



**Artist Management
Association**

Copyrights Part One: Editorial Contracts

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About Us

BILL HANNIGAN

Bill Hannigan is the founder of two premium licensing agencies, [AUGUST](#) and [OTTO](#). He was also a photographers' agent for more than a decade.

EMILIE PITTS

Emilie Pitts is an intellectual property attorney representing artists and organizations with a focus on advocacy, contracts negotiations, and copyright protections.

Part One: Editorial Contracts

A CONTRACT IS A MEETING OF THE MINDS

The base of all negotiations with brands and publications begins with the agreed upon terms.

Part Two: Infringements

WHEN A BRAND OR THIRD PARTY USES ANY IMAGE WITHOUT PERMISSION, IT CONSTITUTES COPYRIGHT INFRINGEMENT

There are various ways to protect, respond and settle these claims in an amicable way that will benefit your artist.

Contents

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STRATEGIC NEGOTIATIONS

TYPES OF EDITORIAL AGREEMENTS

INDIVIDUAL SECTIONS

FINAL OVERVIEW + QUESTIONS

Contract Evolution

A SHIFT IN THE BALANCE OF EQUITY BETWEEN PHOTOGRAPHERS AND PUBLICATIONS

Contracts have been an ongoing evolution over decades with the balance of equity shifting at certain points.

Prior to a change in copyright law in 1976 most photographers doing large bodies of editorial work were on staff with publishers. Photographers such as Irving Penn, Cecil Beaton and Louise Dahl-Wolfe were all on staff for large parts of their careers. The exchange was a guaranteed salary and stability and the publishers owned the work.

After this shifted the new industry standard was a balance of photographers being hired as freelancers. The creative fee or day rate was and is a nominal fee in exchange for the photographer retaining full copyright of the work. The publisher covers the expenses of production and in exchange was granted a one-time exclusive right of first publication and an embargo period. Photographers then were paid for each future use, license, of their work going forward, including by the commissioning publisher.

Contract Evolution

Starting about 15 years ago the contract terms started to shift. More rights were granted to the publishers for broader use of the work and future use of the work.

The arrival of online media negatively impacts most publishers and the print industry. Then, after the recession in 2008, with the editorial market shrinking even more the contract terms start to tip much more in favor of the publishers.

In recent years this trajectory had continued and today the trends are all pointing to an imbalance in editorial contracts. Now, photographers still get paid nominal fees, often invest their own funds into production to offset reduced budgets, and publishers are asking for more and more rights to the work.

There is now an imbalance in the model.

Strategic Negotiations

WHAT TO AIM FOR AND HOW TO MAKE IT MORE EQUITABLE FOR YOUR ARTIST

THE GOAL IN NEGOTIATING ANY CONTRACT IS TO STRIKE A FAIR AND EQUITABLE BALANCE.

This is becoming more difficult as more and more publishers adopt a “take it or leave it” approach and refuse to alter agreements.

However, if publishers are met with common concerns and requests hopefully this will change.

When negotiating it is key to be mindful of the needs of the publisher or magazine in practice in relation to the language of the contract. In many instances the contract asks for terms or rights that won't be exercised and if excluded can strike a better balance for the artist.

Look to others in the industry for knowledge and support, such as other agents, syndication agents or knowledgeable attorneys.

Strategic Negotiations

| COMMISSIONED WORK V. NON-COMMISSIONED WORK

ALWAYS HAVE A TEMPLATE AGREEMENT ON HAND IF A MAGAZINE WOULD LIKE TO PUBLISH WORK THAT WAS NOT ORIGINALLY COMMISSIONED

EXCLUSIVITY VS. NON-EXCLUSIVITY WILL AFFECT THE FEE ON NON-COMMISSIONED WORK

IF NON-COMMISSIONED, THE BURDEN FOR PROVIDING RELEASES, ETC. SHIFTS TO THE PHOTOGRAPHER
(NOTE: SYNDICATION AGENCIES HANDLE THIS)

|| COVER V. INSIDE STORY

WILL HAVE MORE FLEXIBILITY WITH FUTURE USE OF THE WORK IF IT IS AN INSIDE STORY

OFTENTIMES, PUBLICATIONS OWN THE RIGHTS TO THE WORK WITH COVER LINE

Strategic Negotiations

III MASTER AGREEMENTS V. PROJECT-BASED AGREEMENTS

MASTER AGREEMENTS MAKE SENSE FOR ONGOING CLIENTS, IF THE TERMS ARE FAVORABLE TO YOUR ARTIST, OR IF YOU HAVE MULTIPLE AGREEMENTS WITH A PUBLICATION FOR MANY ARTISTS ON YOUR ROSTER

UP TO YOU IF YOU DECIDE TO PURSUE AN EDITORIAL WITHOUT AN AGREEMENT OR FAVORABLE TERMS - MAY BE MORE FAVORABLE TO YOUR ARTIST TO DO THE EDITORIAL AS WFH THAN NOT AT ALL.

