



PHOTOGRAPHERS **AT WORK**

Essential Business and Production Skills for Photographers in Editorial, Design, and Advertising

MARTIN EVENING

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Martin Evening

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INTRODUCTION

In these uncertain times of austerity, the photography industry as a whole has seen a lot of changes, and many photographers are finding it harder than ever to keep their businesses running smoothly. This has been blamed on the recent recession, which has undoubtedly contributed to the problem. But as I found out while researching this book, a lot of what we see going on right now was going to happen anyway. The way technology has popularized photography and brought it into the mainstream has also changed the ways in which images are used and how they are acquired.

I wrote this book because I was interested in exploring the state of the editorial, design, and advertising photography industry as it stands today. I thought the best way to do this would be to talk to experienced photographers who are working in these sectors of the industry and find out how they have managed to maintain successful careers and what advice they would give to those wanting to get started today. I have also drawn upon my own experience as a commercial photographer and summarized here the best ways to set yourself up in business: the stuff that's important, the stuff that's not, and what's best to delegate.

The key points I came across are that professional photographers must be prepared to broaden their skills and that they should specialize. On the face of it, these two statements appear to contradict each other, but the overall message is clear. To have a sustainable career as a photographer you do need to specialize in catering to niche markets that require a high level of knowledge and creative talent, and part of that process will necessarily require you to be skilled in many areas. You need more than a technical knowledge of how to work digitally; you must understand how to market yourself in the digital age as well.

This book has a magazine-style format, which means you can easily dip into any of the different section topics and interviews that take your interest. Ten of the photographer interviews I did have also been recorded as videos. These are around 15 to 20 minutes long, and you can access them via the book website. Or, if you are reading the e-book version, just click on the highlighted links.

DISCLAIMER

This book is intended for educational purposes only and is not intended to be, nor should it be construed as, legal advice. To obtain guidance relevant to your particular circumstances, you should speak with a qualified, competent lawyer properly licensed in your jurisdiction. Consult your local Bar Association or law society for guidance on finding such a lawyer in your area. The views and opinions expressed in this book are those of the author alone and are not purported to be those of any employer, client, or affiliated entity, past or present.

ACCESSING THE VIDEO CONTENT PLUS PDF FILE

Ten of the photographer interviews I did have also been recorded as videos. These are around 15 to 25 minutes long, and you can access them online. If you are reading the e-book version, just click on the highlighted links. Along with the videos, you will also find a downloadable PDF called Printing Advice that addresses how to achieve optimal quality for your prints.

To access these files, follow these steps:

1. Go to www.peachpit.com/photographers_at_work.
2. Here you can download the Printing Advice PDF and all of the video files.

4

BUSINESS SKILLS

THE ESSENTIAL BUSINESS SKILLS EVERY PHOTOGRAPHER NEEDS TO KNOW

DEVELOPING GOOD PRODUCTION SKILLS

Anyone can take a good picture, but it's the steps that precede the moment when you click the shutter that matter most and make the work of a professional photographer special. Imagine you came across a professional photo shoot in progress and you crept up next to the photographer to shoot a snap with your smartphone (I can guarantee the photographer would be pretty pissed off with you if you did). Could you actually call that your own photograph? Even without encroaching on someone else's turf, we all have our moments of glory—like the time you wrote an impressive essay or hit a home run. But can you repeat those successes on demand? This is what professionals are expected to do on each and every assignment.

On certain shoots I've done, the photography part has actually been quite easy. The hard part was organizing and booking the team—the model, the hairstylist, the clothes stylist, and the makeup artist—and briefing them about the job. In situations like this the photography is still important, but the preparation and production are what count most. That, I feel, is the big difference between taking photos for pleasure and being commissioned by a client. For example, do you know how to set up and use an infrared beam trigger device? If a shoot required the use of prosthetics, would you happen to know a makeup artist capable of such work? If the artist was busy, who would you book as an alternative? Would you know who to contact in order to gain access to set up a camera in a lighting rig above a stage? How would you plan and prepare a shoot that involved photographing 100 individuals in one shot? What would you do if a model called in sick on the day of a shoot and urgently needed to be replaced?

Let me briefly provide some answers to the above questions. A quick Internet search will tell you how to work with an infrared trigger, where to buy the necessary equipment, and guidance on how to set it up. But it takes practice and experience



FIGURE 4.1 This shows a wine pour photograph shot using an infrared trigger positioned to go off when the wine exiting the bottle neck hit a certain spot, combined with a short delay before firing the flash.

to capture shots like the wine pour shown in **Figure 4.1**. Finding a good prosthetic makeup artist would be harder, because here you would need to know how to assess an individual's skills. Booking someone for an important job requires experience with the issues at hand, and it's best if you've worked with that person in the past. To gain access to special vantage points, it helps to know the venue manager or have contacts who do, and it's usually advisable to negotiate well in advance of the shoot. Photographing a large group of people is mostly about planning—working out ahead of time exactly where everyone has to be positioned in order to be seen by the camera and instructing people to get into position. There are technical issues to address such as focusing, choice of lens aperture, and how you would light the scene. As for models not showing up, it helps to maintain friendly business relationship with all the main model agencies where you are so they are able to help out in a crisis. I

THERE'S NO SUBSTITUTE FOR
FACE-TO-FACE NEGOTIATIONS
AND ESTABLISHING GOOD
RELATIONSHIPS WITH THE
PEOPLE WHOSE SERVICES YOU
ARE USING.

usually also have photos of models taken at recent castings. These can be shown to a client and used to help find a suitable replacement at short notice.

Knowing how to solve problems like these comes from experience, which is one reason it is a good idea to spend time assisting as many photographers as possible. This is the best way to learn some of the tricks of the trade and build useful contacts of your own. Thanks to the Internet it's easy to troubleshoot and find expert advice, but there's no substitute for face-to-face negotiations and establishing good relationships with the people whose services you are using.

Preproduction can be a real nightmare sometimes, but the challenges can be stimulating and are all part of the creative process. Also, photographers who immerse themselves in their chosen area of specialization have a competitive advantage over most other photographers, not necessarily because they are better photographers but because they'll know their subject really well and know how to troubleshoot.

What's the day rate?

How much should you charge? Many photographers love to boast about the big fees they have earned, but it is probably more interesting (and more indicative) to find out the lowest fee a photographer is willing to work for. At the beginning of my career an agent once told me that every job should be evaluated by asking yourself, is it for the book or is it for the bank? Ideally, we would like it to be both, and that can happen, especially as you build your reputation, but most of the time we have to weigh whether a prospective job will be good for our business in terms of offering exposure or whether it will just be good for the cash flow.

As for how much your creative fee should be, there is always the chance you will end up undercutting someone else—that's just the nature of how business works. It is through experience that you gain a better sense of what is the right fee to ask for each job. The fact that relative newcomers may be willing to work for less is always going to appeal to clients. Not every photo shoot demands the skills of a top professional, and this is where new opportunities arise for those who are willing to work with lower budgets. However, it's a real problem when photographers severely undercharge and are prepared to shoot for very little or no fee. You could argue this has always been the case. Photography is perceived as a glamorous profession, and there have always been people looking to turn their hobby into a career. In more recent years the advent of digital technology has made it easier for anyone with the right basic equipment to achieve the kinds of results that were once possible only using larger and more expensive film cameras, not to mention the skills to expose correctly and control the lighting. If you add to this the explosion of royalty-free and microstock libraries, it's clear how earning an income from photography has now become a lot harder.

It wasn't always like this. Not so long ago, in the 1960s, photographers would have set day rates, just like any other profession. It didn't matter what they shot,

whether it was editorial or advertising, they aimed to charge roughly the same fee (and if you wanted it shot in color that would be extra). This was the era depicted in the *Mad Men* TV series, when the advertising industry went through a boom period. David Puttnam (now Lord Puttnam) was one of those who saw this as an opportunity to represent photographers such as David Bailey and Brian Duffy and get them higher fees. As a result of this, advertising photography started to become big business. Meanwhile, editorial magazines (which at one point used to spend quite freely on photography) started to cut back on fees and expenses as competition within the publishing industries increased. Also, as the various magazine titles started to merge to form large publishing groups, these companies felt better able to dictate terms and conditions when hiring freelance workers.

