

## Negotiating Licences and Re-usage

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. 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.

### **The initial Licence**

The original negotiated commission fee would normally include the following:

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

The licence begins on first insertion and first insertion can be expected within 6 months of the delivery of 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.

In the UK, the photographer's fee normally includes the first use of the photograph/s, 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.

### **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, included in the shoot fee. Clients and advertising agencies are concerned that the photographs which 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 sell the photographs, for example through a library, without client and agency permission, for four years after the end of the licence (unless otherwise agreed). This should be negotiated with the individual agency/client before the shoot takes place, as should other related issues such as confidentiality. The sensitivity of the subject matter should always be taken into consideration, for example, an image which 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. On expiry of the initial exclusivity period, the commissioner should be offered first option to extend the exclusivity clause at a negotiated rate.

It is expected that once the confidentiality period is over that 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.

## **Negotiating Re-usage**

### **BUR (Base Usage Rate)**

To prevent misunderstandings when negotiating additional usage fees, and to enable the client to budget accordingly, it has been suggested that a Base Usage Rate (BUR) should be established. The BUR is the starting point for negotiating use of the work over and above the initial commissioned media and time period and should be clearly stated on the photographer's original estimate. It is the figure to which the percentages in these guidelines are applied.

It is suggested that the BUR should not be less than the negotiated day rate, and could be pitched according to the amount of input and involvement required from the photographer.

# AOP Re-usage Guidelines

When a photographer is doing a 'budget' job for the client at less than their normal day rate, then the BUR could be set at their normal day rate for that type of commission

Example: The client has commissioned a shoot for use in the UK, press and posters for 1 year, they now want to include point of sale. BUR has been negotiated at £2000, a licence for point of sale should be 25-50% BUR – cost of additional licence £ 500 - £ 1000

When several images from a single day's shoot i.e. the same subject or variations from a single shoot, are used by the commissioner, then each individual image should be subject to a negotiable BUR, at less than the original commissioned day rate agreed.

## **Additional media and licence extensions**

The guidelines are for use where the photographer has issued, or is issuing, a licence and were produced as a result of discussions between art buyers, photographers and photographers' agents. These are not recommendations, but are provided as guidelines for negotiation based on current trade practice.

The Additional Uses table is not exhaustive and 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).

## **Different geographical areas**

For all secondary and subsequent use of photographs, it has been agreed that the percentages given on the tables entitled Additional Territories Usage Chart are reasonable and fair. However, it is impossible to cover every eventuality and it is for the photographer and/or their agent and the agency or client to negotiate an arrangement which both parties find agreeable.

## **Don't assign copyright**

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.

In such cases, the Licence to Use will specify "All Media" under Media Use, the Territory will be "Worldwide" and the Time Period will be "Unlimited".

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.

The All Uses licence is 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.

*These Guidelines are from Beyond the Lens – Rights, Ethics & Business Practice in Professional Photography. Published by AOP.*

*This publication is available from the AOP. For more details visit the AOP website - <http://www.the-aop.org>*

# AOP Re-usage Guidelines

	Additional Media in negotiated licence period	Additional year after licence period	Additional 2 <sup>nd</sup> year after licence period	Additional 3 <sup>rd</sup> year + after licence period	Each year up to a 5 year shelf life	Notes for Guidance % is of the negotiated base usage rate (BUR) at not less than the normal day rate. Always state BUR on your estimate 6 months further use would normally be charged at 50% of the %'s shown
<b>Ambient</b> Includes: garage forecourt and rail station screens and all public areas where advertising is screened (not cinemas)	100%	100%	50%	50%		When screening is at Point of Sale those %'s should be used
<b>Brochures</b>	25-50%	25-50%	12.5-25%	12.5-25%		
<b>Direct Mail</b> Includes: door drop leaflets & postcards	25-50%	25-50%	12.5-25%	12.5-25%		
<b>Internet</b>	30-100%	30-100%	15-50%	15-50%		% is dependant on potential volume of traffic or prominence of web presence
<b>Intranet</b>	30-60%	30-60%	15-30%	15-30%		% is dependant on the number and location of client offices
<b>Marketing Aids non-purchasable</b> Includes: umbrellas, ashtrays, beer mats, exhibition panels, trolley panels	25%	25%	12.5%	12.5%		Product list is not limited to these items – others may be requested- but does not include merchandising
<b>Packaging</b>					50-100%	
	Additional Media in negotiated licence period	Additional year after licence period	Additional 2 <sup>nd</sup> year after licence period	Additional 3 <sup>rd</sup> year + after licence period	Each year up to a 5 year shelf life	Notes for Guidance % is of the negotiated base usage rate (BUR) at not less than the normal day rate. Always state BUR on your estimate 6 months further use would normally be charged at 50% of the %'s shown
<b>Point of Sale</b>	25-50%	25-50%	12.5-25%	12.5-25%		Also known as Point of Purchase
<b>Posters</b> Includes: 96/48/16/12/4 sheet, superlites, escalator panels, bus sides & panels, taxi wraps & seats, bus backs, tube, underground	100%	100%	50%	50%		% should include up to 4 types of posters only
<b>PR</b>	25%	25%	12.5%	12.5%		Images used to promote within a press editorial/advertorial or trade handout
<b>Press Includes:</b> Trade, consumer, local, national, magazines & newspapers	100%	100%	50%	50%		
<b>TV, Interactive TV, Video, mobiles, CD Ads</b>	25-50%	25-50%	12.5-25%	12.5-25%		Each media attracts it's own %

