

# **Rights and Value:**

## **In Traditional and Electronic Media**



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## Editor's note

As this edition of the ASMP Professional Business Practices in Photography was being finalized a new and major development in professional photography was taking place: the founding of the photographers' and illustrators' cooperative, **Creative Eye**. While ASMP was the catalyst in launching this new entity, Creative Eye will be operated by its own staff and board of directors. Creative Eye is open to all photographers and illustrators, and it is a marketing and licensing option that should be considered. Learn more about Creative Eye by going to:

<http://creativeeyecoop.com/>

Creative Eye is an important entity in collective licensing, something which ASMP has espoused for many years and which was the basic principle behind the founding of the ASMP licensing program, the Media Photographers' Copyright Agency, MP©A. MP©A – originally created as a separate agency and subsequently as a program within ASMP – is no longer operating. However, the principles on which it was founded, and its pricing structure and photographer-friendly contract, have had a profound influence on the way Creative Eye will function.

Throughout this book we have endeavored to refer to MP©A in its current context. However, readers are advised to keep in mind MP©A's initial purpose and its role in the aforementioned development of Creative Eye when reading this publication. Of necessity, some references to MP©A – as in models of pricing structures and contract samples – will be as if it is still functioning. We have purposely not changed these references because the principles on which they were written still apply.

Peter Skinner, editor

***All prices and other data in this white paper are included for purposes of example and information, only. They should not be considered to be representative of any survey, nor should they be construed to be recommended or endorsed by ASMP, its members or the author.***

## **Introduction**

Most professional photographers make their living by licensing specific usage rights for the images they create to their clients. This is the case whether they are dealing in assignment photography or stock (existing) images.

Photography, by its very nature, is easily copied, and much like music, must be licensed for use, rather than sold as a commodity or consumable product. Today, digital technologies make high quality copying and publishing of photography as easy as pushing a button, and the first copy to the 10 millionth can remain of equal quality to the original.

Since photography is so easily reproduced, publication photographers charge their clients for usage based on the value that a client receives from the work. Licensing fees are different for most every client, depending on their usage. Additionally, cost factors specific to the photographer that created the work are factored into pricing and valuation.

Photographers must maintain an orderly system for assigning value to their images, assuring themselves a reasonable profit, while not creating unfair exposure to those securing the reproduction rights. The control of the right to reproduce an image is one of the fundamental rights granted by copyright law. That right was given to copyright owners so that they could profit from their work, and thus be motivated to create more work. The connection between reproduction rights and profitability has been recognized since the days of the very first laws governing such rights, which date back to the late fifteenth century in Venice.

Usage is usage. Greater usage of a photograph by a client means they are receiving greater value from that image, and the photographer should be compensated accordingly. A small usage by a client, such as for a limited print collateral piece, will command smaller usage fees than will a larger use or combination of rights licensed, such

as those for major print and electronic advertising campaigns.

In this chapter, we will explore the factors that help determine value of photography and how photographers can most effectively license rights to publish their work, both in print and electronic media.

For many years, the only way to reproduce or publish photography was through various paper and ink printing processes. Rights to reproduce images were generally licensed with clearly defined terms relating specifically to the printing industry. However, the increasing penetration of video, personal computers and the Internet into traditional publishing markets has meant that most publishers are no longer exclusively print-based. The need for electronic reproduction licenses is expanding at an exponential pace.

With each year that passes, the term “electronic rights” covers an ever widening collection of licensable rights. As increasing amounts of media content are delivered in electronic forms, the scope of the phrase “all electronic rights” becomes even more extensive than the overly broad phrase “all print rights.” Just as print rights are licensed by specific usage (example: “one-time, non-exclusive, North American consumer weekly newsmagazine rights for XYZ Publication, circulation not to exceed 100,000 copies”), so should the licensing of electronic rights also be specified in such detail.

The term “electronic rights” can often include many, if not all, existing print rights, plus the rights for electronic media uses. These may include all electronic media in existence today, as well as those developed in the future.

For clarity, we will present the following definitions used by ASMP:

**Media** – tangible means for distributing an image. Generally there are three types of media:

**Print** – on paper or other tangible printed material

**Electronic** – digital or analog data on optical or magnetic media

**Film** – Celluloid based material

**Application** – a particular vehicle within a given medium (magazine, annual report, promotional brochure, encyclopedia, billboard, etc.)

**Product** – a capture or presentation means (video tape, paper, CD-ROM, web site, etc.)

For photographers, print and electronic media offer broad opportunities for publication. However, these opportunities are quickly diminished if the reproduction rights are not carefully defined, controlled, and priced. Most photographers would not license “all print reproduction rights” to a client unless there was a very high fee. Print rights include magazines, books, encyclopedias, posters, brochures, etc. In keeping with that logic, it is unwise to license electronic reproduction rights without similar limitations.

