

OutreachEP Presenter Introductions

Welcome to OutreachEP, the volunteer instructional arm of Editorial Photographers. Thank you for volunteering your time. Our motto is "Photographers Mentoring Photographers" and our goal is to inform as many photographers as possible about the necessity of running a responsible business as an independent photographer. By highlighting the benefits of a usage and licensing fee system, and by pointing out the necessity and the benefits of retaining our copyrights, we hope to enable our clients to receive the images they need now at a price they can afford, as well as to continue to reliably provide them with quality images in the future. By raising the bar for the entire industry, we hope to be able to continue to provide creative images for our clients for many years to come. But without such education, we believe that photographers will continue to feel the need to compete with each other on price alone, thereby making the market unprofitable for any of us, and driving down the numbers and quality of images to which our clients have access.

OutreachEP is working hard to establish a nationwide network of volunteers, all EP members, who are available to speak in art and photo schools, camera clubs, community colleges, professional groups, and other venues, and thereby begin to change the way in which images are bought and sold. Ideally, participants will come to us and ask us to speak to their group. In reality however, we expect to have to generate interest and audiences through our own efforts. As a volunteer presenter, you will be asked to seek out and address 40 people per year. If each of us speaks to 40 people, we could conceivably address thousands of students and working pros each and every year. If you speak to just one large class, that would fill your allotment for the year. More likely, you will need to speak to two or three groups to reach 40 participants. It's up to you to try to generate interest in our seminars. Try contacting local art and photo schools and ask if they offer a class in business practices; contact camera clubs, local professional organizations, freelance assistants, even employee colleagues. If you are already a photo instructor, add a new, single session class to attract students, or incorporate this info into an existing class. We don't care how you do it as long as we are reaching our targeted audience of, "photographers who participate in, or who might soon participate in, the making of photographs for profit."

In this packet you will find an outline for our short seminar, as well as several accompanying handouts. The outline is divided into six parts. Depending on your audience, you will pick and choose which parts to present. Some parts cover similar topics, but are intended for different audiences while other parts are to be given to every group. The outlines are fairly complete and should enable you to give an informed presentation right from the get-go. Please take a little time the day before your presentation to familiarize yourself with the information. Our goal is a lively and informative seminar given by a confident and well-prepared presenter. If you have personal anecdotes or experiences that you feel will help get the message across, by all means use them; but please, try to stick to the defined outline. You will also need to make some photocopies of the handouts for distributing to participants. There are only three handouts totaling five pages so the cost should be minimal – about \$10 for a year's worth of participants. We have purposely kept the amount of passed out information to a minimum so as to avoid overwhelming anybody. If participants would like more information, or if

someone has a question you cannot answer, direct them to the EP website where all of this information, as well as much more, will be archived.

Again, our goal is to offer, explain, and encourage sound business practices among those who participate in, or who might soon participate in (even part time), the making of photographs for profit. By doing so, we hope to raise the standards for running a business among all photographers and thereby benefit the entire industry. Specifically, we will encourage anyone entering the field to recognize the options available to them, including: 1) the differences between being an employee and being employed; and 2) best and worst ways to make a sale. For those already working in the field, we will try to help them to: 1) uncover hidden costs; and 2) negotiate sales that are fair, reasonable, and non-confrontational for all parties. And finally, we will impress upon our whole audience: 3) the importance of safeguarding their images and their rights through copyright registration.

Thank you again for volunteering your time. Please take some time to read through this packet and prepare yourself for your seminar ahead of time. Again, direct as many participants as possible to the EP site for more information, or to join the forum if appropriate. The sooner we begin to reach out to other photographers, the sooner we can hope to see beneficial changes in the way we all are forced to do business.



OutreachEP Seminar Overview

The following outline is brief and intended as an overview of the program only. See the more detailed individual sections for a script to follow when presenting. Each Part should take 10-15 minutes to present, so plan accordingly. Don't forget to allow time for questions.

Parts 1.1 & 1.2 are intended for photo students and others who are not yet working in the field.

Use these two sections when addressing students, camera clubs, and any audience that is thinking of getting into the field, then skip to Part 3.

Parts 2.1 & 2.2 cover similar topics, but are directed at photographers who are already working in the field as self-employed freelancers, either full time or part time. Skip parts 1.1 and 1.2 when addressing groups of working professionals, and use parts 2.1 and 2.2 instead, then continue to Part 3.

Part 3 covers copyright basics and should be brought up in every seminar, for all audiences.