# AOP Re-usage Guidelines

Territory	Principle media	Single Additional Media	Multi Media*	2nd year	3rd year	Notes
						2nd & 3rd year percentages are for a further single year each.
Europe (not EU)	100%	50-100%	150%	100% of 1st year	50% of 1st year	
European Union	200%	50-100%	300%	100% of 1st year	50% of 1st year	
Pan European (EU+ non EU)	300%	100-200%	450%	100% of 1st term	50% of 1st term	18mth licence
Pan European (EU+ non EU)	275%	75-150%	350%	100% of 1st year	50% of 1st year	1 year licence
Single Additional Country	20-100%	10-50%	75-100%	100% of 1st year	50% of 1st year	Dependant on size of country or size of original country
Middle East	100%	50-100%	150%	100% of 1st year	50% of 1st year	
USA	200%	50-100%	300%	100% of 1st year	50% of 1st year	
South America	100%	25-50%	150%	100% of 1st year	50% of 1st year	
Canada	50%	12.5-25%	75%	100% of 1st year	50% of 1st year	
Africa	100%	25-50%	150%	100% of 1st year	50% of 1st year	
Asia (excluding Japan)	75%	20-35%	110%	100% of 1st year	50% of 1st year	
Asia (including Japan)	175%	50-75%	250%	100% of 1st year	50% of 1st year	
Japan	100%	25-50%	150%	100% of 1st year	50% of 1st year	
Oceania/Australasia	100%	25-50%	150%	100% of 1st year	50% of 1st year	
Worldwide	500%	125-250%	750%	100% of 1st year	50% of 1st year	
International media**	100-200%	N/A	N/A	100% of 1st year	50% of 1st year	
<b>All Uses Licence In Excess of 750%</b>						
<p>* Any combination (three plus) of media listed previously</p> <p>** In flight magazines, Time, Newsweek, National Geographic etc</p>						

# AOP Re-usage Guidelines

## AFRICA

Algeria  
 Angola  
 Benin  
 Botswana  
 Burkina  
 Burundi  
 Cameroon  
 Cape Verde  
 Central African  
 Republic  
 Chad  
 Comoros  
 Congo  
 Congo Dem Rep  
 Djibouti  
 Egypt  
 Equatorial Guinea  
 Eritrea  
 Ethiopia  
 Gabon  
 Gambia  
 Ghana  
 Guinea  
 Guinea-Bissau  
 Ivory Coast  
 Kenya  
 Lesotho  
 Liberia  
 Libya  
 Madagascar  
 Malawi  
  
 Mali  
  
 Mauritania  
 Mauritius  
 Morocco  
 Mozambique  
 Namibia  
 Niger  
 Nigeria  
  
 Rwanda  
 Sao Tome  
 Senegal  
 Seychelles  
 Sierra Leone  
 Somalia  
 South Africa  
 Sudan  
 Swaziland  
 Tanzania  
 Togo  
 Tunisia  
 Uganda  
 Zambia  
 Zimbabwe

## ASIA

*Afghanistan* \*  
*Armenia* \*  
*Azerbaijan*  
*Bahrain* \*  
 Bangladesh  
 Bhutan  
 Brunei  
 Burma  
 Cambodia  
  
 China  
*Cyprus* \*  
 East Timor  
 India  
 Indonesia  
*Iran* \*  
*Iraq* \*  
*Israel* \*  
 Japan  
*Jordan* \*  
 Kazakhstan  
 Korea  
*Kuwait* \*  
*Kyrgyzstan* \*  
 Laos  
*Lebanon* \*  
 Malaysia  
 Maldives  
 Mongolia  
 Nepal  
*Oman* \*  
  
*Pakistan* \*  
  
 Philipines  
*Qatar* \*  
 Russian Federation  
*Saudi Arabia* \*  
 Singapore  
 Sri Lanka  
*Syria* \*  
  
 Taiwan  
*Tajikistan* \*  
*Turkey* \*  
*Turkmenistan* \*  
*United Arab Emirates* \*  
*Uzbekistan* \*  
*Yemen* \*  
 Vietnam  
  
 \* indicates that the country is a part of Asia, but is  
 often referred to as being a part of the **Middle East**

## STH AMERICA

Argentina  
 Bolivia  
 Brazil  
 Chile  
 Colombia  
 Ecuador  
 Guyana  
 Paraguay  
 Peru  
 Suriname  
 Uruguay  
 Venezuela

## OCEANIA

Australia  
 Fiji  
 Kiribati  
 Marshall Islands  
 Micronesia  
 Nauru  
 New Zealand  
 Palau  
 Papua New Guinea  
  
 Samoa  
 Solomon Islands  
 Tonga  
 Tuvalu  
 Vanuatu

## EUROPE

Albania  
 Andorra  
Austria \*\*  
 Belarus  
Belgium \*\*  
 Bosnia-Herzegovina  
 Bulgaria  
 Croatia  
 Czech Republic  
Denmark \*\*  
 Estonia  
Finland \*\*  
France \*\*  
 Georgia  
Germany \*\*  
Greece \*\*  
 Hungary  
 Iceland  
Ireland (Eire) \*\*  
Italy \*\*  
 Latvia  
 Liechtenstein  
 Lithuania  
Luxembourg \*\*  
 Macedonia  
 Malta  
 Moldova  
 Monaco  
Netherlands \*\*  
 Norway  
Portugal \*\*  
 Poland  
 Romania  
 Russia (European)  
 San Marino  
 Yugoslavia (Serbia)  
 Slovakia  
 Slovenia  
Spain \*\*  
Sweden \*\*  
 Switzerland  
 Turkey  
 Ukraine  
UK \*\*

\*\* indicates member of the EU