IF BOTH PARTIES CANNOT COME TO TERMS (OR A FEE) THAT IS MUTUALLY AGREEABLE, YOU COULD ENTER INTO ONE-TIME PROJECT BASED AGREEMENT AND ADD A TERM THAT PREVENTS THAT CONTRACT FROM BEING USED AS PRECEDENT

Strategic Negotiations

|V ADDITIONAL POINTS

IT IS OFTEN JUST AS IMPORTANT TO DEFINE WHAT RIGHTS ARE NOT GRANTED IN THE AGREEMENT VS. THE ONES THAT ARE

ALWAYS IMPORTANT TO INTEGRATE YOUR TERMS AND CONDITIONS INTO THE AGREEMENT OR A TERM THAT ALLOWS FOR THE ESTIMATE AND THE AGREEMENT TO CO-EXIST

USE YOUR T&C AS A GUIDE TO THE AGREEMENT

ALWAYS HAVE A SIGNED ESTIMATE, EVEN IF THEY PROVIDE AN AGREEMENT AND HERE ARE NO MONETARY CONTRIBUTIONS FROM THE MAGAZINE FOR PRODUCTION OR FEES

Strategic Negotiations

LEGAL TERMS

AGENT TERMS

WORK FOR HIRE

SERVICES (SHOT COUNT)

EXCLUSIVITY + TIME PERIOD

FEE

THIRD PARTY RIGHTS / SUB-LICENSING

MODIFICATIONS / POST- PRODUCTION

PROMOTION

EXPENSES / PRODUCTION COSTS

NON-COMPETE

PRE-APPROVED NAME & LIKENESS

WARRANTY & INDEMNIFICATION

CREDITING

Strategic Negotiations

LANGUAGE TO INCLUDE AS A BACKSTOP

RIGHTS GRANTED HEREIN DO NOT INCLUDE THIRD PARTY ADVERTISING, SUB LICENSING RIGHTS OR MERCHANDISING.

AND

ALL RIGHTS NOT EXPRESSLY GRANTED IN THE AGREEMENT ARE HEREBY RESERVED TO THE ARTIST.

Types Of Editorial Agreements

NUANCED AGREEMENTS VARY ACROSS DIFFERENT KINDS OF PUBLICATIONS IN THE INDUSTRY

FASHION EDITORIAL

Hearst
Condé Nast
Meredith
Independent Magazines

MEDIA PUBLISHING - CELEBRITY

Hollywood Reporter
Variety
Billboard
Entertainment Weekly
People

MEDIA PUBLISHING - JOURNALISTIC

New York Times
The New Yorker
Sunday Times / Financial Times
VICE Media
Wall Street Journal

Types Of Editorial Agreements

| FASHION EDITORIALS - CORPORATE

Template Agreements and global agreements

|| FASHION EDITORIALS - INDEPENDENT

May not have a standard form agreement that has been curated by an attorney

May be less amenable to negotiations

Always Register Your Images

Types Of Editorial Agreements

| MEDIA PUBLISHING - CELEBRITY

Always be mindful of restrictions in celebrity releases - Publications are not a party to them but Photographers always are

|| MEDIA PUBLISHING - JOURNALISTIC

Be mindful of shared syndication rights or granting full syndication rights.

Always Register Your Images

Individual Sections

A DEEP DIVE INTO THE IMPORTANT SECTIONS OF A CONTRACT TO LOOK FOR WHEN REVIEWING

GRANT OF RIGHTS WORK FOR HIRE

EMBARGOES

PROMOTIONAL RIGHTS

FOREIGN RIGHTS / INTERNATIONAL EDITIONS

RELEASES

PUBLICATIONS' RIGHTS

THIRD-PARTY LICENSING

NON-COMPETE

INDEMNIFICATION

ASSUMPTION OF THE RISK (COVID)

Individual Sections

GRANT OF RIGHTS WORK FOR HIRE

It is agreed that the Works shall be work(s)-made-for-hire within the meaning of the U.S. Copyright Act and Publication shall own all rights, titles and copyrights to the work throughout the world.

