

# Copyright and Other Legal Considerations for Photographers

Westbridge Camera Club

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- I. Copyright Law Protects the *Expression* of Ideas, not Ideas and Facts Themselves
  - A. A copyright is a bundle of exclusive rights:
    - right to reproduce the work
    - right to sell or otherwise distribute the work
    - right to prepare new works based on protected works (derivative works)
    - right to perform the work publicly (such as a play)
    - right to display a work in public (such as artwork)
  - B. Ownership of the material object is separate from ownership of copyright
  - C. A copyright exists automatically as soon as an original work of authorship is created, i.e., when it is fixed in a tangible medium of expression such as paper, canvas or on a hard drive with at least minimal creativity.
  - D. Duration of copyright for works created after January 1, 1978:
    - Life of author plus 70 years
    - Works made for hire: 95 years from publication or 120 years from creation (whichever is shorter)Legislation enacted on October 27, 1998 added 20 years to the previous copyright term.
  - E. See attached chart to determine copyright duration based upon when the work was created and the law in effect at the time the work was created.
- II. Copyright Infringement is the Unauthorized Violation of One of the Exclusive Rights. It requires proof of access and substantial similarity.
  - A. Defenses:
    - 1. Ideas are not protected by copyright
    - 2. Works in the public domain
    - 3. Fair use for purposes such as criticism, comment, news reporting, teaching or research as long as the value of the copyrighted work is not diminished

- B. Balancing test for fair use considers all the facts and circumstances, including:
  - 1. Purposes and character of the use (commercial vs. nonprofit)
  - 2. Nature of the copyrighted work
  - 3. Amount and substantiality of the portion used in relation to the whole work
  - 4. Effect of use upon potential market or value of the work (factor courts give the greatest weight)
  
- III. Benefits of Copyright Registration Within Three (3) Months of Publication:
  - A. Proof of creation by the artist as of a particular date
  - B. Recovery of statutory damages (\$750-\$30,000; \$150,000 if willful; \$200 if innocent) and perhaps attorney fees and costs
  - C. Prerequisite to bringing suit to enjoin infringement
  
- IV. Copyright Registration Requires the Filing of the Following with the Copyright Office:
  - A. Appropriate copyright form: Form TX, VA (VA covers photographs), PA, etc.
  - B. Deposit copies (one unpublished or two published works or CD or DVD of photographic works)
  - C. Filing fees (\$45 generally)
 

[www.copyright.gov](http://www.copyright.gov) Forms, Instructions and Publications (Information Circulars and Fact Sheets)
  
- V. Group Copyright Registration for Photographs
  - A. File Form VA, \$45, and CD or DVD of images
  - B. Use Photoshop action features
    - 1. Copyright Dump action
    - 2. Copyright Notice action

[www.drages.com/actions.htm](http://www.drages.com/actions.htm)
  - C. File every 3 months for maximum protection
  
- VI. Transfer of Copyright Rights from Freelance Artists and Independent Contractors
  - A. Generally, the creator of the work is the author, and the author owns the copyright

- B. Exception: Work for hire doctrine
  1. Employees
  2. Independent contractors who create a work commissioned for use as (1) a contribution to a collective work, (2) part of a motion picture, or audiovisual work, (3) translation, (4) a supplementary work, (5) compilation, (6) instructional text, (7) test, (8) test answers or (9) an atlas if the parties expressly agree in a written instrument that the work is a work for hire and that the commissioning party owns the copyright.

## VII. Proper Use of the Copyright Notice

- A. © 2008 Schottenstein, Zox & Dunn Co., L.P.A.
- B. Prior to January 1, 1978, publication of work with notice created copyright; after March 1, 1989, notice is optional, but desirable
- C. Defeats innocent infringer defense

## VIII. Right to Photograph in Public Places

- A. Copyright statute says:

The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing or public display of pictures, paintings, photographs or other pictorial representation of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place. 17 USC 120

- B. This right is limited by:
  1. Right of Publicity – protects individual's name, signature, appearance, likeness (see below)
  2. Trademark rights in famous buildings (Rock 'N Roll Hall of Fame in Cleveland)
  3. Contract – reverse of ticket, event signage
  4. Homeland Security concerns
- C. Model Releases or Licenses are Necessary to avoid liability
  1. Individuals (Adults and Minors) – samples attached
  2. Property Owners (buildings, pets) – sample attached
  3. License is a right to use
- D. OSU Trademark and Licensing Services  
trademarklicensing@osu.edu – 292-1562  
 License fee to OSU is 10% of the wholesale price – paid quarterly  
 Focus group of retailers meets monthly to advise OSU

IX. Importance of Written Contract Terms

- A. Contracts can be oral or written – must have legal consideration and state all the material terms.
- B. Letter agreements are contracts. At the end, “Acknowledged and Agreed” before the other party’s signature.
- C. Consider having standard terms and conditions that will apply in every case. Use the cover sheet for terms specific to that transaction
- D. License is a right to use (for a specific time, in specific locale, for a specific purpose, for a specific industry)

X. Contractual Disputes

- A. Assess who you are contracting with
- B. Signed paperwork and a paper trail help
- C. For collection matters, small claims court (less than \$3000) or collection agency

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# WHEN U.S. WORKS PASS INTO THE PUBLIC DOMAIN

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**Definition:** A public domain work is a creative work that is not protected by copyright and which may be freely used by everyone. The reasons that the work is not protected include: (1) the term of copyright for the work has expired; (2) the author failed to satisfy statutory formalities to perfect the copyright or (3) the work is a work of the U.S. Government.