When using parts 1.1 and 1.2, and for any other programs with limited time, you should omit section 3.B.2. For working pros and those who need to understand a little more about copyright, use all of Part 3. If your audience heard Parts 1.1, 1.2, and 3, you are now done. If your audience heard Parts 2.1, 2.2, and 3, and if time allows, you should continue on to Part 4.

Part 4 is an optional section to be included as time allows and is intended for those already working in the field. It reinforces the importance of proper business practices and gives financial examples that working pros should relate to.

Part 1.1-Employee vs. Employer (for those audiences not yet working in the field)

A) Employee – ***terms handout***

- 1) Editorial
- 2) Corporate / commercial
- 3) Academic

B) Self-employed

- 1) Assisting
- 2) Editorial
- 3) Corporate / commercial
- 4) Advertising
- 5) Fine art – galleries, shows, teaching

C) Trade-off's

- 1) Employee plusses and minuses
- 2) self-employed plusses and minuses

Proceed to Part 1.2

Part 1.2 – Making the sale: you get what you give; OR, Things to keep in mind when you make your first sale (for those audiences not yet working in the field)

We have two primary goals: A) maintain ownership of images and B) fair rates

- A) Licensing is not selling
 - 1) Intellectual property and copyright law
 - 2) Lower initial fees than corp. or advert. work
 - 3) standard edit. license for stock or assig. should be one-time, N.A., print rights only
 - 4) Owning our copyrights provides future income
- B) Fair rates are based on initial fee against space and greater fees for greater benefit
 - 1) stagnant photo fees vs. increased ad revenue
 - 2) concept of space rate for stock sales and assignment work
 - 3) higher fee for greater use – if the user gains added benefit, so should we
- C) Standard pitfalls – look before you leap
 - 1) "red flag" terms and arguments
- D) don't be afraid to negotiate or walk away
 - 1) they want what you have
 - 2) there is "value" to exposure, but you can't pay your bills with it
 - 3) dangers of being a low-budget shooter
 - 4) effects on the industry as a whole
- E) contracts and paperwork – direct them to the EP site for examples of paperwork

Skip to Part 3

Part 2.1-The realities of being self-employed (for those audiences currently selling images as self-employed – full or part time)

- A) Benefits corporations as well as us, yet we still need to make money – **terms handout**
- B) time spent shooting vs. other things
 - 1) Business development
 - 2) image management
 - 3) continuing education
 - 4) general office work
 - 5) only approximately 15% will be shooting time that is directly billable
- C) a cost-of-doing-business demonstration – **CDB Worksheet handout**
 - 1) figure out total overhead
 - a) divide by 250 days
 - b) divide by the # of days you can reasonably expect to shoot
 - 2) now add in a salary of \$30k, \$50k, \$75k
 - 3) compare these numbers with what various mag's are offering
 - 4) pass out a worksheet for everyone to fill in at home to determine their CDB

Proceed to Part 2.2

Part 2.2 - working for win / win situations – we know what we want now how do we get it?
(for those audiences currently selling images as self-employed – full or part time)

Two goals: A) fair rates and B) maintain ownership of images

- A) Fair rates are fee vs. space and greater fees for greater benefit
 - 1) examples of stagnant photo fees vs. increased ad revenue
 - 2) concept of space rate
 - 3) additional fees for add'l uses
- B) Why we maintain our copyright
 - 1) It's the law

- 2) provide future income
- C) How we go about reaching win / win
 - 1) First, we have to state what we want: contracts, T&C, and the paper trail
 - 2) What a complete contract should contain
 - 3) Pitfalls of unfair contracts
 - 4) Finally, we have to be willing to negotiate changes – how we do that

Proceed to Part 3

Part 3 - How we're in a better position and can make a better living by protecting ourselves through copyright

- A) copyright defined and it's intention – **Copyright handout**
- B) why it's important to register
- C) how to register

Proceed to Part 4 as appropriate and as time allows

Part 4 – Improving our Business Practices and Safeguarding our Income

- A) Step-by-step job process
 - 1) first call, gather info
 - 2) estimate
 - 3) confirmation / contract
 - 4) execution of job
 - 5) delivery
 - 6) invoice – be sure to get a signed copy if you've not gotten a signature yet
 - 7) follow-up
- B) Reprints & other add'l uses – **Photographers A, B, & C handout**
 - 1) who is the client? what is the use?
 - 2) advert. vs. editorial
 - 3) determine the rate
 - 4) remember, these rates are only possible if you 1) retain your copyright and 2) specify and enforce specific, limited uses w/ your terms, estimate, and invoice



Business & Contract Terminology for Photographers

"All media known or unknown" – a contract term designed to escape paying for every use of a photograph. It is acceptable to have one fee that covers several media, such as print and Web, or Web and CD-Rom, (see "rights package") but each use should be specifically listed. To claim the right to use an image in any media format NOT specifically listed conflicts with the Copyright Law's intention (see "copyright" below). To claim the right to reproduce the photograph in a media format as-yet-undeveloped is just silly. Why would a photographer ever want to grant that right away?