Electronic rights can include many products, such as video tapes, video discs, CD-ROMs, on-line presentations, Web sites, broadcast television, cable TV, and more. To grant reproduction rights by using only the phrase “electronic rights” is to cut off profit-making potential of images. While an image licensed in print might normally be used in only one application, an electronic application using that same image can be served up in many different forms. It is not uncommon for a successful Web or online product to end up as a CD-ROM and vice versa.

**Reproduction Rights Rule #1: Never license a broad scope of media rights unless you are receiving a compensation consistent with that scope.**

## **Value of Content**

The value of visual content in the electronic market is similar to, if not greater than, its value in the print market. Audiences have come to expect *more* visual information in electronic media, so the demand is higher. ASMP maintains that the newer electronic markets follow directly from the traditional print market. They should be guided by terms and conditions similar to those previously recommended by ASMP, which have become widely accepted.

Although electronic and print markets frequently overlap, they should always be considered distinct and separate, especially when licensing rights or usage. Electronic media are not replacements, but rather, extensions of traditional markets for photographs. Therefore, the additional demand for photography in electronic media effectively increases the overall value of photography.

Determination of the values for visual content depends upon a variety of factors. However, two principles of business never change.

- 1) Compensation should reflect the value of the image.
- 2) Value is relative.

In the publication market place (whether print, electronic, or film), image value is based on specific factors. These are:

**Competition:** What level of competition exists?

What is the availability of similar images from other sources? If images are unique and exclusive, they should command better fees.

**Novelty:** Novel (new) images are those which have a new look and have not been seen by the market at large. Freshly produced images are generally more valuable. Innovation by style, technique, and artistry adds value.

**Importance:** The intended size, placement and repeated use of an image in an application adds value. The relative volume of images also indicates importance. If a photograph is the sole image appearing in an application, it is usually more valuable than if it were only one of 100.

**Distribution Volume:** Circulation, press run, discs pressed and on-line accesses all influence value. Generally, the greater the distribution, the greater the value.

**Application Market:** Each application has a market. Consumer, trade, institutional, not-for-profit, and corporate are all specific markets. Generally, the larger the market, the greater the value. The exceptions to this are in niche market applications, where great selectivity is exercised. Here, the importance of an image is even greater, since the goal of niche marketing is maximum impact on a small, select group. In short, every Web hit or contact can have high value, since that web page has been specifically requested by the user. This is in contrast to the hundreds of pages that might be printed and delivered in a magazine or book, but of which only a small handful might be looked at by a reader.

**Term of Use:** The longer an application is in use, the greater the value.

**Risk Factors:** Liability is a good example. Images used in applications requiring a release (advertising, promotion, trade, etc.) are riskier to publish than editorial images. Even the best releases are contestable and subject to interpretation. A given release can be inadequate if it prohibits image alterations or additions. This increases risk to photographers (for their clients' misuse of their images). Other risks can include physical risk required to create the image in the first place, as well as the risk of the work being devalued by publication in certain media like clip art or royalty free systems. Increased risk generally commands increased fees.

Obviously, assessing value combines a little bit of both science and art. One can numerically determine specific size, placement, number of copies, and similar statistics. Risk can be assessed to some degree based on the use and the terms of releases. However, the level of competition and the novelty of an image are unsure things. Assessing these for value is somewhat of an art. It requires that the photographer learn how a given user values the

image. The difficulty here lies in the fact that experienced photo buyers are often reluctant to share this information.

## **Pricing & Compensation Structures**

Electronic media are simply modern forms of publication, which have evolved far beyond the scope of traditional print media. Pricing for usage in any publication, be it electronic, print or otherwise, should reflect both past and future valuation. Rights granted should be on a "one-time" basis whenever possible, unless the fees earned are far higher than traditional base fees.

Visual content creators should be wary of entering into speculative arrangements that may yield little income in the event of poor sales, or which may result in the loss of control of their copyrights. When photographers accept the risk of a small return in the event of poor sales, they should also demand a significantly greater return if sales are more successful. If content creators share the risks, they should also share the rewards.

Compensation for visual content is usually based upon the following structures or combinations thereof:

1) **Flat fee** – the photographer is paid a single, fixed amount for the use of his or her photograph(s). The broader the license or the more usage extended, the higher the fee will generally be. If the usage goes beyond the original license, additional fees must be paid. This is often the simplest arrangement for both photographer and buyer.

*Example: An image is licensed for up to 1/4 page, one-time, non-exclusive use in a consumer weekly magazine, with a 3,000,000 maximum circulation for a fee of \$350.00. If the final usage is 1/2 page instead, the license fee might increase to \$450 or \$500.*

2) **Structured tier fee schedule** – a schedule of fees agreed upon between the photographer and client. The photographer's fee increases when

distribution of the product reaches certain levels, such as the number of online accesses, the number of CDs pressed or the number and size of each broadcast.