As a result, editorial fees have shrunk considerably from the heyday of the '60s and '70s and have barely increased at all since the '80s. There have also been ongoing battles over copyright ownership—many publishers now expect photographers to sign away all rights and work for a low fee. Advertising work can still earn big sums, but the market for direct commissions has been badly affected by economic pressures and easier access to stock photography and digital technology. For example, not so long ago there were studios that specialized in product and pack shot photography for design studios and advertising agencies. These days such work can easily be done in-house using a digital camera or created using 3D programs.

The true cost of running a business

As we slowly emerge from one of the worst financial crises in living memory, it is poignant to reflect on the economic principles of Wilkins Micawber, a fictional character in Charles Dickens's book *David Copperfield*, who said, "Annual income twenty pounds, annual expenditure nineteen pounds nineteen and six, result happiness. Annual income twenty pounds, annual expenditure twenty pounds nought and six, result misery." While the world of finance has changed considerably since the Victorian days, there is something to be said for Micawber's desire for a balanced set of books. The message here is simple. You need to do the math to work out what the real costs of running a business are and how you are going to make a profit.

If you want to become a professional photographer and earn a regular income, you'll need to figure out what your creative fee threshold should be. A good way to do this is to start by considering the number of hours you'll have available for work in any year (and be sure not to overestimate how much you'll be able to and want to work). Photography is not all about taking photos. If you choose to run your own business you will inevitably have to invest time promoting yourself to find work, carry out personal projects to showcase your talents, and do all the boring stuff like administrative paperwork and bookkeeping. There will also be meetings to attend before and after each shoot. Here is a summary of the kinds of tasks a photographer will need to work on (apart from the actual photography).

FOTOQUOTE PRO

FotoQuote Pro is a software program especially designed for photographers that can be used to help calculate an appropriate fee for individual photo assignments as well as stock photography sales.

YOU NEED TO DO THE MATH
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LAWSON PRICE FIXING

It is against the law for organizations or groups of people to get together to agree to set prices. This means professional organizations other than unions are not allowed to set fee terms or common prices for services. This is designed to prevent groups of individuals from price fixing by common agreement, and it applies to assignments as well as stock photography sales.

- Self-promotion: advertising, website social media, and newsletters
- Shoot production: make and receive telephone calls, send e-mails
- Research: reading magazines, books, Internet and e-mail forums
- Office administration: bookkeeping, accounts, and correspondence
- Business meetings: legal sessions, accounts, bank manager
- Seminars and training

If you are prepared to work, say, 50 hours per week, you should be able to devote 20 of those to actual photography. If you multiply that by 50 working weeks in a year, you'll have close to 1,000 working hours to sell. Next, calculate your annual costs. Add to that a modest (at least, at the beginning) income for yourself (remember to allow for taxes), divide by 1,000, and this will tell you what your base hourly rate should be. (Of course, in practice you might not always be working by the hour. If people want you to do a job on a bid, it gets much more complicated, because you have to estimate how long the job will take. Always overestimate how long it will take—it's sure to take longer than you expect.) Here is a list of the business running costs you should include for the year (also review these items with your accountant in terms of what you can write off on taxes to make your final estimations):

- Rent of your business premises (if you own, include property taxes plus service charges)
- Business premises maintenance costs: cleaning and repairs
- Heat and lighting
- Equipment costs (include lease costs, rental and/or depreciation costs)
- Insurance: premises, equipment, public liability, health, and so on
- Telephone: landline and mobile
- Computer, printer, tablet device
- Office supplies: stationery, postage, and so on
- Subscriptions: Internet service provider, server hosting, publications
- Travel costs: running a car, public transport, taxis, airfare, and so on
- Training expenses: books, seminars, subscriptions
- Database contacts list
- Professional fees: accountant, legal, professional association
- Income protection and pension
- Loan repayments: education, car, business loan

The true cost of running a business may come as a shock. It can also be quite intimidating to realize just how much you have to earn in order to stand still, but these are the same problems every other photographer has to face. In fact, all businesses face this same challenge. What can be said in favor of running a photography business is that if you are successful, it is possible to attain a higher profit margin than with most other types of businesses.

Photographers easily undersell themselves unless they have a firm grasp of what their business running costs really are. It is all very well for clients to set the fees they are prepared to pay—they, after all, want to cut costs wherever they can. But it is in your interest to protect your own business model by understanding what it actually costs you to work as a photographer. Being armed with this awareness will make you more surefooted and confident when negotiating fees.

During the first few years you may not make much profit. Most businesses don't until they have operated for a while. You may well be prepared to work more than a regular 40-hour week (although you will still be constrained by the hours clients are willing to work). Also, some types of work will have seasonal gaps. In the fashion industry the model agencies usually close for two weeks or more over the December holidays.

At the very least, I suggest you use this rough formula for figuring your time for the year as a benchmark to help you negotiate fees. It can help you quickly determine whether you will be working below or above the minimum, break-even hourly rate for your business. This is something newcomers find difficult to grasp. They think they are doing well and making good money but fail to take into account the full cost implications of being self-employed.

Typically, a photographer will derive varying levels of income from different types of clients. The aim should be to ensure that when you add up everything at the end of the year, you will have earned enough to cover all your business costs, plus a wage you can live on. If you agree to reduce the rate at which you charge, you need to be clear in your own mind why you are doing this. Is it because the exposure will be particularly good and help boost your profile? If so, it may be worth working on a project, such as an editorial story, for very little money, because it should give you more artistic freedom. Or, it could be work for a startup business that may lead to more profitable bookings in the future. Or, it could just be you need the cash flow. Other types of businesses do this as a way to help keep their overheads covered. It's better to earn 50 percent of something than nothing at all, and if done in moderation can help you keep your head above water. But if you handle it badly, you can end up painting yourself into a corner. The problem is, once you accept a low fee the first time you work with a new client, or lower your fee for an existing client, how do you regain your normal rate? If pushed, the best solution is to make sure your usual full rate is still shown clearly on the invoice and include a special one-off discount. This way clients are reminded of the day rate you normally charge and how you are giving

ONCE YOU ACCEPT A LOW FEE
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AS SOON AS YOU TELL CLIENTS
YOU CAN'T WORK WITH THEM
BECAUSE YOU ARE BUSY,
THEY'LL BE FORCED TO WORK
WITH SOMEONE ELSE.

them a special, discounted rate. Future negotiations should then always start from your usual base rate.

Agreeing to work for less can make the difference between getting a job and not working, but it's not always a good idea. I have tended to find that clients I've agreed to work for more cheaply don't always treat me as respectfully as those who pay the full rate. For instance, I used to shoot with one hairdressing client who was a friend, so I agreed to give him a special rate. The thing is, it was always his company my bookkeeper had to keep chasing for payment, and I would usually have to wait at least three months for a check. To make things worse, in a press interview he claimed to be spending around ten times more on photography than I knew was the case. Apart from being untrue, it made me look ridiculously expensive. Meanwhile, behind the scenes he divulged to another client of mine the special rate he was actually getting, which didn't go down too well (that's one of the risks when you agree to work for below your normal fee). This all went on over a two-year period, during which time I suppose I did get some good photographs, but in the end I had to wonder if it had been worth it. I was reminded of the saying, "No good deed goes unpunished."

Are clients being completely honest when they offer a low fee? Freelancers can be seen as fair game for exploitation (that's why they are called *freelancers*, right?) It's up to you to decide whether to play that game or not. Focus on your own needs and what a job brings to the table. Will it genuinely offer a good showcase for your work? Will it bring in useful income? Will this job just keep the cash flow ticking over in a quiet month? Be careful about considering the latter. Once you commit to a job you will be obliged to honor that booking. Suppose a better-paid, last-minute shoot comes along and you have to turn it down? It's one thing to have to say you are busy because you'll be working on a lucrative advertising shoot or an interesting editorial story. But what if the prior booking is a poorly paid job that will do nothing for your folio? Good clients are hard to find and easy to lose. As soon as you tell clients you can't work with them because you are busy, they'll be forced to work with someone else. Therefore, the quiet periods you have between jobs should be regarded as a precious resource that shouldn't be given away lightly.

Overall, you need to develop a balance-sheet mentality when costing a job. You can start by looking at the amount of equipment you will be using on a shoot and what the hire cost of that will be. Let's say you'll be unable to do the computer retouching yourself and have to find someone else to do it. How much will it cost? Can you afford to hire a retoucher to replace you and still make a profit? Are all your itemized costings realistic? You might be charging an appropriate photography fee, but are you charging enough for prints? What if the client places a huge print order that ends up consuming much of your time? The extra workload will mean you have to put out a lot of extra effort while making only a small profit. Analyze each aspect of your business carefully to make sure you aren't over- or undercharging. You also need to be confident in all your costings so you can justify these (if necessary) to a client.