**CA specific language - Photographer hereby transfer and signs the entire copyright (for the full term of copyright), throughout the world, in any and all media and forms of publication, transmission, distribution, and display now in existence or hereinafter developed.*

AMENDED LANGUAGE

As between Photographer and [Publication], Photographer owns the copyright in the Works, and hereby grants to [Publication] a one-time editorial license to publish the selected Works in print (and/or) web versions of the magazine issue specifically stated herein.

Individual Sections

EMBARGOES

Publication has the exclusive worldwide right to publish the Works for (up to 180 days) and for one year if published as a cover. Publication retains the exclusive first worldwide right to publish all unpublished works in perpetuity.

ALWAYS LOOK OUT FOR:

- Opportunities to lessen the exclusivity period - especially if it is a story that is running digitally only
- Removing language over the publications rights to unpublished images
- If no edition, embargo waived
- If published in a market (international edition) embargo changes to 90 days from publication date
- Any embargo on your own artists' use of the works

AMENDED LANGUAGE

Publication has the exclusive worldwide right to publish the Works for 60 days and for 6 months if published as a cover with cover lines. Images are provided for one-time use only to promote the current issue of the Publication. Use of the Works in any other context or connected to advertising or third-party promotion is strictly prohibited. Photo credit must be included.

Nothing herein will prevent Photographer, or their representatives, from simultaneously using the Works for self-promotional purposes after the date of First Publication.

Individual Sections

PROMOTIONAL RIGHTS

Publication may use the Works and Photographer's name and likeness to promote, advertise and publicize anything in which an image or video appears, and may authorize others to do so for the full term of the copyright.

Photographer hereby expressly waives any rights of "droit moral" or "moral rights" that may be afforded to Photographer under the laws of the U.S. or any other jurisdiction throughout the universe in connection with the Publication's use thereof.

ALWAYS LOOK OUT FOR:

- Language referring to "moral rights" - new additions
- Language about your artist's name and likeness without pre approval
- Anything that "authorizes others" to promotion

AMENDED LANGUAGE

Publication may use the Works and Photographer's preapproved name and preapproved likeness to promote the Works in context only and may only authorize others to do so with prior written permission from Photographer in each instance.

Individual Sections


PROMOTIONAL RIGHTS - EXAMPLES

888 poker

New players only • £20 free bonus includes \$1 immediate bonus & \$31 in tournament tickets • Bonus will be granted gradually throughout the 7 days after it was claimed • Each part of the bonus expires after 24 hours after it was granted • All immediate bonuses may be withdrawn only after a player has accumulated 2.5 Bonus Points for every \$1 of the received bonus amount • Deposit bonus: 1st deposit only • Bonus equals 100% of player's 1st deposit, up to \$400 • The bonus will be granted in 30 chunks subject to wagering restrictions of 100 Bonus Points per chunk • Offer may not be combined with any other offer • Bonus wins are capped at \$400 • Bonus expires in 90 days • Deposit balance is available for withdrawal at any time • General Withdrawal restrictions T&Cs apply

SAFER BETTER TOGETHER

BeSmileAware




Latin Power Players

JENNIFER

femal fashion finder

Dare to bare like Jennifer in a dress by Monot



[Read more →](#)

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EXECUTIVE OF THE YEAR
REGGAE LION TEAMS WITH LIVE NATION AND RED

BLACK AND LATIN
AFRO-LATINO ARTISTS SPEAK OUT

plus
EVERYONE'S PAYING FOR STREAMING.

THINK WHAT?

Facebook, Twitter, Pinterest, Email, Print icons

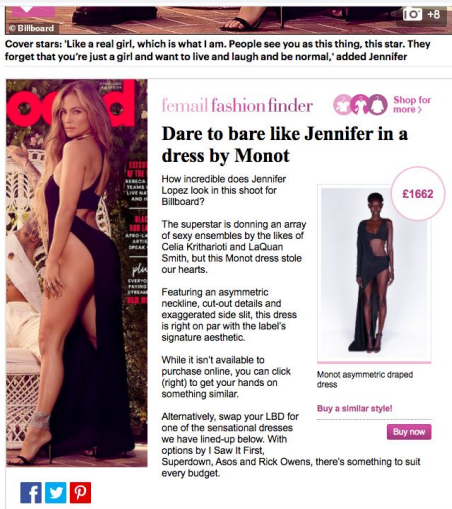
Summit Fullam & lace ma around cheeky receive delivery

ADVERT

Cover stars: 'Like a real girl, which is what I am. People see you as this thing, this star. They forget that you're just a girl and want to live and laugh and be normal,' added Jennifer

THE WRITING.

