

~ *Photography Usage Terms explained...*

## **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 the artists' permission. You are RENTING, not buying 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. 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. European terminology will differ from US terminology, particularly in the "Print" category. In Europe, "Print" includes anything that is not broadcast.

### **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. It is best to specify "from date of first use" 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 purchased. By the time you reach multiple insertions in publications such as **People** or **USA Today**, you may as well buy unlimited rights.

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

**Total Buyout:** You have purchased the copyright to the image and have full rights to do whatever you want with the image. You 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 pay dearly for this usage!

#### **EXCLUSIVITY**

I recommend purchasing exclusivity of all images to prevent the resale of any images during the time period you've 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 your client. 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 purchased.

**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 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, 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 purchased, 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 commercial (sells things) in nature and the artist wants 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 commercial. Magazine layouts and textbooks fall into this category.

## USAGE REALM

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 an 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 photography, when negotiating with talent the specific media included will directly affect your price. Broadcast use is seldom needed, but can be purchased 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, and 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 also plays a role.

**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.

**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, hangtags.

**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 purchased, 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.

**Miscellaneous:** Things like Ad Planners must be negotiated apart from the other media because of the potential for wide- spread, undetermined use.

## BODY OF WORKS

This means all of the images shot for the project, not just the selected image or images. Some photographers will automatically sell you the rights to the entire body of works, but most will sell you the rights to only the selects. You will need to clarify at the beginning of the negotiation because usage will default to the selected images only if not specified. You will also want to include a clause that outtakes may not be sold as stock until the rights on the selects expire.

## REUSE

It is in your best interest to include verbiage in your initial use statement that covers future reuse. Legally, unless otherwise indicated, an artist can sell an image to another client at any time, with an increased risk after the original use expires. Because the exact date of first use may not be known at the time rights are purchased, it follows that the date of expiration may not be exact. With the proper verbiage, you can create a checks-and-balance system to at least have an opportunity to decide if you want to purchase reuse before your client sees it in another ad. I recommend stating that your “client reserves first option of reuse upon expiration of current rights.” If you and your client do not renew your option, then there is a possibility that the image will be purchased by someone else.

## MISCELLANEOUS

You will want to include the right to use images for your agency to use in self-promotion. Those rights are technically not granted past the original usage period without express authorization. Although usually not a problem, it doesn't hurt to have it stated officially. To get the maximum amount of usage time of an image, include the phrase “from date of first use” or “effective date of first use.” That way, if an image is not used for several months, your usage won't begin until then. Otherwise, it may be a point of contention a year from the shoot date. This is especially important with talent. If the photographer is coordinating the talent, do not automatically assume that the usage for the talent matches the usage you are contracting with the photographer. You must clarify talent usage at the estimate stage.

## 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 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. Image will 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, may not be sold as stock until all usage expires. Client reserves first option of reuse upon expiration of current rights. 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 will not hold up in court}