ESTIMATING AND QUOTING ON A JOB

With editorial work there is usually a set fee. With most other clients the price will vary according to the specific requirements of each job. If it's a job for a regular client, it will most likely be just you who is contacted and asked to provide an estimate or quote. With advertising agencies it is common practice to short-list several photographers and ask each to provide an estimate. An estimate is just that: an informed guess about how much a job should cost to produce and shoot. Even though it's an approximate figure, be careful not to price a job too quickly over the phone, as this can harm subsequent fee negotiations. Each photographer will be given a chance to provide a cost estimate for the job. The client won't always tell you what the actual allocated budget is, although you can always just ask.

Every job is different and the eventual costs will depend on many factors. The client wants to see a well-researched estimate, one that is also clear and easy to read. For example, clients may often ask for a quote that takes into account various kinds of eventual usages and different shoot approaches, such as shooting with and without variations. Make sure you present this information in a format that is intelligible and clearly shows the options and how much these will cost. Clients don't want to see an estimate that looks like it was put together in a hurry and is just a guess at costs. Major shoots usually involve hiring other talent, and an estimate will need to be backed up with details as the prices are firmed up and a total budget agreed upon. With art buyers you have to bear in mind they have a lot of experience in TV and stills production and will already roughly know what a job should cost. A poor estimate can kill a job stone-dead. For example, if it is ludicrously low, can you be trusted to complete the job to a satisfactory standard? But if you are roughly within the ballpark and art buyers are keen to use you, they'll usually be prepared to work with you to refine the estimate before presenting it to a client.

If you make it through to estimate stage, you are doing well. It doesn't mean you'll get the job, as there can only be one eventual winner, but to be short-listed in this way can be taken as a compliment: you are thought capable of producing the job. At the same time there will be among the final selection one recommended photographer; the others will be there to allow the client some choice. For example, as a brief changes, it is possible one photographer may then become more preferable. Even if you are unsuccessful at the bid stage, your work will have been brought to the attention of the client and the creative teams working at the agency. You will at least have raised your profile and improved your chances of getting short-listed for another job in the future.

With big advertising shoots, you have to bear in mind that the media expenses may easily dwarf the costs of producing the advert. Therefore advertising agency clients aren't so much looking for a good deal as reassurance. They don't necessarily want to spend lots of money on the photography, but the media cost will justify them

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investing properly in the creative services beforehand. If a quote looks too cheap, this may cause the agency or client to worry about whether everything will run smoothly. The fee isn't the only issue; all parts of the quote must appear properly researched and fully accounted for.

Breaking down the costs

Your quote will need to show the creative fee, the costs associated with producing the job, as well as the usage fee (more on the latter to follow). Earlier on in this chapter I highlighted the things you need to consider when working out your day rate, so that bit is fairly easy to deal with. The costs will vary depending on the complexity or unusualness of the job. If it is a straightforward shoot, similar to others you carry out regularly, you can probably compile a quote quite quickly. For example, whenever I am requested to quote for a studio PR shoot, I have a template that's ready to send after some minor editing. When preparing an estimate or quote for advertising jobs, you always need to research the costs carefully, because each job will be different and you have to make sure every detail is accounted for.

The creative fee and costs are all about how much it costs to produce a job. The usage fee reflects how and where the photographs are going to be used and for how long they will be used. This is usually the trickiest part to work out, as the usage requirements can vary enormously from job to job. Also, if the job requires getting quotes from model agencies and stylists plus other freelance suppliers, you need to make sure they are all on the same page regarding expected usage and what is appropriate for them to charge.

For example, let's say you are being asked to photograph an ad for a consumer product. The type of usage might be press advertising in a number of magazines and newspapers, plus packaging and Internet advertising. You will also need to know for how long the photograph will be used, which in this case might be for one year. With photography for packaging, the lifetime can vary. For example, photography to advertise designer swimwear will be usable only for the sales period leading up to summer and for a single season only. Photography for something like high-end underwear is likely to sell for a longer period of time before the products (and photography) need to be renewed. Lastly, you'll need to know which territories the photograph will be used in. Suppose the ad is to be used in two territories. The estimate will need to show your fee, a summary of the costs associated with shooting the job, and a usage fee to reflect the fact that the photographs are to be used for packaging and Internet on top of the magazine usages and will appear in more than one country.

Some photographers incorporate the usage into their creative fee for standard usages, so the basic day rate charged will include, say, up to two media usages in a single country for one year. For any additional usages a usage fee is charged, and this is calculated by multiplying a base usage rate. The base usage rate can be based on your day rate, or it can be higher, depending on your level of expertise. Some professional

photography associations publish guidelines that can be used to calculate such usage fees. These suggest the percentage by which to multiply the base usage fee based on the usage that's required. It must be stressed that these are guidelines for estimating jobs, which will then be subject to negotiation with the client. Using a fee usage calculator can help you pitch a job at a rate that is based on your personal level of expertise and ensures that the usage fee you charge is roughly in line with industry expectations. It in no way guarantees you will get the fee asked and doesn't take into account current economic conditions. It helps photographers gauge what they *should* be charging and adapt accordingly. These things are never straightforward—you might want to take into account how useful a particular job will be in advancing your career, aside from the issue of fees. Or it might be that the photograph you are asked to shoot could be of value to you as a library image after the initial licensed usage has expired.

Before you're hired, there will usually be a period of negotiation over fees plus costs, and the brief might get modified following preproduction meetings. Once everything has been approved, it will then be time to submit a quote. At this stage you need to be absolutely sure of the final required usages and what everything will cost. The client will then be in a position to book you. A verbal agreement over the phone will suffice in order to place a provisional booking. Your acceptance should be seen as a commitment to do the job, and if someone else asks you to do a shoot the same day, you can offer only a second provisional booking till the client who made the provisional booking with you first either confirms or cancels. If you do get a second inquiry for that day, it is always a good idea to let the first client know that someone else is interested in working with you that same day so you don't lose out on the second booking. The same procedure applies when booking other freelance talent. Freelance agencies are adept at managing their clients' diaries in this way and ensuring no work opportunity is lost.

Your aim at this point will be to secure a confirmed booking from the client and to have it in writing, which can be in the form of an art order from the client. At the same time, you should issue your own written confirmation of acceptance in the form of a formal quote, in which costs and usage are confirmed, accompanied by a copy of your terms and conditions. The art order will need to be received prior to the start of the shoot. This is as much in the client's interest as the photographer's, since art orders that are received late, i.e. during the middle of a shoot or afterward, are less likely to be considered legally binding.

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TERMS AND CONDITIONS

Most services and suppliers you deal with will have standard terms and conditions that you are required to accept. Photography is no different, and therefore photographers should also have their own terms and conditions to give to clients. These are usually issued prior to the shoot and again when invoicing. The terms and conditions

CLIENTS MAY ISSUE THEIR OWN TERMS OF ACCEPTANCE, AND IT IS IMPORTANT TO CHECK THERE AREN'T ANY CLAUSES THAT MAY CONFLICT WITH YOUR OWN TERMS.

MODIFYING TERMS AND CONDITIONS

If you take a standard terms and conditions form and modify it, make sure you have a lawyer look at the modified version just to confirm everything works together. It is not unknown for people to modify documents and unwittingly introduce internal inconsistencies with a clause that they didn't fully understand. If it ever came to litigation, this would cause a court all sorts of confusion.

may include things that are already covered by trading law or recognized business practices. The document allows you to state your terms of business, especially with regards to payment and copyright. Clients in turn may issue their own terms of acceptance, and it is important to check there aren't any clauses that may conflict with your own terms of service. For example, the clients' contract may include a clause that states their terms supersede yours.

The types of terms and conditions issued by photographers vary from country to country, where, for example, copyright law is not always the same. You can get a lawyer to help draft a form for you to use, but if you belong to a professional photography organization, it probably has a standard form you can adapt and use for your particular location.

The main thing to include is clarification on copyright, where ideally, you will want to assert that you retain all copyright. If clients insist on owning all rights that's fine, but let them know they have to pay for it. It is also a good idea to have a "use" clause, which, among other things, states that copyright is licensed only after payment has been received. This protects you in case the commissioning client goes bust. If this should happen the clause means the end client won't be able to use the photographs until your invoice has been paid, regardless of whether the agency has already been paid.