*Example: A photograph is reproduced as the cover of a brochure, on a non-exclusive basis, with printing rights extended to the client for one year.*

*Up to 20,000 copies – fee is \$1,000.00  
20,001 to 50,000 copies – \$250.00 is added.  
50,001 to 100,000 copies – \$150.00 more is added.*

*In this case if the buyer prints 20,000 copies or less, the photographer is paid \$1,000.00. If an additional print run of 30,000 is made (totaling 50,000), the photographer is paid an additional \$250.00. If an additional press run is made after the one year term of the license, the fee reverts to the starting point.*

**3) Percentage of sales fee** – the photographer receives a percentage or a stipulated amount for every sale. This could be a fee based on the selling price of every disc, publication or book, or it could be a stipulated amount for every download or access to an application. Frequently, this would be in addition to a base or guaranteed minimum for the usage. In this manner, the photographer can accept the risk of a small return if the product is not successful, yet share in the reward if the product succeeds.

*Example: A photograph is reproduced as a 11"x14" framed print for a 12 percent royalty on net sales, before taxes and delivery fees. The art might sell in a retail outlet for \$60 with the wholesale price at \$30. At a 12 percent royalty, the photographer receives \$3.60 per unit sold. The photographer might negotiate a \$1,500 minimum guarantee, paid as an advance against the first 416 units sold. Additional \$3.60 royalties would then be paid to the photographer for every unit after that.*

**4) Per unit (produced or sold) fee** – the photographer's fee is based upon a fixed payment per unit produced or sold (units produced is the preferred method).

*Example: A photograph is reproduced as a full screen image in a CD-ROM disc for a fee of \$.03*

*per disc pressed, with license extended for the copyright life of the product.*

*In this scenario, each image would be valued at three cents per disk. If the volume of discs initially pressed is 10,000, the fee is \$300. As more disks are pressed, the total fee increases. Generally, in such an approach, the fee per unit decreases in steps as the volume increases. In such a case, the payment at the 50,000 unit level might be reduced to one cent per disc.*

## **Pricing Examples**

When it comes time to extract the value of images in an actual transaction, all the foregoing theory must be applied in short order. To do that, photographers have traditionally taken different approaches, depending upon whether the images licensed are generated on assignment or are selected from an existing library (stock).

Assignment pricing is often complex, and the basis of pricing varies. Advertising, editorial, corporate, and architectural photography each have their own pricing peculiarities. However, licensing of stock photography has been more standardized over the years and can more readily be used to demonstrate pricing systems taking value factors into account.

In an effort to illustrate the use of value factors, and to show a specific licensing method, we have received permission from the Media Photographers' Copyright Agency (MP©A) to publish some of their fee structures and value factors. The figures presented here were established in 1995 and are adjusted for inflation to the year 2000.

The MP©A pricing system is based upon certain criteria:

- 1) Mastering fee** – payment for the right to make a master copy, from which all other copies are made. This master could be, among other forms, a printing plate, a digital file in a computer, or a film negative for a motion picture. Regardless of the media or means by which it is captured, the

master is the first copy from which all copies to be distributed are made.

size, novelty, multiple reproductions, and the like

2) **Distribution fee** – payment for the total number of copies made, published, viewed, etc.

3) **Multiples** – factors which are used to adjust the price for value added attributes such as

The following are examples of the MP©A (inflation adjusted) price list for brochures, educational books, and editorial use. An example of how the lists are used follows each listing.

### MP©A Category 1: Brochures, Flyers, Promo Cards, Etc.

Mastering Fee: \$110 per image, plus:

$$\text{License Fee} = \text{Mastering Fee} + \text{Sum of Distribution Additives}$$

Per Unit Distribution Fees (1/4 page or less):

| <u>Volume</u>                   | x | <u>Multiplier</u> | = | <u>Additive Distribution Fee</u> | <u>Total License Fee</u> |
|---------------------------------|---|-------------------|---|----------------------------------|--------------------------|
| 5,000 (minimum)                 |   | \$.023            |   | \$115.                           | \$225.                   |
| Next 15,000 (20k total)         |   | .0067 ea.         |   | 101.                             | 326.                     |
| Next 30,000 (50k total)         |   | .0034 ea.         |   | 102.                             | 428.                     |
| <b>Next 50,000 (100k total)</b> |   | <b>.0011 ea.</b>  |   | <b>55.</b>                       | <b>483.</b>              |
| Next 150,000 (250k total)       |   | .00056 ea.        |   | 84.                              | 567.                     |
| Next 250,000 (500k total)       |   | .00022 ea.        |   | 55.                              | 622.                     |
| Next 500,000 (1 mil. total)     |   | .00017 ea.        |   | 85.                              | 707.                     |
| Next 2,000,000 (3 mil. total)   |   | .00009 ea.        |   | 180.                             | 887.                     |
| Over 3,000,000                  |   | .00005 ea.        |   | \$50./million                    | -                        |