"All rights in perpetuity" – a contract term which equates to work-for-hire (see below). Work under a contract which uses this clause, and you are agreeing to, in effect, share your ownership (copyright) in anything you create while being paid by your client. Your client will have equal access to, and use of, your images. Not only can they do whatever they want with your images, without additional payment or even permission, but they can even compete with you by reselling your images for a lower price than you would charge.

Assignment – an agreement between a photographer and a client whereby the photographer shoots to the client's specifications and agrees to certain uses of the image(s), in return for a fee plus reimbursement of expenses. All assignments should be confirmed with a contract (see below).

Business Plan – For the small business owner, a business plan is a set of documents that describe who you are, what you do, how you intend to do it, and what you need in order to accomplish your goals. Financial institutions or independent investors use business plans to evaluate the potential for success when you come to them for loans. More importantly, a business plan should work like a road map for your future.

Contract – a legal document that lays out in writing the obligations of each party signing the contract. In order to be most enforceable, a contract must have three things: 1) it must be a "meeting of the minds" in other words, both parties must agree to the terms. If one party is pressured into signing, it is labeled a "contract of adhesion" and can be argued to be invalid; 2) there must be an exchange of goods or money in return for services rendered; 3) both parties must sign the contract. By implication, every contract must be negotiable. Otherwise, it is a one-sided contract and therefore a contract of adhesion.

Copyright – the legal concept that once an original expression of a creative process is fixed in a tangible medium, that expression belongs to the creator (not the person paying the fee) who has the exclusive right to control and authorize its reproduction, distribution (by sale, rental, lease, or lending), public display or performance, or derivation. (US Code, title 17, sec. 106)

Copyright infringement – a use other than one specifically authorized by the copyright holder

Copyright registration – the act of paying a small fee and submitting a copy (copies) of your work to the US Copyright Office for registration. The copies are kept on file and in the public record to reference for any future disputes and for assessing any penalties.

Cost-of-doing-business (CDB) – this is the amount of money that is required for you to operate your business, regardless of your number of clients, and is generally expressed as an amount per day. To find your CDB, add up all of the factors that make up your overhead (see below), and divide by the number of days you are "open for business" in a year. 250 days is a standard number (5 days x 52 weeks – 2 weeks vacation), but not very generous. Remember, this is what it will cost you EVERY day and may or may not include your salary (depending on how you figure your overhead), yet you cannot expect to earn income every day, unlike a salaried employee who earns a regular paycheck.

Creative fee – this is the fee that a photographer charges for conceiving and creating images and takes into account creativity, experience, degree of difficulty, specialized equipment, and perhaps usage (although usage may be a separate line item). This term reflects photographer's desires to be paid based on our experience, our ability, and on the benefit gained by the client from using the fruits of our creative processes, rather than simply on how long we work.

Day rate – an out-of-date term that we use to signify the minimum amount a photographer would be paid when shooting for an editorial client, with additional money owed if multiple images were used or if images were used particularly large (see "space rate"). The term has come to mean the flat rate that photographers are offered for shooting for a publication, and disregards experience, ability, degree of difficulty, and benefit gained by the client. When being paid solely for our time, it can also lead to arguments over full and half days, and even hourly rates. Most day rates are barely enough to cover our CDB (see above), never mind make a profit. As professionals, we should be compensated for our creativity (see creative fee above) and for the benefit gained by our clients from using our images (see space rate).

Delivery memo – an important part of the paper trail (see below) that should accompany any image that leaves your files. It officially places your image(s) in the care of another person and binds them to abide by your Terms and Conditions (see below). It also enables you to keep track all of your images and know their location at any given time.

Embargo periods – a period of time often requested by publishers during which you agree not to re-license an image. Embargoes can be complete, meaning no re-sales whatsoever of the image or any similar, or they may be limited to only competing publications, or by geography, for example. Limited embargoes are a legitimate request for assigned work (see above), especially for news and event coverage, but embargoes for stock sales (see below) are simply trying to claim exclusivity (see below) that should instead generate additional compensation for the photographer.