An exclusivity clause should give the client the right to use the photographs exclusively for the time period of the license but still allow the photographer the right to use the photographs for promotional purposes. A confidentiality clause can guarantee the client that the photographer will be respectful of sensitive data given to him or her in confidence (for instance, if a client is coming out with a new product that hasn't been released yet). Separate to this you will also need to be mindful of advertising agency confidentiality agreements, in which a client may require you to hold back on self-promotion till after the photographs have first been used.

Cancellation fees are payable only after a job has been confirmed. If a client cancels for whatever reason close to the day of a shoot, you should be entitled to a cancellation fee, and this will need to be specified in your terms and conditions. Typically, you might state you charge 100 percent of your fee plus any expenses incurred if canceled within two days of the start of a shoot and 50 percent if canceled between two to four days before. In reality this charge can be discretionary—for example, if it's a regular client, the shoot is being rescheduled for another date, and you haven't lost out on any other work.

The terms and conditions should also include a rejection clause, which states there can be no grounds to reject work on the basis of style and composition (see the section later called "Job Rejection").

PAYING ATTENTION TO THE DETAILS

It is all too easy to let the small details slip through unnoticed. In my experience, once you have negotiated and agreed on a fee there will be no further arguments over how much you are to be paid. But it is always the little extras that can lead to problems down the line. As long as clients are happy with the photos, they will be prepared to pay the agreed-upon fee, but disagreements can easily arise over the expenses that are eventually billed. For example, let's say you allocated a budget for lunch for an estimated number of people, but far more people than expected show up on the day, all needing to be fed. If you can, it's best to include a contingency in the budget that can be used to take care of this, or use your own judgment and swallow the extra expense if necessary. It is usually the petty things that annoy clients most. There was a hire studio that once charged for gas heating on what was one of the hottest days of the year. It was something like 50 pence, and when quizzed it turned out they had measured the gas at the beginning of the day and at the end, and one or two units had been consumed. They had charged for the pilot light gas.

When working on a busy shoot it's easy to miss what's happening around you. One of the ways photography assistants can make themselves useful is to act as an extra pair of eyes and ears to note what's going on, such as recording the arrival and finish times for models and generally checking to see the clients have everything they need.

Ultimately you can't rely on good things to last forever. Great clients can stop using you for all sorts of reasons that are out of your control. They might lose an account, the art buyer might move jobs, the agency or magazine might fold. The lesson here is to never take anything for granted, and even when things seem to be going well, plan ahead for your next move. Sometimes a relationship can end quite unexpectedly. As an assistant I worked with a photographer producing ads for a bicycle company that featured the bicycles being photographed in exotic locations. The first year we went to Kenya and, following the success of that trip, traveled to Martinique in the Caribbean. Apart from the photographer being heavily interrogated on the way out through Paris Charles de Gaulle Airport, everything went smoothly. The art director and the agency were delighted with the results. What none of us paid attention to was the employee from the bicycle company who had accompanied us to help look after the bikes. We could easily have managed them on our own, but her accompanying us on this trip was the company's way of rewarding a key member of staff. We let her relax and enjoy herself while we got on with organizing the shots. However, her perception was that we were all having a lovely holiday at the company's expense—she wasn't around to notice we were up most mornings before dawn checking out locations for the next day's shoot. Anyway, when she got back home she wrote a negative report to her bosses, which put an end to that particular campaign.

CONFIDENTIALITY AGREEMENTS

On advertising shoots or even some editorial shoots, you may be asked to sign a confidentiality agreement. These are designed to protect the client's interests, which can mean you can't release any images prior to the launch of a campaign, or even discuss a job that you have shot prior to the launch date or the newsstand date. As the photographer and person in charge of a production, this means paying careful attention to assistants and others who may take photographs on set that might end up on Twitter or Facebook. It also means making sure all the people who may be involved in handling the image files (such as retouchers) also sign confidentiality agreements. Why is this necessary? For example, from time to time photographs from a celebrity shoot will get leaked that allow people to compare the original images with the retouched versions. It's fun to see what goes on behind the scenes, but it constitutes a major breach of trust for the photographer who was responsible for that shoot.

GOODIES AND EXTRAS

One of the perks that comes with PR and advertising shoots is that items will sometimes be up for grabs after a shoot, such as small props or products. At the same time, photographers have to know their place in the pecking order. A friend of mine who photographed room sets told me how on each job he photographed, just about every prop brought in for a shoot would have to be sent over to the advertising agency at the end of a job. One art director got the nickname “Bonus” because he was always on the lookout for shoot freebies and wasn’t averse to a bit of bribery. At the very least, if you like a product on the shoot, the client you are working for might be able to arrange a good discount for you.

INVOICING AND EXPENSES

IT IS ACCEPTABLE TO CHARGE A MARKUP ON ANYTHING YOU HAVE TO BUY FOR A JOB BEYOND YOUR BASIC TOOLS. ALL BUSINESSES DO THIS WHERE THEY HAVE TO MAINTAIN STOCK AND COVER WASTE THROUGH LOSS.

Once a job has been shot it will be time to prepare a sales invoice. If you can, it is advisable to break down the invoicing into stages for the work done and have this agreed upon beforehand. For example, if there is to be a substantial amount of retouching work, you’ll want to invoice this separately. Otherwise you may be left waiting ages for final approval of the retouch work before you are able to invoice for the total job, which could harm your cash flow. Make sure you know who the invoice should be sent to, which may well be someone different from the client who briefed you. They may even be located at different addresses.

It is acceptable to charge a markup on anything you have to buy for a job beyond your basic tools. All businesses do this where they have to maintain stock and cover waste through loss (such as printer inks and paper), as well as taking into account the cash flow time gap between purchasing those items and final payment of the invoice. It’s worth rehearsing this argument, because it’s one you’ll come across from time to time in business. Some clients may ask to see receipts as evidence of expenditure. There is no reason why you should be expected to supply these. When you buy a service or product from a company, the invoice they supply you with is all that’s needed as proof of purchase. But go ahead and give copies of them if you like. Whatever you do, don’t give away your original receipts—you will need to keep these for your own records.

Invoices should remind clients of your terms of payment, and these should be followed up by issuing statements of account at the end of each month. These are an important reminder to clients to pay you; in fact, many companies won’t issue payment until they have received a statement reminder. If necessary, follow it up with a telephone call to chase an outstanding amount. You can also help speed up payment by making it easier for clients to pay you. If sending a statement, you can issue one with a tear-off section that makes it easy for the client to attach a check and stick it in a window envelope. You can also include your bank account details so the client has the option to pay you directly online, which is what most people prefer these days. Basically, make the payment process for clients as easy as possible.

In the UK, there is the Late Payment of Commercial Debts Act (1998), which gives businesses the right to charge interest on invoices that are unpaid after 30 days and also defends you from unscrupulous clients who might try to word a contract so as to negate this right. This legislation can be used by your suppliers as well, of course, but since it is based on the Bank of England base rate (which is currently very low), it doesn't provide as much incentive as it did when the act first became law. The overall intention of such legislation is to foster a business culture in which prompt payment benefits everyone. This approach has certainly worked well in some countries; for instance, you can count on German clients to pay swiftly. In other countries payment collection can be a nightmare.

Cash flow crises

They say you spend money three times: first when you get the job, second when you invoice, and lastly when you receive the check, by which time there's no money left. The worst time for any startup business is in the first few years, when cash flow will be the biggest hurdle. But it doesn't always get much easier as you become more established and the up-front expenses are scaled up.

Money collecting can be a frustrating and time-consuming business. Some companies have a deliberate strategy of delaying payment to suppliers. Stretching the time between the money coming in and going out is all part of the way their businesses are run. Rather than take out a line of credit they rely on delaying payments to contributors and other creditors, effectively using them as a free form of finance. What generally happens in a time of recession is bigger clients such as advertisers feel the pinch first and start delaying their payments to the magazines, who in turn may pass on the problem to their contributors. One way or another, it is the freelancers who usually end up bearing the brunt of a crisis situation. Therefore, if it is going to take 90 days or more to get paid, you can at least factor this into the equation when you work out how much you need to charge. Editorial clients tend to be good payers. When I used to shoot for *Time Out* magazine I was paid within 45 days on the dot, although I have heard of one magazine that currently delays its contributor payments by up to 12 months.