Example:

$$(100,000 \text{ copies}) = \$110 \text{ (mastering fee)} + \$115 + \$101 + \$102 + \$55 \text{ (distribution additives)}$$

$$\text{Total license fee} = \$483$$

### MP©A Category 2: Textbooks, Encyclopedias, Trade Books, Picture Books

Mastering Fee: \$110 per image, plus:

$$\text{License Fee} = \text{Mastering Fee} + \text{Sum of Distribution Additives}$$

Per Unit Distribution Fees (1/4 page or less):

| <u>Volume</u>                  | x | <u>Multiplier</u> | = | <u>Additive Distribution Fee</u> | <u>Total License Fee</u> |
|--------------------------------|---|-------------------|---|----------------------------------|--------------------------|
| 10,000 (minimum)               |   | \$.0056 ea.       |   | \$56.                            | \$166.                   |
| <b>Next 10,000 (20k total)</b> |   | <b>.0045 ea.</b>  |   | <b>45.</b>                       | <b>211.</b>              |
| Next 20,000 (40k total)        |   | .0034 ea.         |   | 68.                              | 279.                     |
| Next 20,000 (60k total)        |   | .0022 ea.         |   | 44.                              | 323.                     |
| Over 60,000                    |   | .0011 ea.         |   | 11./ten thousand                 | -                        |

Example:

$$(80,000 \text{ copies}) = \$110 \text{ (mastering fee)} + \$56 + \$45 \text{ (distribution additives)}$$

$$\text{Total license fee} = \$211$$

### MP©A Category 3: Editorial Magazines, Newspapers, Newsletters, Etc.

#### Mastering Fees:

| Type                  | Monthly      | Weekly | Daily |
|-----------------------|--------------|--------|-------|
| Consumer Print        | \$56.        | \$34.  | \$22. |
| Trade Print           | \$45.        | \$22.  | \$11. |
| Corporate Print       | \$45.        |        |       |
| Institutional Print   | \$34.        |        |       |
| Micro Published Print | \$11.        |        |       |
| Electronic (ALL)      | <b>\$34.</b> |        |       |

#### Distribution Fee (based on circulation, on-line accesses, units pressed, etc.):

| Volume         | x Multiplier | = Distribution Fee    | Total License Fee           |
|----------------|--------------|-----------------------|-----------------------------|
| 100            | \$.112       | <b>\$11.</b>          | \$ 11. + mastering fee      |
| 1,000          | .022         | <b>22.</b>            | 22. + mastering fee         |
| 5,000          | .011         | <b>55.</b>            | 55. + mastering fee         |
| 10,000         | .0067        | <b>67.</b>            | 67. + mastering fee         |
| 25,000         | .0034        | <b>85.</b>            | 85. + mastering fee         |
| <b>50,000</b>  | <b>.0022</b> | <b>110.</b>           | <b>110. + mastering fee</b> |
| 100,000        | .0014        | 140.                  | 140. + mastering fee        |
| 250,000        | .0006        | 150.                  | 150. + mastering fee        |
| 500,000        | .00034       | 170.                  | 170. + mastering fee        |
| 1,000,000      | .00019       | 190.                  | 190. + mastering fee        |
| 2,000,000      | .00010       | 200.                  | 200. + mastering fee        |
| 3,000,000      | .00008       | 240.                  | 240. + mastering fee        |
| 4,000,000      | .000062      | 248.                  | 248. + mastering fee        |
| 5,000,000      | .000052      | 260.                  | 260. + mastering fee        |
| 6,000,000      | .000045      | 270.                  | 270. + mastering fee        |
| Over 6,000,000 | .000023      | Add \$23. per million | -                           |

*Example:* (50,000 copies, electronic)

**License Fee** = **Mastering Fee** + **Distribution Fee**  
 = **\$34** (Mastering fee) + **\$110**  
 License fee = **\$144**

#### Other Factors in MP©A Fee Structure:

##### License Duration Default:

The default license duration is 12 months after the date of the initial license.

##### Printed Size / Placement:

|              |                  |
|--------------|------------------|
| 1/4 Page:    | Base fee         |
| 1/2 Page:    | 125% of base fee |
| 3/4 Page:    | 150% of base fee |
| Full Page:   | 175% of base fee |
| Double Page: | 225% of base fee |
| Cover:       | 300% of base fee |

##### Multiple Reproductions in Same Application (Print or Electronic):

|           |                                |
|-----------|--------------------------------|
| 1st Time: | Original fee                   |
| 2nd Time: | Additional 75% of original fee |
| 3rd Time: | Additional 65% of original fee |
| 4th Time: | Additional 50% of original fee |

##### Screen (electronic) Placement:

|                   |                     |
|-------------------|---------------------|
| Regular Use:      | Base amount         |
| Section Head Use: | 175% of base amount |
| Title Use:        | 250% of base amount |



## **A New Alternative: Day Rate Against Usage**

There are a variety of pricing models available, each which have advantages and flaws. An ideal system has long been described as one where the same values for usage can be applied to both assignment and stock photography.

