

Usage Fees and Image Licencing

Licensing and the Usage Calculator

When the photographer is originally approached with a possible commission, great care needs to be taken in assessing the exact needs of the client, because the costing is dependant on this information.

In the UK, the photographer's fee normally includes the first use of the images, but the duration, media and territory are frequently negotiated within this fee. Factors such as the experience of the photographer and the desirability of the commission may affect the negotiated day rate.

The majority of photographers will include some usage in their fee (see below), others will charge a set day rate and charge usage on top.

Licensing

The initial Licence

The originally negotiated fee would normally include the following:

- 1 Year UK or any single country - any two media (3rd media may be included depending on its proportion of the media spend), or;
- 2 Years UK or any single country - any one media.

The licence begins on 1st insertion and 1st insertion can be expected within 6 months of the delivery of the finished job to the agency/client. It is suggested that work should be licensed for a minimum period of 6 months at a negotiated day-rate. Less than 6 months in an advertising context is not realistic, however, for web use, where the images will be taken down as soon as the licence expires, a lesser period may be negotiated.

Exclusivity

Standard trade practice, with reference to the original commission, will give the client exclusivity for the period of time, in the specific territories agreed and included in the fee.

Clients and advertising agencies are concerned that the images they commission, and for which they pay the origination expenses, should not fall into the hands of competitors or become associated with other products after the initial licence period has finished. To prevent this, it has been suggested that the photographer should not licence the images further, for example through a library, without client and agency permission, for four years after the end of the licence (unless otherwise agreed).

The sensitivity of the subject matter should always be taken into consideration, for example, an image that could be used to good effect by a competitor of the original client. Where material is not sensitive, it is unlikely that an agency or their client would withhold this permission. This should be negotiated with the individual agency/client before the shoot takes place, as should other related issues such as confidentiality.

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

On expiry of the initial exclusivity period, the commissioner should be offered first option to extend the exclusivity clause at a negotiated rate.

Calculating Usage

Setting the BUR (Base Usage Rate)

To prevent misunderstandings when negotiating usage fees, and to enable the client to budget accordingly, it has been suggested that a Base Usage Rate (BUR) be established.

The BUR is the starting point for negotiating use of the work over and above any media, territory and time period included in the fee, and should be clearly stated on the photographer's original estimate. It is the figure to which other factors are applied by means of percentages in the Usage Calculator and is not to be confused with the figure negotiated for the fee.

It is suggested that the BUR should never be less than the negotiated daily fee, and should be pitched according to the expertise of the photographer and the amount of input and involvement required on the shoot from the photographer.

When a photographer is doing a 'budget' job and the cost of the initial work for the client is charged at less than their normal day rate, it is expected that the BUR be set at the figure they would normally charge as a fee for that type of commission. This figure will then be used to calculate any extra usage.

When several images from a single day's shoot ie. the same subject or variations from a single shoot, are used by the commissioner, then each individual image could be subject to it's own BUR.

Using the Calculator

Using the BUR, all use (not included in the fee) can be estimated by using the usage calculator – duration, media and territory. The calculator was produced as a result of discussions between photographers and photographers' agents, and overseen by art buyers. These are not recommendations, but are provided as guidelines for negotiation based on current trade practice.

The Calculator is not exhaustive, requests for media not shown can be negotiated by using a similar media with the same style of distribution or viewing. Merchandising should be negotiated separately and the licence cost could be based on a % of each sale (royalty).

Individual Countries

Countries have been graded by their GDP and then banded from A+ to D with a different percentage allocated to each band. For example the United States is an A+ country, this band has 150% for extra use attached to it – so additional use in the US would cost 150% of the BUR. The list of countries, the band and percentage allocated to them is called Country Grading by GDP.

Geographic terms and acronyms

The listings under Territory Options show which countries are included in various geographic areas, and in the various acronyms being used by agencies and clients to bundle areas together.

Above and below the line

Instead of asking for specific media, many clients will ask for Above the Line or Below the Line media to be licensed. These two categories are becoming common parlance, but there is no definitive description as to which media should belong in each and this can cause confusion as to what the photographer needs to licence. In the 1st instance, photographers

are advised to ask the client what media they actually need to ensure they can price the licence fairly.

The following list is not exhaustive, but gives an idea as to which media should belong in each category, and has been developed through experience of negotiating licences by Photographic Agents:

Above the Line

Ambient

Internet

OOH (Out of Home)

Point of Sale

Posters

Press

TV (Including interactive)

Below the Line

Brochures

Collateral

Direct Mail

Intranet

Marketing Aids

PR

Internet

Whilst the Internet is global by its very nature, not all websites will be of interest to the wider community. Most companies, regardless of their size, will have a web presence and so licensing Internet use generically is no longer feasible. It is advised that the kind of business; viewing market; and the relevance in the worldwide market place of each client be taken into consideration before pricing a license. Many smaller/provincial companies presence is 90% web based and photographers may wish to include web use for this type of client within the original fee. The Calculator guidelines include a BUR % by country, as well as worldwide, to reflect this.

Assigning copyright

Many clients still want to obtain copyright from the photographer for a variety of reasons, the main ones being a lack of 'copyright' understanding and the fear of having to spend more money for further use.

In principle, we are opposed to the assignment of copyright. However, we recognise that agencies sometimes need to negotiate a fee covering any future use of the photographs without continuous reference to the photographer (who owns and should continue to own the copyright).

In such cases, the Licence to Use will specify "All Media: print and digital" under Media Use, the Territory will be "Worldwide" and the Time Period will be "Unlimited" (copyright will remain with the Photographer).

The licence will be exclusive to the Agency/Client and will cover all uses of the photography in relation to the product named on the licence. The photographer retains the right to use the photographs for promoting his/her own work. An All-Uses licence is still subject to the general Terms and Conditions and therefore does not permit use in relation to another product or sub-licensing, for example to a photo library. Neither can it be sold on as an asset of the company if the client goes into liquidation – at this point the licence would revert back to the photographer.

There is no hard and fast rule for pricing this. You would have to judge it based on how much the image is worth to you, the budget that your client has and how good the actual image is. You need to consider a few things. Is the image one that is very specific to them? Is it one that you could sell again as it is more generic? Does the client have a realistic budget? What is the image actually worth?

Generally the only time we would give unlimited copyright to a client is if the shot was taken specifically for them and was, for example, of a product that they manufactured and there is little further use of the image possible. In these cases we generally just allow the client to have full copyright without charging any extra beyond the agreed day rate.

Remember, as Karl talks about in both part 2 and part 3, only some clients will pay a usage fee. Generally usage fees only apply to national or international campaigns. If it is an image you for a smaller client, you may only be able to work to a day rate that includes your time and gives the client exclusive rights for a specified period. Karl often works to a two year exclusive period so that the full copyright returns to you the photographer after this period and then allows you to earn further revenue from that image as a stock shot.

If it is a stock shot they would like to purchase from you then the usage calculator can be useful for calculating licensing fees for the given period. However there is general rule as to "an image is worth this much", this is only something that you as the photographer have to judge depending on the market, the client, the quality of the photo and what you believe the image could be worth now and in the future.