With direct clients there is always going to be a degree of uncertainty until you have had a chance to work with them a few times and gauged their payment methods. In my experience you can never tell how good a direct client will be at paying. Most of the people I have worked with have been very good, but every now and then you come across problem clients who will drag their heels for weeks on end before issuing a check. As long as everyone you work with pays eventually and the majority of your clients are good payers, you should be able to weather the storm when one client lets you down. When clients owe you money for too long, it is best to try to talk to them first and wait it out without taking legal action. You don't want to upset a potentially good future client that's just hit a rough patch, and legal fees are expensive.

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Of course, if that client happens to owe you a lot of money, you have a problem. Even if your biggest client is a regular payer, you still need to be on your guard. What will you do if that client goes bankrupt or switches to another photographer? Nobody would ever want to turn down work on a big project, but when one client starts to dominate your bookings diary, you need to think ahead to ensure you can carry on trading without that business if necessary.

Managing cash flow isn't just a matter of how much you owe and how much you are owed. It is about when money is due to you and when it must be paid. On paper you might be able to show a positive bank balance, but if the bulk of the money owed to you is from jobs carried out in the past few weeks and the money you owe is approaching 60 days or more due, you have a cash flow problem. As long as you have the promise of money coming in, you have a good argument for stalling payment on the money you owe, or you might be able to seek a temporary bank overdraft. An overdraft is something you can have in order to temporarily resolve cash flow delays. Providing you have a good financial history with your bank, there shouldn't be any problem securing an overdraft facility. However, be aware that as soon as you start borrowing money from a bank, it will need to see some kind of financial projections as well as regular cash flow statements.

If you need money to finance other things, such as investment in equipment or business growth, a finance loan will be more appropriate. These used to be fairly easy to arrange, but since the banking crisis it is now much harder for small businesses to secure such loans. You need to be aware of some of the darker practices that have been exposed in recent years. Banks have been in the spotlight over this and urged by governments to clean up their act and also to increase lending to small businesses. Even so, it is wise to pay attention to the financial news and know what kind of questions you need to ask so as to avoid finding yourself with a bad loan agreement. A business loan will usually require some kind of security, such as a property you own or a financial guarantee from a relative. If it all goes wrong and the lender decides to play hardball, the bank will have the power to use that security to make good any debts, which is why you must analyze a loan application very carefully.

To understand your cash flow, you might want to use a spreadsheet program to compare all your monthly outgoing expenses against projected income. You can use a program such as Microsoft Excel to do this. By entering in your current bank balance at the beginning, you can predict what the balance will be at the end of each following month. When you do this for the first time it can be a sobering revelation, one that puts certain expenditure items into perspective. For example, you may find out just how much the cost to run your car and make payments on it are affecting your finances. This exercise lets you take out unnecessary items or modify the budget by using, say, a smaller, less expensive car and see how the projection for six months ahead might slip from a negative to a positive balance. Micawber would be proud.

When the money you owe to suppliers becomes overdue, you have no choice but to deal with this head on. You can ignore your debts only for so long. At some point the debt bubble will burst and the only solution is for your business to fold. But it doesn't have to end like this. There are always ways you can manage debt and bring it under control earlier on. The first step is to recognize you have a problem and forewarn your creditors. For example, you can ring up a supplier, explain you are going through a temporary cash flow problem, and ask the representative to be lenient when chasing your overdue account that month. If you are able to follow through on your promise, the supplier will certainly be more willing to listen if you have to contact it again to make the same request. I went through this whole process myself once. After my sixth year in business, I had built up something like a £30,000 negative balance in my trading accounts, and the economy was about to go into recession. I requested patience from my creditors and the opportunity to pay them back in stages. I made a series of appointments to meet with them face to face and thrash out a deal to repay outstanding debts in manageable installments. I felt terrible going into those meetings but better coming out from them with an agreement in place, and better still when later on I was able to repay everyone. In the meantime, I was able to continue working with my credit rating intact.

Accountants who manage the sales ledger for big companies have to be tough when dealing with outstanding debt. They know to speak firmly with debtors to make sure their outstanding debts are given priority over all other debts you might have. At the end of the day they will also be prepared to take a pragmatic approach to bad debt. Ultimately it is better for them to have some chance of recovering something than nothing at all. If you are in a bullish mood you can press this to your advantage, especially when dealing with credit card debt. An accountant might be able to advise on ways to drastically restructure your personal debts. However, this action comes at a price, though. Your credit score will suffer and your credit limit restricted or made nonexistent. This is the nuclear option, but one that might just save you in a tricky financial crisis.

It is important for any business to fine-tune its day-to-day running costs. There is a saying where I come from: "Watch the pennies and the pounds will look after themselves." This is known as micromanagement, where the goal is to ensure business running costs are kept under control and to maximize profit. It is something all businesses must pay attention to, but at the same time you don't want to lose sight of the bigger picture. It's a useful business exercise, but you don't want to fall into the trap of becoming too obsessed with financial analysis. If you devote too much attention to scrutinizing the budgets, you won't spend enough time being creative and making the business grow. In a flatlining economy this is the predicament many businesses find themselves in. With banks unwilling to lend, many are struggling to find ways to keep their businesses turning over. They are constantly treading water just to stay afloat and not going anywhere. It's good to spend some time minimizing

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your expenditures, but what you most need to do is to deal with the bigger problems. You need to concentrate on what is going to bring more work, which means focusing most on the photography side of the business.

Cash flow problems can be the result of rapid expansion. This is where a sudden influx of new work means you build up short-term debt on expenses associated with each shoot, but the income you are due to receive is going to be delayed. So you may find that as you get busier, you'll struggle to meet the associated shoot expenses as well as being unable to pay your regular outgoing expenses. In a way it's a nice problem to have, because eventually you should be reaping a profit, and it is easier to explain to suppliers why you are having difficulty paying them.

There are ways you can mitigate a cash flow problem. One way is to ask for the up-front expenses to be paid in advance. This is common practice on big productions, such as TV commercials. Advertising agencies understand the need to cover expenses, and agents often negotiate this on behalf of the photographers they represent. With photographers who represent themselves or with other types of clients it doesn't happen so much. I think that's mainly because clients think they are paying you enough money as it is and photographers may like to project an image of not needing up-front finance even though they do. Typically an advance will be 50 to 100 percent of the production costs and may take up to two weeks to be processed. Remember, the agency will need to bill its client first in order to secure the advance amount.

Deflect as many of the big expense liabilities as you can. When quoting for a job you will be expected to list your costs as well as those of everyone else who is working with you. Where a shoot involves hiring models, makeup artists, and other talent, these other fees can easily add up to more than what you yourself will be charging. OK, if you were to incorporate all the shoot costs, this would boost your turnover, but as they say, "Turnover is vanity and profit is sanity." As you negotiate the shoot expenses, ensure such fees are paid directly by the client, so they don't become your added responsibility. Basically, it is standard business practice to charge a markup on all incurred expenses. If you ask the client to pay these expenses directly, you can say they are getting these fees at "cost," rather than you having to mark them up. This can also reassure a client that you aren't just loading the quote. By reducing your liability you also place less stress on the business cash flow.

It's important to get your paperwork in order promptly. Photographers complain about delayed payments, but clients will often point out that suppliers, and especially photographers, make things difficult for themselves by not following through with all the correct paperwork. Having said that, some clients do make a point of holding back on their paperwork requirements and throw them in at a late stage as a deliberate delaying tactic.

As a last resort you can use what is known as a factoring company to handle the debt collection for you. What happens here is you invoice a client as normal for a job,

but instead of sending the invoice to the client you send it to the factoring company instead, which in effect is buying the debt from you. It then pays you the full amount less a small commission and collects the money from the client itself. You'll need to have been trading for a number of years before a factoring company will be willing to work with you. The advantage of this approach is that it protects you from having to ask for an overdraft or a loan from the bank (which is expensive or hard to get), and you can pick and choose which invoices you feel need to be factored. You don't have to do it for every job. Factoring companies can also advise you as to which clients might be bad payers. The downside is, it reveals to clients the state of your finances, which might give the impression you are struggling financially. But hey, lots of people use factoring companies, and it can be a real lifesaver when cash flow is tight.

DEALING WITH CLIENTS

Understanding client expectations and the way clients work can help you figure out how much to charge. From a client's perspective, photography can be seen as a costly luxury, but once clients decide to commit to a photo shoot they will want to be sure they are spending their money wisely. The photography fee may be just one component in a bigger budget that involves design work, printing, and purchasing of advertising space. It can also include the costs of hiring the other talent required to make a shoot happen. When you look at things from the clients' perspective, the pressure is on for them to make the right choices at each stage of the process. While you may view yourself as an artist, clients may simply see you as a means to an end that benefits their business.