One relatively new model that does this is based on the concept that “usage is usage is usage,” and a fee for a particular usage should remain constant for a photographer’s work, whether licensed through assignment or stock. For stock licensing, the usage fee alone would be the primary billable amount (research and other stock fees notwithstanding). For assignment work, the photographer’s creative fee or day rate would be applied as a minimum against the fees billed for usage.

This is similar to the traditional editorial magazine model of a day rate minimum applied against a published space rate. The photographer is guaranteed a minimum day rate for an assignment, but if the number and size (space) of photos published, combined with the magazine’s rate applied to space, are greater than the day rate total, the photographer gets paid the space rate.

The Day Rate Against Usage model applies this principle to all licensing of photography, not just editorial use, and applies to both assignment work and stock sales. If the photographer’s creative fee or day rate for an assignment is greater than the combined usage fees, then the creative fee or day rate total is used as a minimum. If the value of the usage exceeds these, then the photographer bills for the larger usage amount.

For example, a photographer might charge \$1,500/day (plus expenses) for a 3-day corporate shoot, totaling \$4,500. If the client only used a few of the resulting images for a small collateral piece, the usage fees might only add up to \$2,800. In this case, the the \$4,500 day rate figure would

be applied against the \$2,800 usage total, and the photographer would bill the client \$4,500 (plus expenses).

However, if the client wanted the images for trade show displays, corporate identity campaigns and multimedia uses (on a web site or CD-ROM), the usage fees might easily total \$20,000 or more. In this case, the usage total would exceed the day rate or creative fee minimum, and the photographer would bill the client for the usage amount. Obviously, all this needs to be agreed to with a written Assignment Confirmation or contract prior to the photographer ever starting the assignment.

Again, the advantage of this system is that the different licensing fees a photographer sets for each type of usage can be applied identically to both assignment work and stock sales.

Among the first steps in this process are calculation of fair fees for each kind of usage that the photographer might license – and determination of a discount structure for clients desiring more than a single usage. While some photographers may not feel it appropriate to discount usage fees for volume, the more common practice in the industry seems to be that photographers do offer volume licensing discounts.

There are a number of commercial pricing references to consult as a starting point for determining your own usage fees. You can also talk with other photographers to help determine fees based on your particular types of photography and business needs. Once you’ve established a set of base figures, you can calculate all other fees and adjustments when usage varies, such as when clients change reproduction size, distribution, duration and quantity of photos licensed.

For most of these variables, a simple **square root** or **inverse square** relationship can be used to

calculate relative prices. (Note that these are calculations most photographers are already familiar with through exposure and lighting relationships.)

*Example: A base rate for a particular usage might be \$200 for a 1/4 page reproduction. Doubling the size to 1/2 page would increase the fee by the square root of two (1.414), totaling \$283. Quadrupling the size to a full page would increase the fee by the square root of four (= 2) to \$400. Halving the size to 1/8 page from the original 1/4 page would reduce the fee by the square root of .5 (= .71) to \$141. A minimum fee, such as \$125, could also be specified, as well.*

|                      | <b>(Base)</b>  |               |               |               |               |               |               |            |            |
|----------------------|----------------|---------------|---------------|---------------|---------------|---------------|---------------|------------|------------|
| <b>Reprod. Size:</b> | <u>1/16 p.</u> | <u>1/8 p.</u> | <u>1/4 p.</u> | <u>1/3 p.</u> | <u>1/2 p.</u> | <u>2/3 p.</u> | <u>3/4 p.</u> | <u>1p.</u> | <u>2p.</u> |
| <b>Fee:</b>          | \$100          | \$141         | <b>\$200</b>  | \$231         | \$283         | \$326         | \$346         | \$400      | \$566      |

This can also be applied to changes in the license term or duration.

*Example, a photographer might set a base fee for corporate web use of a 1/2 screen photograph at \$1,000 for 3 months. Doubling that term of use to 6 months would multiply the fee by 1.414 (the square root of 2) to \$1,414. A one-year license would cost \$2,000 (the base term is multiplied by 4 so the price doubles).*

|              | <b>(Base)</b> |               |                |               |               |               |              |                 |               |
|--------------|---------------|---------------|----------------|---------------|---------------|---------------|--------------|-----------------|---------------|
| <b>Term:</b> | <u>1 mo.</u>  | <u>2 mos.</u> | <u>3 mos.</u>  | <u>4 mos.</u> | <u>6 mos.</u> | <u>9 mos.</u> | <u>1 yr.</u> | <u>1.5 yrs.</u> | <u>2 yrs.</u> |
| <b>Fee:</b>  | \$577         | \$816         | <b>\$1,000</b> | \$1,155       | \$1,414       | 1,732         | \$2,000      | \$2,449         | \$2,828       |

Note that usage specifications can be changed in combination, as well. For instance, if you were to double the term (duration) of use, as well as the reproduction size *and* the number of languages licensed, you would be effectively multiplying the usage by a factor of eight. The fee would therefore increase by the square root of eight, or a factor of 2.83.

