

graphs in-house² to save hassle (perish the thought!).

Let us bring clarity to the matter by defining the terms most commonly used.

From the Oxford Dictionary:

Sell: give or hand over (something) in exchange for money.

License: authorise the use, performance, or release of (something).

There are three main aspects involved in licensing images: the market, the issues of exclusivity, and the licensing model³.

Market:

There are a few different umbrella markets, and the use in each is defined by how a specific image is used.

- **Consumer:** defined as 'commercial communication that is directed to members of the general public'.
- **Trade:** described as 'advertising that is directed to specific industries, professions, or special interest groups'.
- **Editorial:** defines as 'a use whose purpose is to educate and/or convey news, information, or fair comment opinion, and which does not seek or accept sponsorship to promote a product, person, service, or company'.
- **Personal:** wherein use is 'only for private purposes and not related to business or commerce. No reproduction rights granted'.

Issues of Exclusivity – Exclusive vs. Non-Exclusive

There are some instances in which you will require exclusivity for the work you commission from a photographer –viz, the images are to be used in your marketing efforts and during that time your products or services will become associated with such images. Thus, you may want exclusivity so that your competition will not be able to use the photographs.

PLUS defines Exclusivity and Exclusive as:

Exclusivity – Exclusive

Definition: Describes a right that, when granted by a licensor to a licensee, limits how the licensor (and other parties offering licenses of the work) May license rights in a work to a third party.

Additional Info: Exclusivity May be broad or specific. The rights grant May provide the licensee with exclusive rights to use a work singly or in any combination of: a specified media, industry, territory, language, time period, product, and any other specific right ne-

² See 'Bob in Accounting Takes Good Photos' sidebar for some legal implications of this approach.

³ Definitions from the Picture Licensing Universal System (PLUS). www.useplus.com

gotiated by the licensor and licensee.

Term In Use: "The advertising agency wants to license exclusivity for using the image in printed matter".⁴

Contrasting with Exclusive, Non-Exclusive is also defined:

Non-Exclusivity

Definition: A type of right granted by the copyright owner. The licensor (and other parties offering licenses of the work) May license similar, related, or identical rights to another licensee at any time.

Additional Info: A purchase option that must be negotiated. Unless the right of exclusivity is expressly granted by a licensor to a licensee, any other rights granted under a license are non-exclusive by default.

Term In Use: "A competing magazine was able to use

⁴ http://www.useplus.com/useplus/glossary_term.asp?pggl=1&tmid=27200000

'BOB IN ACCOUNTING TAKES GOOD PHOTOS'

Think not that making your photos in-house is simpler, cheaper and free from legal issues. Nay, Copyright Law still applies.

Thus, before you hand a camera to a member of your staff and ask him to take pictures for the company's Web site, consider carefully the following:

- According to Canada's Copyright Act, a photo's copyright belongs not to whomever owns the camera, but to whomever *operated* it. If Bob in Accounting took the photos, *he* –not you or your business– owns said images; and until/unless he gives up or transfers the copyright –by means of a signed document stating so– he remains legally entitled to request and obtain from you licence fees for such images, *even if he took them and processed them with your own equipment and at your own property*, and to sue you were you to refuse.
- Bob will continue to own the photos he took even if/after he stops working for you, regardless of the fact that he might no longer have access to the picture files (i.e. because they were left behind on your company's computers).
- Furthermore, Bob is completely free to license the images to whomever he well pleases –yes, even to your competition.

Of course, if Bob is a star employee, you probably have little to worry about, but if he ever becomes disgruntled and/or is drawn into an 'easy money' opportunity by a shrewd attorney, the initial, seemingly solid convenience of 'doing it in-house' will quickly sublime into a noxious cloud of litigation headache of no small proportions.

the same image on the cover because they had only negotiated for non-exclusivity of the photo".⁵

There are several kinds of exclusivity, and some of these are mentioned below. Most are self-explanatory and, for reasons of space they will not be defined here; however, we do encourage you to turn to PLUS's glossary⁶ for the actual definition when deciding on whether you need to purchase exclusivity with your licences.

Some types of Exclusivity: Duration, Geographic, Industry, Language, Media, Periodic, Product, Regional, and Rights.

Licensing Models

In the current commercial milieu, the licensing models have been simplified to Rights Managed and/vs. Royalty Free.

Turning to PLUS once more, we define them:

- **Rights Managed (also referred to as 'RM')**. 'A licensing model in which the rights to a creative work are carefully controlled by a licensor through use of exact and limiting wording of each successive grant of usage rights'.
- **Royalty Free (also referred to as 'RF')**. 'Denotes a broad or almost unlimited use of an image or group of images by a licensee for a single license fee. License agreement typically specifies some limitations (e.g. resale of the image to a third party is usually prohibited)'.

To see how RM and RF and Exclusivity interact, refer to **Table 1**.

Which approach is the best depends on your individual situation, business needs, and budget, among others.

⁵ http://www.useplus.com/useplus/glossary_term.asp?pggl=1&tmid=27220000

⁶ <http://www.useplus.com/useplus/glossary.asp>

SOME COMMON PHOTO MYTHS (DEBUNKED)

'I paid money for the photos, so now they're mine'

No, they are not. An image belongs to whoever holds the *copyright* not the media.

'I can do with the photos whatever I want'

Again, no, you cannot, unless the licence clearly says so. You can only do what the images' licence specifies you can –anything else would constitute infringement.

'The photos are of me (or of my business, products, &c), therefore I own them'

For the last time, no, you do not. You cannot appropriate an image simply because it depicts your likeness, your logos, or the work of your hands. Images belong to whomever made them until/unless said maker surrenders or transfers the copyright, in writing.

TABLE 1. LICENCES AND THEIR SCOPE AND PRICE

	ROYALTY FREE (RF)	RIGHTS MANAGED (RF)	
		Non-Exclusive	Exclusive
Fees	Client pays a one-off fee.	Client pays a fee each time the image is used. A one-off fee might also be negotiated.	
Usage	Client can use the image multiple times and in multiple projects within the scope of the licence.	Client must specify the intended use, media, territory, and duration for each usage.	
Pricing	Price is determined by the type of image, its complexity, and the time and physical risks it took to create it.	Price is determined by the intended use.	Price is higher (~20-50%) in order to compensate for only one licensee using the image.
Exclusivity	Royalty Free images are never exclusive. Thus, other clients (even competitors) can purchase a licence for the same image and use it as they wish within the licence's scope.	Other clients (even competitors) can license and use the image.	Nobody else but the licensee, (in some cases, not even the photographer himself) can license nor use the image. (Explains the higher cost of this type of licence.)