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years <sup>1</sup> (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation <sup>2</sup> )
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice <sup>3</sup>	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

<sup>1</sup> Term of joint works is measured by life of the longest-lived author.

<sup>2</sup> Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

<sup>3</sup> Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice was made within five years, such as by placing notice on unsold copies. 17 U.S.C. § 405. (Notes courtesy of Professor Tom Field, Franklin Pierce Law Center and Lolly Gasaway)

**LOLLY GASAWAY**      **Last updated 11-04-03**

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Please include web address on all reproductions of chart so recipients know where to find  
any updates.**

**ADULT RELEASE**

In consideration of receipt of consideration the adequacy of which is hereby acknowledged, I hereby grant to \_\_\_\_\_ and his or her successors and assigns ("Photographer") the irrevocable and unrestricted right and permission with respect to the photographs of me or in which I may be included with others, copies of which are attached hereto, to do any or all of the following:

- (a) To copyright the same in its own name and any other name that it may select; and
- (b) To use, re-use, publish or re-publish the same in whole or in part, separately or in conjunction with other photographs, without restriction as to changes or alterations, made in any medium now or hereafter known or developed, and for any purpose whatsoever, including, but not limited to, illustration, promotion, art, editorial, advertising and trade.

I consent to use of any caption or printed matter in conjunction with the photographs and to use of my name in connection therewith if Photographer so decides. I waive any right to inspect or approve the finished printed matter that may be used in connection therewith.

I hereby release and discharge Photographer from all and any claims and demands ensuing from or in connection with the use of the photographs, including any and all claims for libel and invasion of privacy. This authorization and release shall inure to the benefit of the licensees, successors and assigns of Photographer, as well as to the person(s) who took the photographs.

I hereby warrant that I have reached the age of majority and have the right to contract in my own name. I have read the foregoing and fully understand the contents hereof.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

Printed name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

**MINOR RELEASE**

In consideration of receipt of consideration the adequacy of which is hereby acknowledged, I hereby grant to \_\_\_\_\_ and his or her successors and assigns ("Photographer") the irrevocable and unrestricted right and permission with respect to the photographs of my minor child or in which my child may be included with others, to do any or all of the following:

- (a) To copyright the same in its own name and any other name that it may select; and
- (b) To use, re-use, publish or re-publish the same in whole or in part, separately or in conjunction with other photographs, without restriction as to changes or alterations, made in any medium now or hereafter known or developed, and for any purpose whatsoever, including, but not limited to, illustration, promotion, art, editorial, advertising and trade.

I consent to use of any caption or printed matter in conjunction with the photographs and to use of my child's name in connection therewith if Photographer so decides. I waive any right to inspect or approve the finished printed matter that may be used in connection therewith.

I hereby release and discharge Photographer from all and any claims and demands ensuing from or in connection with the use of the photographs, including any and all claims for libel and invasion of privacy. This authorization and release shall inure to the benefit of the licensees, successors and assigns of Photographer, as well as to the person(s) who took the photographs.

I hereby represent and warrant to Photographer that I have reached the age of majority; I have every right to contract for the minor in the above regard; and I have read this Minor Model Release and understand its contents. This release shall be binding upon me and my heirs, legal representatives and assigns.

\_\_\_\_\_  
Minor's Name

\_\_\_\_\_  
Signature of Parent or Guardian

Printed name: \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name

Phone: \_\_\_\_\_

Date: \_\_\_\_\_



**PROPERTY RELEASE**

In consideration of the publicity and promotional benefits to be received, the undersigned legal owner or the entity having the right to permit the taking and use of photographs on location at the property designated as \_\_\_\_\_, does hereby grant to \_\_\_\_\_ (the "Photographer"), the full right to enter our premises and take photographs of \_\_\_\_\_ and to use and publish such photographs.

The undersigned waives any right to inspect or approve the photographs, the finished product, the advertising copy or printed matter on which or in connection with which the photographs may be used. The undersigned releases and discharges the Photographer and those for whom he/she is acting from any claims and liability relating to the taking, use or publication of the photographs, including any and all claims for copyright infringement, libel and invasion of privacy. This release shall inure to the benefit of the Photographer, those for whom Photographer is acting and their heirs, legal representatives, successors and assigns, and this release shall be binding upon the undersigned and his/her/its heirs, legal representatives, successors and assigns.

\_\_\_\_\_  
Signature

Printed name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Printed Name