Employee – a status that for photographers means you do not own the copyright to your images. Most, if not all, employment contracts stipulate that because the employer is paying your salary and all of your expenses, they own the copyright to any images you create while working for them. However, in exchange, you do receive a regular salary, with benefits, sick days, paid vacation, and a retirement plan – all options not available to you as an independent contractor (see below).

Estimate – another important part of the paper trail that lays out, in writing and before the shoot, the exact parameters of a prospective job, the ultimate usage of the images (including size and number of insertions, media format, circulation or print run, any geographic limitations, exclusivity, and length of use), and the fees you will be charging. If both parties agree to and sign the estimate, it becomes a contract (see above).

Exclusivity – a description of rights granted which refers to your ability to re-license the image to another client. If you grant your client exclusive rights to an image, you are agreeing not to re-license that image to anyone else. Exclusivity can have limitations of time, geography, or topic, for instance, but in all instances any grant of exclusivity should receive additional compensation.

Fair use doctrine – the part of the US Copyright Law which states that certain uses of otherwise copyrighted material are not considered infringements. These "fair uses" cover the free-sharing of information for scholarship, research, teaching, and news reporting, among others, but also must take into account the use's effect on the, "potential market for or value of the copyrighted work" (US Code, title 17, section 107).

Incorporation – The most complicated form of doing business, but worth the additional trouble and expense if your business generates enough income to make the services of an accountant and lawyer worthwhile. Incorporation can provide some tax advantages to small businesses. The business is taxed separately from the owners and/or stockholders. Incorporation can also provide a "corporate shield" against personal liability. Corporations must be registered with your state government.

Indemnification clauses – these clauses within contracts ask one or both parties to release the other party from responsibility should a certain act occur. Indemnity clauses usually read, "...agree to indemnify and hold harmless..." As with warranties (see below), we need to be very careful that what we are indemnifying against we actually have control over. When signing a contract, you never want to pledge yourself to a certain action in response to another action or event over which you have no control.

Independent contractor – a non-employee (see employee above) who is hired by a company for a specific project or time-frame, to complete a certain task. Unless stated otherwise in the contract between contractor and company (see work-for-hire and all-rights below and above), the independent contractor retains the copyright to all works created while working on behalf of the company, per Copyright Law. Independent contractors do not get the benefits of being an employee of the company, such as access to insurance and benefit programs, paid sick or vacation days, or even regular paychecks. They do, however, set their own hours and make their own business decisions. Therefore, as independent contractors, freelance photographers need to maintain control of their copyrights in order to maximize income and to offset the added expenses of being self-employed (see below).

Invoice – a bill. Invoices are requests to be paid for services rendered. They are the last step of the paper trail and lead to the conclusion of the contract. Standard business practices are to pay all invoices within thirty days. Many photographers request payment sooner, within 21 or even 14 days, while many businesses try to pay on 45, 60, or even 90 day schedules. As with all parts of a contract, the amount of time to pay is negotiable, but should be stated clearly in your Terms & Conditions (see below).

Liability clauses – a clause in a contract whereby one party agrees to accept responsibility, legal and/or financial, for a certain action(s). As with warranties and indemnities (see above and below), we want to be careful not to accept liability for any action over which we have no control. Then, because accidents do happen even when we have control, smart businesspeople, especially sole proprietors (see below) have liability insurance to protect them financially in the event of a mistake.

License (noun) – because we as copyright holders have the sole right to control the distribution of our work by, "sale, lease, rental, or lending", a license is a contract which grants the right to use an image in a certain way, in a certain place, for a certain period of time, to someone else. A license should specifically state how large the image may be used, how many times, in what specific media format(s), and for how long. It should also state any exclusivity (see above) restrictions, or should state "non-exclusive". All rights not specifically granted remain with the copyright holder, and a clause to that effect should also be a part of any license.

License (verb) – to license an image is simply to grant a license (see above) for its temporary use. As photographers, we should license images for use, not sell them outright.

Model release warranties – a warranty (see below) that, in effect, asks us to guarantee that the client will never be sued for using an image of a person or thing. As with any guarantee that is beyond our control, this is an unreasonable request. As part of a contract, we might reasonably be asked to provide a signed release from the subject on request, and even to testify on the client's behalf should a case go to trial (provided we are compensated for our time), but we should not be asked to warrant that over which we have no control.

