

GUIDE TO COPYRIGHT, COMMISSIONING & PUBLISHING ARCHITECTURAL PHOTOGRAPHY



**IMAGE
MAKERS
ASSOCIATION**

In the same way that architects control who can reproduce their designs, photographers usually control who can reproduce their images. The purpose of this document is to foster greater communication between photographers and architects, interior designers and the broader design and construction community whose work they document.

The importance of photography cannot be underestimated in communicating a designer's vision. Image makers play an important role in interpreting and documenting design. They are often commissioned because of their style, working method or experience. Appropriately valuing photographers' work and therefore retaining a strong and sustainable industry will in turn ensure the design and construction community continues to be supported with access to a diverse pool of talented image makers.

It is important to note that, under Australian law, anyone wanting to reproduce photographic imagery, for any purpose, even on social media, has a responsibility to ensure they seek and obtain appropriate permission from the copyright holder (usually the photographer) before doing so.

WHO OWNS COPYRIGHT?

Photographs are protected by copyright as artistic works. For photos, unless there is an agreement to the contrary, the general rule is that the photographer is the first owner of copyright, including for commissions. Where material is created under an agreement or by commission, it is a good idea to have a written agreement stating who will own copyright and expressly outlining how the commissioning entity is licensed to use photograph/s.

There are several exceptions to this general rule (that the photographer is the first copyright owner), set out below.

- the photo is taken for a private or domestic purpose
- the photo is taken by an employed photographer rather than a freelancer
(in this case, the employer owns the rights, but note that in the case of photographers employed by newspapers and magazines, the copyright is shared with the employer)
- a Commonwealth, state or territory (but not local) government 'directs or controls' the taking of a photo (for example, a government commissions a photographer), or
- a Commonwealth, state or territory (but not local) government 'directs or controls' the first publication of a photo
(for example, a photographer licenses a government to use an image from their stock library).

If a photographer's stated terms specify that they retain ownership in any works they produce, and a client, including a Commonwealth, state or territory government accepts these terms, then the above exceptions will no longer apply.

For more general information, see the Australian Copyright Council fact sheet Ownership of Copyright.

EXCLUSIVE RIGHTS OF COPYRIGHT OWNERS

Copyright owners have exclusive rights to deal with their work in certain ways - including the right to reproduce the work, communicate the work and make the work public for the first time. Where a photographer owns copyright in the photographs they have taken, this means that others cannot use the photographs in those ways unless they have the photographer's permission to do so.

For more information, see the Australian Copyright Council fact sheet Photographers & Copyright.

WHAT IS COMMERCIAL USE OF PHOTOGRAPHY?

There is no definition of 'commercial use' in the Copyright Act. However, it is generally regarded in the industry that using images on or in anything connected with a profit-making entity, is commercial use. This includes social media and blogs, and any print or electronic media that a business might use to communicate about its products or services. Without a licence and appropriate payment to the photographer who created an image, a business does not have the right to use the image.

We recommend that all licences be in writing. However, without a written agreement, a licence may sometimes be implied from the circumstances. Often the scope of an implied licence may be unclear; so it is always best to have a written agreement.

It is important to note, that there is no exception to requiring the copyright owner's permission for a 'not-for-profit' use of a photograph (or other copyright material).

COMMISSIONING PHOTOGRAPHY, LICENSING & USAGE

While the photographer almost always retains ownership of copyright in commissioned work, they will license their work for use by clients who commission photography. What this licence includes should be clearly understood by both parties from the outset. The term 'Usage Rights' refers to the ways in which a commissioning party is permitted to use the photography. Along with considering all the practical requirements of a shoot, the photographer will factor in the value of the Usage Rights required in their fee.

A licence granted by a photographer will commonly restrict use of the images to the party who commissioned them. A photographer's fee will generally factor in a fee for the use of the images in any material the commissioning party produces for self-promotion, for example, electronic and print media for the promotion of their business. This may include most things a business needs from its photography such as website and social media use on their channels, awards submissions (including publication directly related to relevant awards programs), client presentations and tender documents, monographs and brochures.

The licence should also include other terms including terms:

- as to how long the photographs may be used (e.g. 5 years)
- about whether the licence is exclusive (i.e. only the licensee can use the images) or non-exclusive (meaning that the photographer may license those same images to others), and
- outlining the wording the photographer wants used in attributing the image to them and the use of a copyright notice.

The photographer may charge an additional licence fee for usages outside their standard licence terms. Common licence extensions which should be communicated from the outset include whether:

- the photograph/s may be published in books or magazines (or anywhere else e.g. billboards)
- publication is in print or online or both
- other parties involved in a project wishing to share the commission, may use the images.

In these cases, the photographer may increase their fee to reflect the commercial value of the other entity's/entities' use of images. Without such an agreement in place, others wishing to use the images must obtain a licence for use from the photographer.

Generally speaking, the broader the usage required, the more the client should expect to pay.

Please ensure you have clear communication with your photographer; talk to them before you start a job and everyone will know where they stand.

For more general information, see the Australian Copyright Council fact sheet Assigning & Licensing Rights.

DOES THE PHOTOGRAPHER NEED TO BE CREDITED?

Creators of copyright works, including photographers, have 'moral rights' in relation to their works. These are separate from copyright. Moral rights impose certain obligations on people who use a copyright work. Unlike copyright, moral rights remain with a creator and cannot be assigned, sold or transferred. Photographers have the right to:

- be attributed as creator of photographs
- not to have authorship of their photographs falsely attributed, and
- integrity or not to have their work subjected to 'derogatory treatment'—that is, the right to take action if their work is distorted or treated in a way that is prejudicial to the photographer's reputation.

There are some situations where these rights don't need to be observed, for example, where the photographer has consented to this. For more information, see the Australian Copyright Council fact sheet Moral Rights.

HOW LONG DOES COPYRIGHT IN THE PHOTOGRAPHS LAST?

In most cases, for photographs taken on or after 1 January 1955, copyright lasts until 70 years from the end of the year the photographer died. For more information, see the Australian Copyright Council fact sheet Duration of Copyright.

NEED MORE INFORMATION

If you'd like more information, the Australian Copyright Council publishes the free fact sheets including the ones referred to above and has other resources available for sale on its website: copyright.org.au

Image Makers Association of Australia is an affiliate of the Australian Copyright Council which is recognised as the pre-eminent authority on Australian copyright law.

This document has been authored by Image Makers Association Australia and reviewed by the Australian Copyright Council for accuracy in relation to Australian copyright law as at the publication date.

It is endorsed by the following organisations:



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