

Don's Photo, Legal Seminar

Creative Law for Photographers 101

July 29, 2025

EDWARDS
CREATIVE LAW



Presentation Overview

1. What is copyright
2. Registration
3. What is protected
4. Life of a copyright
5. Grant of Rights
6. Red Flags when Contracting

Copyright 101

- What is Copyright?
 - The “right to copy” / controlling the “right to copy”
- Entitlements of the Right
 - Produce, reproduce, perform, publish, communicate, and rent
- Who owns copyright?
 - Usually, the author/creator of the work
 - Exception: course of employment

Registration

- Obtaining copyright
 - Do I need to register? No
 - Registration does not create copyright
- Registration gives notice to the rest of the world of a claim, and creates a legal presumption that you are the author, creator or owner
- The Copyright Office is not responsible for policing or checking on registered works and how people use them; the Office cannot guarantee that the legitimacy of ownership or the originality of a work will never be questioned
- Costs:
 - \$63 for copyright registration; \$81 for registration of assignment or licence



Is My Idea Protected?

- What's copyrightable?
 - **'Fixed expressions of ideas'**
 - Eligible work must be **original to its author, not copied from another work**, and requires **more than trivial or mechanical intellectual effort**
- A comic book or script idea is not protected until it is fixed into an expressive medium, i.e., writing it down or recording it in some form
 - If the idea, but not the tangible asset is copied, it is not copyright infringement
- A script, or a completed book, is copyrightable, including elements such as characters

Life of a Copyright

- How long does copyright last?
 - Generally, copyright lasts for **the life of the author...**
 - **Plus 70 years** following the end of that calendar year in which the author died.
 - Therefore, protection will expire on December 31 of the 70th year after the author dies.
 - Common example:
 - Shakespeare's works – producing a film, theatre production, anthology, or new take on a Shakespearean work are all fair game

The Grant of Rights

What is a Grant of Rights?

- A Grant of Rights sets out which of the creator's/owner's rights in the work are being granted (legal) or waived (moral), and the terms on which they are acquired, may be used and may be lost
- Examples – Option, Cast and Crew, Release, Music, Broadcast, Distribution

Employee versus Independent Contractor

- The product of an employee's services are owned by the employer
- The product of an independent contractor's services are owned by the independent contractor – they must be transferred or licenced

Critical elements in a Grant of Rights

- Legal rights being granted
 - all or some of the "bundle of rights"
 - transfer (ownership) or license (limited use)
 - Conditions – precedent (get rights) and subsequent (lose rights - reversion)
- Moral rights being waived
 - Integrity of the work
 - Attribution
 - Anonymity

Red Flags and Tips when Contracting



1. Party Due Diligence



2. Discuss Key Terms and Expectations



3. Prioritize your Primary Objectives



4. Record the Agreement

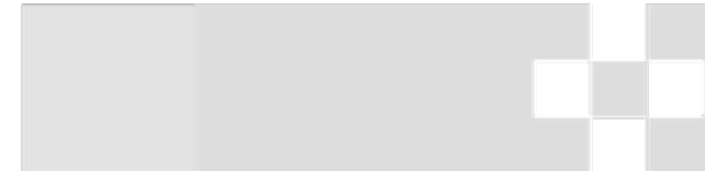


5. Take Your Time



6. If Needed, Consult with an Entertainment Lawyer

SAMPLE PHOTOGRAPHY LICENSE AGREEMENT



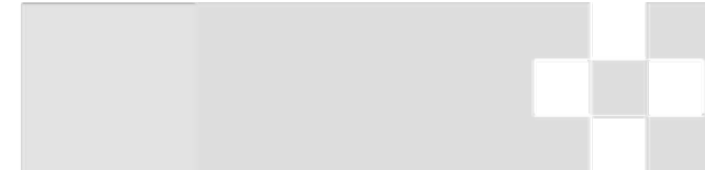
This Photography Licensing Terms Agreement ("**Agreement**") is made effective as of [Date], by and between [Photographer's Full Name/Company Name], hereinafter referred to as "Photographer", and [Client's Full Name/Company Name], hereinafter referred to as "Client".

1. Scope of Work The Photographer agrees to provide the Client with [number] of high-resolution digital images ("**Images**") as described in the attached Exhibit A, which is part of this Agreement.