Negotiate – to compromise; the process of each side giving up something in return for another. All contracts (see above), by definition, must be negotiable or they are considered one-sided and a "contract of adhesion", and can be invalidated.

Overhead – Overhead is the sum of all expenses you generate to operate your business, regardless of the number of clients, and includes rent, utilities, inventory, equipment and repairs, advertising and marketing, business loans, travel, labor, insurance, training and education, etc.. Keeping overhead manageable is a critical part of operating an efficient and competitive business. As a sole proprietor, you may choose to include your own salary in your overhead or not. If you do, then any money left over after covering your overhead is profit (see below) to use to grow your business. If you do not, then money left over would be considered net income, not profit, and must be divided between paying yourself and growing your business.

Paper trail – the collection of all documents generated for a given job. At the very least, the paper trail for assignments should include: estimate, contract, delivery memo, invoice and usage license, proof of payment, and terms & conditions (see above and below). A paper trail for a stock sale (see below) would omit the estimate, and the contract and usage license might be one and the same, as you are not providing a service, merely licensing the use of an image. Appropriate pieces of the paper trail should be signed by both parties (contract, delivery memo, invoice) and the accumulated paper trail for every job should be archived for future reference. See the EP website, www.editorialphoto.com, for a complete example.

Partnerships – Partnerships are like sole proprietorships in that income is reported through the individual partners; the partnership business is not taxed separately. Liability is also similar. The only reason to have a partnership is to create a stronger business, by combining resources, than you can alone. Good communication is absolutely essential, and all business related issues should be resolved in writing before the partnership is created. Bookkeeping, accounting and tax returns will be more complicated and costly. You should consult a small business lawyer before entering into a partnership agreement.

Profit – Profit is revenue minus all expenses, including salary. Profit is that portion of your revenue that should be used to grow your business. Profit is usually generated as a percentage mark-up on expenses and billable items. For example, if you mark up a \$10.00 item by 30%, the client pays \$13.00. The three dollar profit, minus any taxes you will have to pay, is money used to grow your business.

Reprints -- Reprints are magazine articles that are reprinted and repackaged by the magazine on behalf of the subject, and then used as advertising by the subjects. Publishers charge many thousands of dollars for reprints as they understand their value to the subject client. As photographs make up a valuable part of any story, photographers should be partially compensated for this use as well. Future reprint rights should be excluded from any editorial assignment contract between publisher and photographer and should be negotiated based on the higher rates for advertising use that they represent.

Revenue – Revenue is your total, or gross, income. It includes creative and licensing fees, billable expenses, and mark-up. If you are a sole proprietor, and will be filing a Schedule C with the IRS, the gross income from your business, minus business expenses and all allowable deductions, is totaled with any additional income from other sources. It is very important that you can compute, at any time, the revenue of your business and be able to distinguish profit and salary from each other.

"Right to assign, transfer or sell" – terms of a contract that allow a client to pass your photos around, or even to sell it in direct competition with you, to affiliated or non-affiliated publications or clients, without compensation. These terms are most common where a publication has multiple editions, say in other countries, or where a publisher wants to share images among many of its magazines, or even into its book division. However, photographers should realize that the right to distribute their images rests solely with them, as per the US Copyright Law, and should charge additional fees for each added use. Offering to bundle multiple uses of the same image into a rights package (see below), is an alternative to this clause.

Rights package – an offer to bundle multiple uses of one or more images into a single fee, usually at a discount from purchasing all the rights separately. For instance, if you would normally charge \$600 for a print use and \$300 for Web use, you might offer a rights package that charges only \$750 if the client purchases both at the same time. Rights packages are a valuable negotiating tool, as both parties give something up, but also gain in return.

Rights transfer (copyright transfer) – a term which means you are relinquishing all your rights in an image(s) and turning them over to someone else. You are giving up your copyright to, all control of, and the right to profit from, your image(s). Some contracts try to claim that by allowing the printing of your image by XYZ, or by being paid for a day's work by XYZ, you are executing a rights transfer to your work. Nothing is further from the truth, unless you sign a contract that says you will. Unless XYZ is willing to (very) generously compensate you for all lost future income from the rights transfer of that image, you should refuse to accept this term in a contract.

Salary – Salary is the money you pay yourself and/or your employees, and is generally derived primarily from creative and licensing fees. Salary determines your standard of living. If you include profit in salary, you are depriving your business of the money it needs to prosper. If you dedicate profit to your business, but your salary is inadequate, you need to examine the creative fees you are charging clients and/or the number of jobs you are completing.