THE FRIENDSHIPS.



femal fashion finder

Dare to bare like Jennifer in a dress by Monot

How incredible does Jennifer Lopez look in this shoot for Billboard?

The superstar is donning an array of sexy ensembles by the likes of Celia Kritharoti and LaQuan Smith, but this Monot dress stole our hearts.

Featuring an asymmetric neckline, cut-out details and exaggerated side slit, this dress is right on par with the label's signature aesthetic.

While it isn't available to purchase online, you can click (right) to get your hands on something similar.

Alternatively, swap your LBD for one of the sensational dresses we have lined-up below. With options by I Saw It First, Superdown, Asos and Rick Owens, there's something to suit every budget.

£1662

Monot asymmetric draped dress

[Buy a similar style!](#)

[Buy now](#)

Shop for more >

Facebook, Twitter, Pinterest icons

TOYOTA COROLLA GR SPORT

read more

goop

PODCAST

Individual Sections

FOREIGN RIGHTS / INTERNATIONAL EDITIONS

Photographer hereby authorizes Publication to allow any of its owned or licensed magazines outside of the United States to publish, republish, transmit, or display the Works for (either a one-time fee or a fee per page, image).

ALWAYS LOOK OUT FOR:

- Opportunity to cap the amount of time
- Added opportunities to increase revenue through syndication to other publications
- Limitations on publications internationally where your artist may already be working with a competing publication
- Adding in an option period that will expire if not used

AMENDED LANGUAGE

For use in any international editions of the magazine outside of the exclusivity period, Publication must negotiate directly with Photographer and all reuse fees must be paid in full prior to publication.

Individual Sections

RELEASES

Photographer will obtain written releases from all persons, talent depicted in the Works, and owners of property depicted in the Works. Photography may not agree to any restrictions, limitations or right to review the Works.

ALWAYS LOOK OUT FOR:

- Requirements of the photographer or agency to get the releases for talent and property
- Obligations of the Photographer to ensure terms are up to publications standards
- Liability for this in the indemnity provision

AMENDED LANGUAGE

Publication shall have the sole and exclusive responsibility to obtain all releases from third parties whose property, materials or likeness may appear in the Works including, without limitation, model or talent consents, location releases, and rights holders of published or performed music.

Individual Sections

“KILL FEES” AND NON-PUBLICATION

If the Works are not accepted for publication, Publication shall have the exclusive option to reassign the Works for publication or by any of its affiliates in any media, now known or hereinafter developed. In any such case, you will not receive payment for the fee and assignee will have all the rights set forth herein.

ALWAYS LOOK OUT FOR:

- No fee for cancellation of the story
- Ability for Publication to reassign the Works to another brand without Photographer approval
- Add a time limit for decision on publication, i.e. if not published within 12 months all rights revert to the photographer

AMENDED LANGUAGE

If the Works are not accepted for publication, Publication shall nevertheless pay 100% of all fees and expenses as agreed herein. Any reassignment will be subject to prior written approval from Photographer in each instance.

Individual Sections

PUBLICATIONS' RIGHTS

Photographer grants to Publication, for the full term of copyright, the non-exclusive right to publish, print, re-publish, re-print, and otherwise reuse the Works for any purpose at any time, the right to make and authorize making of prints and reprints of the Works, and the right to authorize others to do so. Photographer further grants to Publication the unrestricted, royalty-free right, for the full term of copyright, to syndicate the Works to third parties around the world and to retain third parties to do so and retain all proceeds therefrom. .

ALWAYS LOOK OUT FOR:

- Publisher requiring more rights upfront
- Very broad terms related to third-party use and syndication
- Opportunity to include what rights are not included such as rights to syndicate the work out of context, merchandising, etc.

AMENDED LANGUAGE

Publication shall have the irrevocable option to republish the Works in all translations throughout the world. Such option shall be exclusive for (up to 180 days) provided that such option is exercised in writing to your syndication agency. If Publication exercises such option, you will receive (A) a one-time fee; or (B) a fee per image; or (C) a fee per page for all international editions.