Making the wrong choice of photographer can prove to be a hugely expensive mistake. Clients may have already worked out the appropriate amount of money to spend on each component and will have shopped around accordingly. If you have a feel for what the client is expecting to pay, you can tailor the quote to meet those expectations. To win a job you have to reassure clients that they are buying the right talent within the expected budget. In these instances there is the danger you might price yourself too low. An advertising agency art buyer (knowing what the end client's expectations are) may even nudge you in the right direction to modify a quote upward.

A client can also be under pressure to ensure that other important people are kept happy. With a shoot that involves photographing a major celebrity, the pressure will be on to select the right photographer. The safe option will be to use someone who has an established reputation or rapport with the artist. This won't come cheap, of course, but can add more value to the shoot. Many years ago I saw a fashion advertising shoot that featured aristocratic young ladies photographed by Norman Parkinson. I happened to know the art director, Tony Chettle, who devised the campaign and

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asked him if it had been an expensive shoot to produce. Apparently not. Once Norman Parkinson had been secured as the photographer, the debutante models were all willing to work for more or less the standard rate and were just happy to have had the experience of being photographed by “Parks.”

Below-the-line advertising is more competitive. Here everything is about controlling the price and being able to stick to a tight budget. It’s also an excellent way for a young photographer to get a first break with an advertising agency. Small advertising jobs, such as trade magazine ads, will be given to the younger art teams. They in turn will know that their budget doesn’t allow hiring the biggest names in photography, so they’ll look for the best talent available among up-and-coming photographers, especially those that have been recommended by the art buyer. Even if an agency were able to secure a big-name photographer, it may calculate it’ll get better value out of a younger, keener photographer working for the same or lower fee.

In fact, being perceived as young and naive can work to your advantage. Younger clients will naturally feel more comfortable working with people who are near their own age. It may also make them feel more in control, whereas working with an established name photographer can be an intimidating experience. This also applies to most sectors of the creative industries, particularly on editorial magazines. Older photographers, like me, may be inclined to whinge that our wisdom and experience has been neglected in favor of inexperienced hotshots. The fact is there are a lot of very good younger photographers out there. Older clients, too, may prefer younger photographers because they are easier to work with, although this could be interpreted as “more gullible and easier to manipulate.” Whatever the reason, there is a threshold point where having a certain degree of experience combined with youth can definitely work to your advantage. If you’re planning to work into old age as a photographer, just make sure you attain “legendary” status at some point in your career.

Of course, all the above negatives can also be seen as advantages. This is, after all, how most people are given the chance to work with a new client. Nothing remains static forever, and it is the nature of any industry that change leads to new opportunities. Whether this always works to the benefit of photographers, we can’t be sure. Above all, remember that whatever struggles you experience when finding work will be similar for every other photographer who’s just starting out.

Whatever type of work you end up doing, be it advertising, PR, corporate, or editorial, you’ll want to find clients you can bond with. As your career progresses you will find out which type of work and clients suit you best. Building good working relationships will help you and your clients become more relaxed and, as a result, produce better work. If you don’t feel at ease with the people you are working with, then maybe you need to re-examine whether you are targeting the right type of market.

Knowing when to say no

It's natural to feel slightly nervous before a big shoot. View it as a sign you are taking the job ahead seriously and you are going to give it your all. But it's also important to know your limits and when to say no. It would be crazy to take on an assignment for which you have little, or no experience, such as doing a complex composite or agreeing to shoot video without ever having done so before. It is better to say no in these circumstances than to end up with an upset client and an unpaid invoice. Instead of taking on more than you can chew, find people who can provide the necessary expertise. Film and TV production is all about putting the right teams together. A film director may have a detailed understanding of the technical processes involved in creating a film or video but will still rely on a team of individual experts to turn those ideas into reality. For example, I know of a photographer who was asked to produce a beer TV commercial to be shot in a black-and-white 1950s style. He cleverly chose to hire a crew of old-timers who had actually worked on movies of that era and got them to set up the lighting and camera.

On one occasion I was asked by an agency to replicate a photograph that had been shot by a Spanish photographer. I found out the agency had approached the photographer in question, but the fee asked was too high, hence it was looking for another photographer to re-create the same shot. I thought the project spelled trouble, so I declined to quote.

Working for foreign clients carries extra risk because if you are commissioned by a client from abroad, it will be under the legal jurisdiction of the client's country. This means that if a dispute should arise over payment, you would have to pursue this through the courts in the client's country rather than your own. This can make chasing debt complicated and expensive.

You have to be alert to all kinds of dangers such as Internet fraud, where an unknown client (usually foreign) contacts you with a seemingly genuine job request. What do you do? One way to find out if it's a scam or not is to ask around on one of the photography forums. If it is a scam you will soon find lots of other photographers who have received a similar e-mail that week. However, Michael Clark, whom I interview later, mentions that he has received e-mails that looked like spam because they sounded too good to be true, yet turned out to be genuine, such as when Red Bull asked him to work for it. So you never know.

IT WOULD BE CRAZY TO TAKE ON AN ASSIGNMENT FOR WHICH YOU HAVE LITTLE, OR NO EXPERIENCE.

IS YOUR BUSINESS VIABLE?

Ideally you'll find a successful niche to work in, make a business plan, and see your business grow. But nothing can be taken for granted, and every photographer is likely to experience the effects of a downturn at some point in his or her career. There can be many reasons why this happens. Some things are simply out of your control, such as the economy going into recession or a major client going bust. But you can control

other factors. Is the type of work you do still relevant? Over the last few years, traditional markets such as pack shot photography and stock market library work have eroded, affecting the livelihood of many photographers. There are parallels here with the print industry and what happened to typesetters during the '90s. This was around the time of the desktop publishing revolution, when a little software company called Adobe created Postscript, which revolutionized the way type could be controlled and managed. In the old days designers worked at a large easel and hand-designed their print layouts. These were then passed on to the production department or printer, where pasteup people or typesetters would take the copy that had been supplied by the art department and manually prepare the type for printing. Once desktop computers could be used to carry out the design and type layout, the job of the typesetter was absorbed by the designers, who enjoyed the freedom and control this gave them. So, if the type of photography you produce is no longer in demand, then maybe it's time to change tack and explore new markets.

IDENTITY THEFT

Now more than ever, it is important to protect your personal records. All paperwork that contains personal information needs to be shredded before being recycled. Also bear in mind that discarded packaging of expensive items left outside your business are like an advertisement to would-be thieves.

Online security is a big issue these days. Most Web security revolves around the use of passwords, which is an ongoing vulnerability made worse by recent hacks into major databases, such as RockYou and LinkedIn. These have revealed not just individual passwords but provided insights into how we go about creating them. This information in turn has enabled hackers using the latest hardware and software to hack more successfully. For example, it is estimated that 91 percent of passwords are in a list of the top 1,000 regularly used passwords. Forty percent are in the top 100 list, and 10 percent of us use *password*, or 12345678. Even 52-character passwords can now be decoded in a matter of minutes. Passwords will continue to be used, as there is no real alternative for managing regular online access. The best advice is to avoid passwords that are obvious, such as names of favorite bands and changing a letter to a symbol. In other words, choosing *@erosmith* as your password isn't going to make your online activities very secure. Solutions suggested by the experts include taking a line or two from a favorite poem or song and using the first letter of each word. To make your password even more secure, substitute numbers or symbols for letters and you can end up with an easy-to-remember 8- or 10-character password that will be hard for anyone else to crack. For example, you could take a phrase like "*The Photographers at Work* book by Martin Evening" and create the following password: *tpawbbme*. To make this password even more secure, substitute a few symbols and use some capitals: *tP@Wbbm3*. Another suggestion is to create a long password by taking two unrelated words and joining them together.

LAWYERS AND HOW TO AVOID THEM

Every aspect of our lives, it seems, is governed by laws and legal responsibilities. As Professor Niall Ferguson once said, “The rule of law has been replaced by the rule of lawyers.” Take a wrong step and you could incur civil, or worse, criminal prosecution. The easiest way to avoid dealing with lawyers unnecessarily is to not get into trouble in the first place. The most important service a lawyer can provide you with is contract advice that protects you from harm or doing harm. Contracts are important because they clarify an agreement and are legally binding on both sides. They are vital for all kinds of business activities, from renting or leasing to job assignments. For this reason, it is advisable to hire a lawyer to review your basic paperwork when you first set up in business to make sure everything is in good shape. That way you’ll be starting with a solid foundation if something needs to be litigated down the road.