Self-employed – a term that indicates that you are your own employer and are responsible for your own overhead and salary (see both above), both the employee's and employer's share of all applicable taxes, as well as any liability incurred by your actions. If you are self-employed, and you are hired by another company to complete a project, then you are an independent contractor (see above) in relation to that company. See also work-for-hire.

Sole proprietorship – The most common form of small business ownership. Revenue, minus business expenses and other allowable deductions, is passed through your individual federal income tax return on a Schedule C. The business does not pay separate corporate income taxes, but neither can it protect you from liability. Defaulting on business loans or expenses will therefore be a mark on your personal credit history. Adequate liability insurance is also a necessity. You will still need a business license and might pay other forms of business taxes to your city, county, or state.

Space rate – a rate of compensation tied to how much space (1/4 page, full page, etc.) our photos occupy and preferred by photographers as compensation is directly tied to the benefit gained by a client from using our images. Editorial assignments all used to be billed with the day rate (see above) as a guaranteed minimum against the space rate. In other words, if the day rate were \$650, but the publication ran one photo at half page size worth \$500 and a second photo at quarter page size worth \$300, then the photographer would be due an additional \$150 ($500+300-650=150$) upon publication. In a system where advertising rates are billed based upon how large an ad runs, it is only fair that photographers also be paid for how large a photo runs. If a client gets more benefit by running the image larger, then the photographer should be compensated accordingly.

Spec – abbreviation for speculation, as in "shooting on spec" and means agreeing to create images to a client's specific terms, without a contract or a guarantee of payment. While there is nothing wrong with shooting images to build a stock library (see below) and submitting those for consideration, photographers should not allow a potential client's current requirements to dictate the shoot at the expense of variety and potential future sales, without a guarantee of payment (see "assignment" above). If a client wants or needs specific images badly enough, they will give out an assignment. Shooting on spec rarely turns a profit as the photographer must also cover all the expenses, rather than being paid an assignment fee plus expenses as a minimum against space rate (see above).

Stock sale – the licensing of an image from a pre-existing collection of images, or stock. Stock images may be generated by shooting assignments, or they may be created by the photographer specifically for building a stock library. Residual income generated from stock sales is one of the primary reasons for photographers to retain the copyright to their images. A single image may be re-licensed again and again over the years as a stock image, thereby resulting in thousands of dollars for the photographer.

Success – Success means operating your business in an ethically profitable manner and earning the profit you need to grow your business and maintain your standard of living. It means realizing your potential as a business owner and as an image maker. It means enabling yourself to make a contribution to your community and to your profession, and earning the respect of your peers.

Terms & Conditions – this is the "fine print", the collection of conditions under which you agree to do business with other parties. Your Terms & Conditions should be clearly stated and included on all parts of the paper trail (see above). Therefore, by signing and agreeing to

your contract, for instance, a client also agrees to various conditions such as paying within thirty days, or being responsible for your original images while they are in their possession. See the EP website, www.editorialphoto.com, for a complete example.

Unauthorized use – the use of an image for which a specific license has not been granted. Remember, a use must be specifically granted, otherwise it remains with the copyright holder. The law is very clear: it is up to the end-user to obtain a license to use a copyrighted work before doing so, otherwise the use is unauthorized.

Usage – how, where, and for how long a copyrighted work has been licensed to an end-user by the copyright holder.

Warranties– these clauses within contracts ask one or both parties to pledge that some act or circumstance will or will not occur. These clauses may or may not be reasonable when the acts or circumstances are within our control, for instance when we are asked to warrant that the photographs will be original and that we are the exclusive copyright holder. This protects the publisher from an unethical photographer who steals another's work and then sells it as his own, for example. However, if we are asked to warrant against anything that involves a third party, for instance, "...will not infringe upon the personal or proprietary rights of or give rise to any claim by any third party", we may end up being held liable for something we could not control and we should not be asked to guarantee that.

Work-for-Hire – a contract term which signifies that all work being done under the contract becomes the property of the person paying for it, not of the creator. It converts the creator's status from independent contractor (see above) to employee. It is an "employee-for-a-day" status, yet almost always fails to compensate us for self-employment expenses such as employment taxes and liability coverage, and for missed employee benefits like insurance programs, bonuses, and retirement programs which the photographer must continue to supply for him/her self. Being self-employed and therefore responsible for all of our own overhead, as well as our own insurance and retirement programs, freelance photographers need to retain control of our copyrights to provide future income and should therefore think carefully before agreeing to any contract which stipulates work-for-hire, all-rights, or rights transfer (see above).