One of the great advantages of this system is that you can set your base fees using any usage combination that you want, and precise usage needed by your clients will be calculated consistently. Each photographer would set their own base fees depending on their particular business structure, experience and market demand for their work. The relationships between increasing and decreasing usage factors would remain completely consistent and predictable – which is of benefit to both photographers and their clients.

Such a system means that photographers would no longer give the impression that they simply pull numbers out of a hat when quoting usage fees. Gone would be the days of looking through reference tables for ranges of fees and then arbitrarily quoting a number that “feels comfortable” to a client. This system provides mathematical logic to usage fees, and allows for precision pricing, even down to an exact number of copies distributed, if so desired.

With this system, circulation or distribution changes are calculated differently than the previous usage factors, since large adjustments in circulation don’t affect usage fees as much as similar changes elsewhere in usage. A slightly modified formula – the square root of the square root (fourth root) of the circulation difference – would appear to more accurately reflect today’s usage-fee-to-circulation ratios.

Example: A photographer sets her base fee at \$500 for 10,000 copies of a photo reproduced 1/4 page in a corporate brochure or magazine. Doubling the circulation to 20,000 would multiply the usage fee by a factor of 1.19 (the fourth root of 2) to \$595. If the circulation was increased by a factor of 16 to 160,000, the usage fee would be doubled to \$1,000.

|                     |              |              |              |               |               |               |             |             |             |
|---------------------|--------------|--------------|--------------|---------------|---------------|---------------|-------------|-------------|-------------|
|                     |              |              |              | <b>(Base)</b> |               |               |             |             |             |
| <b>Circulation:</b> | <u>1,000</u> | <u>2,500</u> | <u>5,000</u> | <u>10,000</u> | <u>20,000</u> | <u>50,000</u> | <u>100K</u> | <u>160K</u> | <u>250K</u> |
| <b>Fee:</b>         | \$281        | \$354        | \$420        | <b>\$500</b>  | \$595         | \$748         | \$889       | \$1,000     | \$1,118     |

Finally, this system allows for consistent discounting of license fees for multiple photographs and/or for multiple types of usage. Multiple photos and uses involve an **inverse square** (1 divided by the square root) relationship between the number of images and/or uses, and the adjusted fees calculated for each.

As an example, consider a client wanting to license multiple photographs. The first image would be licensed at the photographer's full fee for that usage. The second photograph would be charged at 71 percent of its calculated fee (1/square root of 2 = .71). The third image would be charged at 58 percent, and the fourth would be at 50 percent, etc. This same relationship would also be used when more than one usage was desired.

Example: A calculated usage fee is **\$500** for one image. The total fee for five images used at the same size, distribution, etc., would be **\$1,617**, resulting from the sum of the discounted fees below:

| <b>Image #<br/>(or usage):</b> | <b>1/Sqrt(x)</b> | <b>Disc. Fee</b> | <b>Total fee</b> |
|--------------------------------|------------------|------------------|------------------|
| First image (\$500 fee)        | 100 %            | <b>\$500</b>     | = \$500          |
| 2nd image (\$500 x .707)       | 70.7 %           | (+) <b>\$354</b> | = \$854          |
| 3rd image (\$500 x .577)       | 57.7 %           | (+) <b>\$289</b> | = \$1,143        |
| 4th image (\$500 x .5)         | 50.0 %           | (+) <b>\$250</b> | = \$1,393        |
| 5th image (\$500 x .447)       | 44.7 %           | (+) <b>\$224</b> | = <b>\$1,617</b> |
| 6th image (\$500 x .408)       | 40.8 %           | (+) \$204        | = \$1,821        |
| 7th image (\$500 x .378)       | 37.8 %           | (+) \$189        | = \$2,010        |
| 8th image (\$500 x .354)       | 35.4 %           | (+) \$177        | = \$2,187        |
| 9th image (\$500 x .333)       | 33.3 %           | (+) \$167        | = \$2,354        |

Note again that some photographers do not feel it is appropriate to discount fees for multiple uses or images, and would simply charge first image and/or usage fees for each. In the above example, this photographer would multiply the single image usage fee (\$500) by the number of images (5) to total \$2,500, rather than the volume discount shown above of \$1,617.