The most common legal problem a photographer will face is bad debt: either money that’s owed to you or money you owe someone else. This is always a civil matter, which means if you have a problem with someone who owes you money, you go to a solicitor, or attorney, as a last resort. Before you do this you need to look at all the options that are available to avoid taking unnecessary action. If a client owes you money, first check the terms on any contract you might have. Maybe it stipulates that payment will be made within 90 days? Speak to the client directly if the time limit has passed. You could e-mail first if you prefer, but follow this up with a call, and then send a letter. By this point you should have established there are no contractual reasons for late payment, you have informed the client that you are chasing payment, and you have made every effort to speak to the client directly. If, for example, the client says a check was sent in the post and it went astray, you have given your client the opportunity to provide that as an explanation. If the client doesn’t remedy the situation immediately, now is the time to toughen up and write a standard letter to demand payment. If you’re in the UK, at the top of the letter write “Without Prejudice.” Keep your letter simple and to the point and state that if the letter is ignored, it will be followed up with legal action to recover the debt plus costs. In your terms and conditions you may have stated that interest becomes due on unpaid bills after a certain period of time (this depends on the law in your country regarding late payment). If so, you will also be able to claim interest charges on top of the unpaid amount. In the majority of cases you can expect to receive a swift response. Payment should then follow, or at least a promise to pay in scheduled installments. Or, you may receive a counter letter spelling out the reasons for nonpayment. This will require a further response from you but will at least be a starting point for negotiations.

If you don’t get a reply to your original letter, you have the choice of taking the matter further via a solicitor or attorney, doing it yourself, or perhaps doing nothing. The first two options will incur some cost. Doing it yourself is actually very easy, but if you get a solicitor or attorney to handle the debt recovery on your behalf, a letter

CREDIT REPORTS

In the US at least, you can obtain copies of your credit report from each of the three major credit reporting agencies: Equifax, Experian, and TransUnion. Keeping an eye on those once every year can be a good way to ensure nobody has stolen your identity and opened lines of credit in your name. You may also want to check out Annualcreditreport.com. This is a site run by the three credit bureaus to comply with the credit reporting law.

IF YOU HAVE A PROBLEM WITH SOMEONE WHO OWES YOU MONEY, YOU GO TO A SOLICITOR, OR ATTORNEY, AS A LAST RESORT.

CLIENT CHECKS

Before doing serious business with someone, it is worth doing a quick court records check to see if the client regularly sues (or gets sued) and the circumstances surrounding any litigation. Working with someone who sues a lot isn't necessarily a deal-breaker, but it's a red flag. Also, you don't want to get a reputation yourself for being overlitigious.

WHEN YOU ARE FORCED TO CHASE AN UNPAID DEBT, IT IS IMPORTANT TO BE FIRM, BUT ABOVE ALL DON'T MAKE IT PERSONAL.

written on the firm's letterhead paper will usually be enough to get most debtors to swing into action. If not, you then have the option to initiate formal debt recovery proceedings. Now, these are serious. Most outstanding bills are likely to be small enough to be handled via small-claims court procedures instead (the upper limits and rules vary in each country as well as in each state in the US). It doesn't cost a lot to initiate your own small-claims proceedings and it's something anyone can easily do without legal help. In the right circumstances it can be very effective. Providing no counter-claim is made by the defendant, you will have the power to secure a judgment against the individual or company. However, this still won't ensure you receive payment. The defendant may comply willingly, of course. Otherwise, you'll have to actively execute the judgment through the court. You may even be able to potentially bankrupt the client (this can be done in the UK on debts above a certain threshold value).

The question you have to ask yourself before you even consider initiating court proceedings is, is it something worth doing or not? If clients don't pay you, maybe it's not because they didn't like your work but because they can't afford to. If so, who else might they owe money to? Yes, you have the power to pursue a claim and secure a judgment, but that might not help much if you are just another in a long line of angry creditors. There is no sense in throwing good money after bad on a hopeless case. So do your research and find out what the client's financial situation really is. I was once owed a debt from a business and found out later the owner was the boyfriend of someone you really didn't want to mess with. One of his other creditors, who had been persistent in chasing the debt, had the windows of his shop smashed in. In that instance I knew it was time to walk away. Sometimes people will surprise you, though. I can think of a couple of occasions when unpaid debts got paid in full some years later.

When you are forced to chase an unpaid debt, it is important to be firm, but above all don't make it personal. Clients are much more likely to be responsive to a professional approach than an angry, vindictive one. What matters most is the threat of litigation and the impact this may have on a client's business.

I can't confirm if the following is true or not, but I did hear a story about a company called Rent-a-Tramp, which would employ down-and-outs to act as money collectors. The idea was they would give one of their "tramps" a letter of authorization to collect an outstanding invoice. The scruffy collector would then visit the ad agency in person and insist on waiting in reception till receiving a check. It was all perfectly legal, apparently.

When things get ugly, it is all too easy to allow emotions to get the better of you. Where you have two warring factions, two firms of attorneys will happily make money from the disagreement. A cynic might argue it's in the attorneys' best interests to fuel such arguments, and you see this all the time in divorce proceedings. It's best to avoid letting debts get to that stage if at all possible.

But what about being faced with the threat of legal action yourself? You can protect yourself to some extent from litigation through legal insurance, which seems to be vital in this day and age. Whether or not you wish to initiate your own legal actions is up to you. One benefit of being a member of a professional body is that it may be able to provide free or discounted legal advice. Some offer legal services to their members at special rates. If all you need is some advice about what to do in a particular situation, this can help enormously.

It bears repeating: you need to avoid personalizing any business conflicts you have. One of the things you learn over the years is not to let your emotions get the better of you. Either let the issue drop and move on, or if you need to take action, do so dispassionately in a businesslike manner. When conflicts get out of hand they can become all-consuming and a huge distraction. An early business mentor of mine often raged against one of his competitors to the point where the very mention of the chap's name would bring on a fit of fury. A little anger is good if it helps you deal with a problem rather than let it fester, but anger is self-destructive when it gets out of control.

If you do have a grievance, how sure are you of the facts? In my experience, whenever I have thought someone has done me wrong, more often than not my first assumptions have proven to be incorrect. You should always step back from a situation and verify the facts before you jump to conclusions. To start with, if there is one thing more unreliable than the postal service, it's e-mail. Many misunderstandings arise simply because a letter, check, or e-mail genuinely got lost in the system. While important business can be conducted this way, you should never rely on it completely. E-mails can be diverted into someone's junk folder, or an attachment you included can result in a failed transmission. When you are sure of something, can you prove it? It always pays to explore all options before you confront someone with an accusation.

ONE OF THE THINGS YOU
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NOT TO LET YOUR EMOTIONS
GET THE BETTER OF YOU.

Job rejection

It's the call every photographer dreads—to be told there is a problem and the client doesn't like the photographs. It happens, and the outcome can be an expensive reshoot or ongoing litigation. But litigation happens only in extreme cases, when the photographer is clearly at fault or the client is acting unprofessionally.

On a client-paid shoot, the client or client's representative will be present, and his or her job is to direct and approve the work being created on behalf of the client. Photographers like to mock art directors for having an easy time while they do all the work, but the art director is responsible for approving the photographs as they are being shot. It is normal, accepted practice that if the art director OKs the work on a shoot and doesn't ask for any changes, he or she can't then argue the photographer should have shot the subject differently after the fact. Of course, it is easy to reconsider decisions made when viewing the photographs the next day, but the job of the

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art director is to direct the photographer and be decisive. The same is true for editorial assignments where the photographer is working with a magazine editor or art director. With direct clients it may be necessary to educate them about their responsibilities. For example, if a client commissions me to carry out an expensive shoot, I always make sure I know who is responsible for signing off on the work and that that person is present on the shoot.

The bottom line here is if clients decide later that they don't like the photographs, they can't blame the photographer, especially if the photographer was capable of making those changes at the time. For example, let's say on a food still life shoot, the photographer is asked to photograph a dessert with cream poured on top. On seeing the photographs the clients point out they needed to see a variation with whipped cream. If the photographer was briefed to do this and forgot, this would be the photographer's fault. If the art director or client forgot to mention this, then it's clearly the client who is to blame.