2. Grant of License The Photographer hereby grants to the Client a [non-exclusive/exclusive], [worldwide/local], [perpetual/term-limited] license to use the Images for the following purposes:

[Specify permitted uses, e.g., commercial use, personal use, advertising, promotional materials, online and print media, etc.]





3. Restrictions Unless otherwise agreed in writing, the Client shall not:

Sub-license, sell, rent, lend, or otherwise distribute the Images to third parties.

Use the Images in any manner that is considered defamatory, libelous, obscene, or illegal.

Alter or modify the Images without the Photographer's prior written consent.

4. Credit and Moral Rights

The Client agrees to provide credit to the Photographer in a manner agreed upon by both parties for any use of the Images that is public in nature.

The Photographer asserts their moral right to be identified as the author of the Images and will not be associated with any work or derivative thereof in a manner that is prejudicial to the Photographer's honor or reputation.





5. Fees and Payment

The Client agrees to pay the Photographer a licensing fee of \$[amount] for the use of the Images as specified in this Agreement.

Payment shall be made upon receipt of invoice, within [number] days of the invoice date.

6. Term and Termination

This Agreement is effective from the date of signing and shall continue in effect until [end date or condition], unless terminated earlier by either party with [number] days written notice.

Upon termination, the Client must cease all use of the Images and delete or return all copies of the Images to the Photographer.

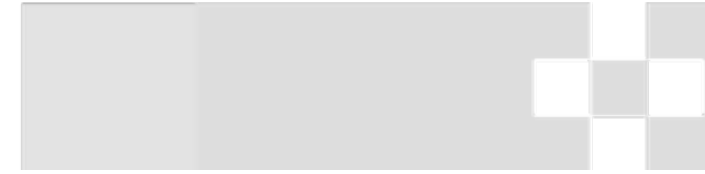


7. Indemnification The Client agrees to indemnify, defend, and hold harmless the Photographer from and against any claims, liabilities, damages, losses, and expenses, including reasonable attorneys' fees, arising out of the use of the Images not in accordance with this Agreement.

8. Governing Law This Agreement shall be governed by the laws of [Province/Country]. Any disputes arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of [Province/Country].

9. Entire Agreement This Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior agreements and understandings, whether written or oral.

SAMPLE PHOTOGRAPHY LICENSE AGREEMENT



10. Amendment No amendment or modification of this Agreement shall be valid unless in writing and signed by both parties.

11. Acknowledgment By signing below, both parties acknowledge they have read, understood, and agree to the terms of this Agreement.

Photographer's Signature: _____ Date: _____

Client's Signature: _____ Date: _____

Exhibit A: Description of Images

[Provide detailed information about the images included under this license, including file names, descriptions, and any other relevant details.]



Contractual Boilerplate Clauses

- Notices
- Warranties + Representations
- Indemnification
- Remedies
- Survival
- Assignment
- Illegality + Survivability
- Confidentiality
- Governing Law
- Dispute Resolution
- Further Instruments
- Entire Agreement
- Independent Legal Advice

Business Structures

- Sole Proprietorship
 - Simple, inexpensive
 - Personally liable for debts and liabilities
- Partnership
 - Can be simple, inexpensive; costs shared among partners
 - Potential liability, continues after death
- Corporation
 - Separate legal personality
 - Shareholders not liable
 - Certain tax advantages
 - Exists in perpetuity
 - Can be complex, expensive
 - Annual upkeep required



Should I Incorporate?

- **Limited Liability**
 - Subject to exceptions, shareholders are not responsible for corporate liabilities
- **Separate Legal Entity**
 - Corporations have the same rights as a real person, including owning IP, getting loans, and entering contracts
- **Film Grants and Tax Credits**
 - All Canadian tax credit programs and some grant programs require your business to be incorporated
- **Investors**
 - Corporations are commonly used for investment structures whereby investors become preferred shareholders in the SPC
- **Continuous Existence**
 - Corporations live on until they wind up, dissolve, amalgamate, etc. Other business structures end upon the owner's death.

Contact Info

- michael.duboff@edwardslaw.ca
- Blogs: <https://edwardslaw.ca/blog/>
- **Edwards Creative Law** (edwardslaw.ca) works with creators of every variety – photographers, influencers, videographers and musicians, to help produce and exploit their written works.
- FB and IG @EdwardsCreativeLaw



www.EdwardsLaw.ca