## **Copyright Title Transfers**

Copyright is an intangible asset, yet as an asset, it can be leased or sold. All of the previous examples presented here are based upon the photographer retaining copyright ownership of their work and licensing the use. There are, however, cases where photographers are asked to transfer the ownership of copyright. In such cases, determining the complete value of the image(s) and copyright are of primary importance. In such cases, the photographer should note:

- The buyer is placing great importance on the image, since they want the copyright.
- The image will never produce additional revenue for the photographer from this or any other client, and that revenue loss is value which should be compensated.

There are two common arrangements for structuring photographers' fees when copyright title transfers are involved.

1) **Assignment of copyright ownership** – generally, an undesirable arrangement for photographers and other content creators, since it involves a complete transfer of image ownership to the buyer. The creator will lose control over the quality and use of their work, and will be unable to make any future income from royalties, residual sales, resale or stock licensing of the material. It is also possible for photographers to discover that they are competing directly with their own work, if the client sells the images to a stock agency or decides to market the images as stock themselves. There can be occasions when assignment of copyright is necessary, but generally, the needs of most clients can be satisfied through broad usage terms and written guarantees by the photographer not to resell the material to competing clients. In the rare event that a copyright assignment is truly necessary, the photographer should negotiate an appropriate fee to compensate for all future income that he or she will be unable to earn from the material.

*Example: a photographer whose fee for a specific package of limited rights is normally \$1,500 per*

*day, might have a quadrupled or quintupled fee of \$6,000 or \$10,000 per day for copyright assignment.*

2) **Work for Hire** – ASMP is opposed to work for hire arrangements for all independent contractors. Under a work for hire, the photographer not only loses the copyright to the work from the moment he or she creates it, but also loses all rights to authorship. This includes loss of the right to be identified as the author of their own work. Additionally, photographers cannot recapture their copyright after 35 years, a right they retain when they transfer or assign it, as described above. In any situation where ownership of the copyright is absolutely required by the buyer, photographers should arrange a transfer or assignment of copyright, at a rate which fairly compensates them for the entire value they are giving up, rather than doing a work for hire.

**Reproduction Rights Rule #2: ASMP urges all photographers to carefully consider the long term value of copyright before agreeing to transfer ownership of that copyright to another party.**

## **Copyright Protection**

Digital and electronic technologies have made it far easier than ever before to copy photographic images. High quality scanning, image capture and digital reproduction devices, available at relatively low cost, have resulted in a greater risk of image appropriation and theft for the owners of copyrighted material. ASMP supports the protection of electronically distributed images through the use of watermarks, encryption, pixel-embedded copyright notices and other effective protection schemes. These techniques should be used on all sizes of electronic files, since even the smallest files can be easily interpolated on personal computer systems to yield reproduction quality images.

Physically protecting a photograph from unauthorized reproduction is a task separate from copyright protection. The majority of

unauthorized reproductions are “innocent infringements” – usually the result of some confusion at the client level over what usage was licensed from the photographer or content provider. For this reason, photographers should request that clients destroy (or return to the photographer) all scans, separations, film or digital files made from the original after completion of the production process or license term.

It is also important for photographers to actually register their copyrights with the U.S. Copyright Office. Copyright protection in the United States is automatic from the moment an image is fixed in a tangible form (such as on film or digital media). However, when violations occur requiring legal action, attorney fees and punitive damages (up to \$150,000 per violation) can only be collected in court for images previously registered with the Copyright Office. Non-registered images are still protected by copyright, but only actual value of the usage can be pursued in court.

The process of registering copyrights is fairly straightforward, and can be done for both unpublished and published images. Copyright registration is viewed by many as a reasonably cheap form of insurance for all content creators and authors. For details, contact the U.S. Copyright Office at:

<http://lcweb.loc.gov/copyright/>

## **Multimedia**

Electronic publication, particularly of multimedia titles, represents a merging of two major industries – traditional print publishing and motion picture/television production. Both industries have relied for decades primarily on independent contractors and content providers. For the print industry, this includes writers, photographers, illustrators and editors, while the film/TV industry adds actors, producers, directors, musicians, voice over talent, set designers, crew and countless others to the mix.

The two industries, however, have evolved separately in their approach to acquiring content.

The traditional publishing field primarily regards content from outside (non-employee) sources as material licensed for specific use. This is how most independent still photographers have structured their businesses, as well. Photography or writing done on assignment for a client is owned by the author and licensed for limited use to that client. U.S. copyright law has also focused primarily on protecting the rights of authors over the years.

The film/TV industry however, is far more complex. The simplest documentary film can rarely be done by a single individual due to the need for a camera person, audio technician and an off camera interviewer or producer at minimum. Most productions require the involvement of many people, and thus, are considered collective works. Through necessity, production companies usually hire their contractors, including photographers and cinematographers, under work for hire arrangements. Contribution to a collective work, as well as contribution to a motion picture or audio-visual work, are categories enumerated in the Copyright Act as qualifying for a work for hire – primarily due to the efforts of the film/TV industry.