Individual Sections

THIRD-PARTY LICENSING

Publication (and its licensees) shall have the perpetual, worldwide right, for no additional consideration, to publish, republish, reuse, distribute, in print and non-print media formats by all means and technologies now known or hereinafter developed, including ancillary promotion of all the foregoing. Such rights will be exclusive during the embargo period and non-exclusive in perpetuity.

ALWAYS LOOK OUT FOR:

- Promotional language
- Rights to sublicense, distribute, authorize others to do so
- Time cap (or lack thereof) on the period allowed for "promotion"

AMENDED LANGUAGE

Notwithstanding any of the foregoing, during the embargo period and thereafter, Publication agrees not to license or distribute any published or unpublished Works to any third parties without permission. In addition, this clause will not be construed to allow Publication to allow third party brands, designers or contributors to post on any social media platform as ancillary promotion. Any such requests from third parties will be immediately directed to Photographer.

Individual Sections

NON-COMPETE

Photographer will not create, participate in, or publish any images or videos that includes the same person, location or similar set up as any Works hereunder to any other publication of any sort in any media in the universe until after the period of exclusivity has expired.

ALWAYS LOOK OUT FOR:

- Broad language saying “anytime anywhere around the world” etc.
- Use of the word “similar” instead of “same”
- Time period

AMENDED LANGUAGE

Photographer will not publish the same set up as any of the published Works hereunder for any other competitive publication during the embargo period only.

Individual Sections

INDEMNIFICATION

Photographer hereby agrees to indemnify and hold harmless Publication and its licensees and assignees from any and all claims arising out of, or related to, breach or claimed breach of the representations and warranties. Photographer also agrees to assist and cooperate with Publication in defense of any claims pertaining to, or arising out of, the Work.

ALWAYS LOOK OUT FOR:

- “Arising out of”
- Lack of mutual indemnification
- Request for payment of counsel fees

AMENDED LANGUAGE

Both Parties hereby agree to hold harmless Publication and its licensees and assignees from any claims related to breach of the foregoing representations and warranties.

Individual Sections

ASSUMPTION OF THE RISK (COVID)

Photographer understands the risks and dangers involved in the preparation of the Works, and Photographer assumes the risk and acknowledges that Publication has attempted to minimize such risks and dangers. Photographer shall be solely responsible for ensuring that all crew are tested for Covid-19 and test negative as required by applicable law prior to the shoot date.

ALWAYS LOOK OUT FOR:

- Language that requires Photographer to test crew or is responsible for a negative outcome
- Opportunities to shift liability to production company
- Payment penalties if the client cancels due to Covid (Force Majeure)

AMENDED LANGUAGE

Photographer understands the risks and dangers involved in the preparation of the Works, and Photographer assumes the risk and acknowledges that Publication has made best efforts to minimize such risks and dangers. Production Company / Publication shall be solely responsible for ensuring that all crew are tested for Covid-19 and test negative as required by applicable law prior to the shoot date. Should any cast or crew members test positive for Covid-19 anytime within fourteen (14) days after the Shoot date, Publication shall be solely responsible to ensure that all cast and crew members are tested at the expense of Production Company / Publication.

Overview

ALWAYS HAVE VERSIONS OF YOUR OWN AGREEMENTS ON STANDBY

LOOK FOR OPPORTUNITIES TO IMPLEMENT CHANGES TO A MASTER AGREEMENT ON A PER ASSIGNMENT BASIS (IE., SHOOT SCHEDULE OR OTHER AGREEMENT)

USE YOUR TERMS AND CONDITIONS AS A GUIDE TO WHAT NEEDS TO BE INCLUDED IN THE OVERALL AGREEMENT

STAY CURRENT ON ISSUES AND APPROACHES TO CONTRACT TERMS IN THE MARKET THROUGH PEERS, COLLEAGUES AND PROFESSIONAL ORGANIZATIONS.

THE MORE WE ALL COLLECTIVELY CHALLENGE THE PARADIGM, THE MORE LIKELY WE WILL HAVE SUCCESS WITH CHAMPIONING OUR ARTIST'S RIGHTS

ULTIMATELY, IT IS UP TO YOU AND YOUR ARTIST FOR WHAT WORKS BEST FOR YOU - BUT PLEASE KNOW YOU HAVE THESE OPTIONS FOR NEGOTIATION.

Always Register Your Images





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