR should be set at their normal day rate for that type of commission.

Example: You have commissioned a shoot for use in the UK, in press and posters for 1 year. You now want to expand the media coverage to point of sale. BUR has been negotiated at £2000. Extending the licence to point of sale in the UK for 12 months should be 25 - 50% of the BUR (see AOP Re-Usage Guidelines) depending on the amount of coverage, therefore the cost of the additional licence would be £500 - £1000.

When several images from a single day's shoot i.e. the same subject or variations from a single shoot are used, then each individual image is subject to a negotiable BUR, at less than the original commissioned day rate agreed.

Negotiating additional media and licence extensions

The AOP Re-Usage Guidelines (as published in Beyond the Lens) are for reference when negotiating usage on additional media / territories within the initial licence period and when negotiating re-usage of images beyond the initial licence period. They were developed by photographers, agents and art buyers and are not recommendations, but are provided as guidelines for negotiation based on current trade practice. The Additional Uses table is not exhaustive and requests for media not shown can be negotiated by using a similar media with the same style of distribution or viewing. Merchandising should be negotiated separately and the licence cost could be based on a percentage of each sale (royalty).

Different geographical areas

For all secondary and subsequent use of photographs, the percentages given on the tables entitled Additional Territories Usage Chart are reasonable and fair. However, it is impossible to cover every eventuality and it is for the photographer and/or their agent to negotiate an arrangement that both of you find agreeable.

Copyright

The AOP is opposed to the assignment of copyright. However, it is recognised that agencies/clients sometimes need to negotiate a fee covering any future use of the photographs without continuous reference to the photographer. In such cases an All Uses Licence may be negotiated - this Licence will specify "All Media" under Media Use, the Territory will be "Worldwide" and the Time Period may be "Unlimited". The Licence will be exclusive to the Agency/Client and will cover all uses of the photography in relation to the product named on the licence. The photographer retains the right to use the photographs for promoting his/her own work. The All Uses licence is subject to the general Terms and Conditions and therefore does not permit use in relation to another product or sub-licensing, for example to a photo library.