Multimedia has brought a merger of these two industries, along with a conflict between them regarding rights. This has resulted in two different models for the acquisition and development of content for multimedia – the book publishing model and the film/TV model. Multimedia producers coming from the traditional print industry generally adopt the book publishing model, and are willing to license specific and limited use or consider royalty payments to photographers and other content providers working on assignment. Producers coming from the film and television side tend to use the film/TV model, wanting both to pay a flat fee for the assignment and to own all rights to the material created under a work for hire.

Both models have advantages, although few of those advantages are for photographers and authors under the film/TV model. Content, particularly the ownership of that content, is a primary key in the expanding electronic market place. Large media conglomerates have repeatedly and publicly stressed the importance of content ownership to their stock holders as the industry has expanded so dramatically in recent years. ASMP once again urges all photographers to carefully consider the long term value of copyright before agreeing to transfer ownership of their copyrights to another party.

## **Moral Rights**

Moral rights, which are different from copyrights, give creators the right to control attribution (credit) and the integrity (alteration) of their work. Moral rights protect not only the integrity, but the paternity of the original work of an artist. These rights provide a level of sanctity to artists' original creations. Unfortunately, in the United States, there are currently no moral rights attached to images made for publication. Only fine art works, created for exhibition, and yielding 200 or fewer copies, are eligible to receive moral rights protection in this country.

Generally, the way to enforce your moral rights in the U.S. is through contracts governing the license of your work to your clients. There are two contractual terms which provide for this – photo credits and alteration limitations.

**Photo credits** – these are a key part of the compensation photographers receive for any display of their work. The inclusion of a photographer's credit and/or copyright notice in electronic media, is as simple and basic as it is in print. The aesthetic values are similar, as well. For visual creators, credit lines accompanying published images provide name recognition. They are a key element of one's professional reputation. Readily visible copyright notices also serve to remind the viewing audience that the images are protected under copyright law. Many of the standards for photo credits in print apply

to their use in electronic media. The ease with which digital files can be copied makes the issue of photo credits more important than ever for both types of media. Placement of credits and copyright notices should always be a key element in any licensing or usage negotiation.

It doesn't do a photographer any good to have his or her work seen by millions of people, if those people can't identify the work as having been created by that photographer. Readily visible credits and copyright notices make the difference. Proper attribution of the authorship of photography also further assures the protection of images in the many countries outside the U.S., which have a greater concern and more strict laws governing moral rights.

*Example: Many photographers require that their fees be tripled when their photos are reproduced without proper credits. It is important to stipulate this up front in written contractual terms, however.*

**Alteration** – A photographer might wish to allow a client to alter his or her work where such alteration is customary – such as in advertising use, or to restrict alterations where they are taboo – such as in news reporting. Regardless of whether or not one will allow alteration of one's work, **ALWAYS INSIST ON INDEMNIFICATION FROM THE CLIENT** if the work undergoes any alteration. Appropriate contractual language for dealing with credit and alteration can be found in Chapter 6, "Formalizing Agreements."

## **Ethics**

While there are countless new concerns that have arisen with the advent of electronic and digital technologies, many of these are identical to those which photographers and other creators have faced for years. The digital tools and electronic delivery systems available today simply provide better tools and more opportunities, both for photographers and those who wish to utilize our work. These tools also make it easier to alter and manipulate photographic images without any

visual evidence that changes have been made, which can cause great damage when used for the wrong purposes.

ASMP is opposed to any alteration of the content or meaning of a news photograph. ASMP is also opposed to the undisclosed manipulation of the content of photographs presented as fact in editorial and documentary coverage, or in any other forum where photographs imply truth and fact. We urge all photographers and publishers to exercise caution when considering any alteration of photographic content.

### **Conclusion**

With the continuing advancement of digital and electronic technologies, photographers have entered a whole new realm of usage rights. No longer are volume distribution and reproduction of photographic images limited to traditional print publishers. Electronic media, with their immediate and immense distribution capabilities, are already dwarfing those of traditional print media, and are expected to dominate the market for visual content in the years ahead.

Photographers are visual communicators, content providers and copyright owners, and we have the responsibility to understand these technologies and to serve our clients' changing needs. We must fully comprehend the converging electronic and print markets before we can adequately license our work for publication with complete fairness to both ourselves and our clients.

Talk with your clients. Talk with each other. Learn together. It's a world of opportunity for everyone.

### **About the Author**

Scott Highton is an officer and national director of the American Society of Media Photographers (ASMP). He is the author of a number of industry white papers and has written frequently about digital imaging technologies and multimedia. He is also recognized as one of the pioneers in the field of photographic virtual reality, and works extensively in the multimedia industry.