It gets more complicated if clients simply don't like the photographs. Prior to a shoot the clients will have deliberated over the choice of photographer, and they will have made their decision based on the chosen photographer's style and available budget. Most of the time clients should know what to expect. Allowances should be made for a photographer who fulfills a brief but doesn't necessarily excel by producing the greatest images. In these instances the photographs may be usable, but the photographer probably won't be booked again. Commissioners should reasonably expect results of a similar standard to the photographs that are in the photographer's portfolio. The key here is "fulfilling the brief." As long as the photographer gets all the requested shots done and the work is approved at the time, he or she can't be blamed afterward if someone has a change of mind. But there is still a lot of pressure on photographers to avoid having their work rejected in the first place.

So in a nutshell, if the photographer's creative work falls short of expectations, this should be picked up by the client at the time of the shoot. There is a lot that can go wrong on a job. Crew members can arrive late or fail to show up at all. The people you choose to book may fall short of expectations, which can make you liable for the photographs being rejected. Your worst nightmare is when things go wrong that are out of your control. That said, most problems can be overcome. If a model falls sick, you quickly find a backup. If the clothes aren't looking right, you get the clothes stylist to drape them differently or have something more suitable sent over. If the subject you are photographing has to cut short the amount of time you have to shoot, you make sure you have everything set up beforehand and work at top efficiency. It can be argued that this is what the pros get paid the big bucks for—the ability to keep the show on the road, come what may. This is where your experience comes into play. You should have a list of contacts that you can call upon to recover from any bad situation. If working in an unfamiliar city, you might want to consider hiring the

services of a local production company, or at the very least make sure you hire a local, knowledgeable assistant.

In extreme cases, when the photographs are rejected, this can be resolved in one of three ways. If the photographer agrees to being at fault, he or she may be given the opportunity to reshoot at no cost to the client. This can be costly for photographers but does at least avoid the costs of litigation and enables them to restore their reputation and keep their fee. If the photographer believes he or she shouldn't be held responsible, it can go to arbitration. This will require the consent of the client, though. For example, the Association of Photographers offers arbitration as a service for its members, where an independent photographer and art director examine the work that's been produced and decide whether the brief was met or not. Both parties have to agree beforehand to abide by their decision. Failing that, the case may have to go to court.

Supplier problems

Then there are the confrontations you have to face when you are the client and have a problem with a supplier. The people you rely on working with may let you down and put your shoot at risk. For the most part, you just make the best of a bad deal and work around the problem. Accept that things will go wrong sometimes and factor this into your schedule. It is not a good idea to overcommit on the number of shots you can do in a day. It is better to say you can achieve four finished photographs in a day and have some slack left over in the schedule to achieve this, just in case there is some kind of problem. If you are then able to produce extra photographs on top of what you promised, that can be seen as a bonus for the client.

When dealing with problem suppliers, the same rules apply as when one of your clients has a dispute with you. For example, if you hire a props stylist and decide you don't like the props brought to a shoot, you can only really complain if the brief hasn't been met or you weren't informed beforehand. Let's say your client produced a mood board that has visual references for clothes or props that are no longer available in the shops. A good stylist will inform you and the client before the shoot, maybe at the preproduction meeting. This then allows everyone involved to manage their expectations and consider other options. But if, say, a hairdresser is expected to have arranged for a skin test on a model prior to coloring her hair on a shoot and forgets to do so, that could cause a big problem, and you could justifiably make a claim against him or her.

Be wary of secondhand observations. If an assistant you trust informs you of a problem, that's one thing, but look out for those who tell tales on other crew members. They may mean well, or they might have a private agenda—you never know. Whenever there is a dispute, it is only natural for people to be defensive. Ask people why they have made such a mess of things and you can hardly expect them to agree

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with you. Rather than make subjective accusations, focus on the specifics in a matter-of-fact way. For your own sake you need to deal with any problems as quickly as possible as they arise. This is, after all, part of what your client is paying you for. As I have mentioned already, the most common snag is someone who has been booked on a job turning up late. In these instances you need to make a written note of the time the person arrived, and if it affects the schedule, bring it up to the contractor or their agent.

Personality clashes

Personality clashes between you and the people you work with are inevitable. But the benefit of being freelance is everyone is free to pick and choose whom they work with. If things don't work out on a shoot, the easiest remedy is to not book that person again. It is also worth taking a look at yourself to assess your own behavior. None of us are perfect, and when breakdowns in communication occur, it can be just as much our fault as that of others. I'll be the first to admit I have made my own share of mistakes and mishandled shoots—it's a constant learning experience. Above all, it is about treating your clients and coworkers with respect. When I hear people complain about what it is like to work with certain other photographers, the main grumbles are things like a lack of proper catering or sneakily extending the shot list beyond what was discussed. In any town or city there will be a small network of people working and competing in the same industry, and it's easy to make enemies. So be careful whom you upset.

Regarding catering, whether in the studio or on location, my policy has been to provide a decent lunch for everyone along with healthy and vegetarian options. This always goes down well and keeps the team happy. I do advise you make sure the catering expenses are approved beforehand with the client. Some clients like a nice lunch. Others may frown at the shoot being held up while everyone stops to eat a big meal. In the '70s and '80s advertising shoots would usually entail long, boozy lunches. That all changed after the '80s recession. It wasn't just the need to tighten budgets (and waistlines). The new breed of art directors who came in during the '90s were more focused on getting the job done and wanted to disassociate themselves from the Mad Men image that had lingered for so long.

IMAGE LIBRARY SUBMISSIONS

As Peter Hince points out in the following interview, photographers who submit photographs to image libraries need to pay careful attention to getting all their paperwork in order. Image libraries insist on this, as it protects them and those who will be purchasing the images.

If the photographs you submit are designated for editorial, news-type usages only, you won't need a model release. But for all other types of usages, if a person appears in a photograph, you will need to provide a signed, all-rights usages model release that will allow the pictures to be used commercially.

Not all model agencies are willing to offer buyout deals for image library photo shoots at a rate that makes an image library shoot affordable to carry out. So when shooting for stock, you will have to find models who will work within your budget for an all-rights usage.

If a building is featured in a photograph, a property release may also be required. With photographs of individual buildings you'll need consent from the owner in the form of a property release if the pictures are to be used for advertising, promotional, or even some editorial purposes. Let's say you photographed someone's mansion and the photo was used to illustrate a feature on how rich people have avoided paying property tax. Another classic example would be a household insurance ad, where the "owner" of the featured property had been refused coverage by that insurance company. In both cases, the real owner would likely be miffed by the implications of the feature or ad. These are all potentially awkward situations, which is why it is important to get a property release for photographs like these. Landmark buildings such as the Leaning Tower of Pisa are in the public domain and don't count, and it is normally OK to take photographs of public buildings. Also, if you photograph a cityscape you don't have to get permission from each and every building owner.

With sculptures and other works of art that are on public display, it is generally OK to include these in a photograph, but if the image is principally of a copyrighted sculpture, then the photographer may run into copyright issues with the sculptor. Also, with works of art that are on someone's private property, you definitely need permission to use a photograph of them, even if the sculpture or other artwork can be seen from the street. Inside buildings the rules are different. What may be a public space on the outside isn't inside. For example, you can photograph the exterior of St Paul's cathedral in London from almost any angle you like, but you won't be allowed to take photographs inside. The same applies to most museums and art galleries. Ultimately, if you can't provide the necessary paperwork your images will be rejected or withdrawn.

Note that the Easy Release model release app by ApplicationGap (see **Figure 4.2**) can be used on location to create model or property releases, which can be output in PDF form and sent by e-mail. According to ApplicationGap, these types of forms will be recognized by the major photo agencies, but you may want to check first with the image libraries you submit to.

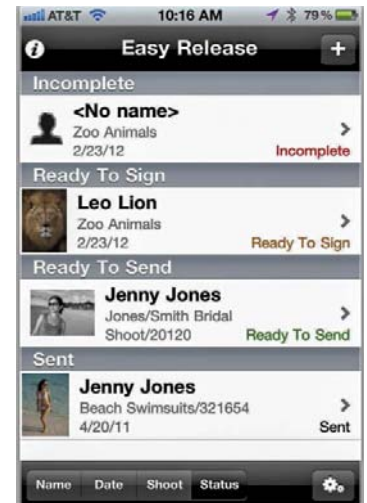


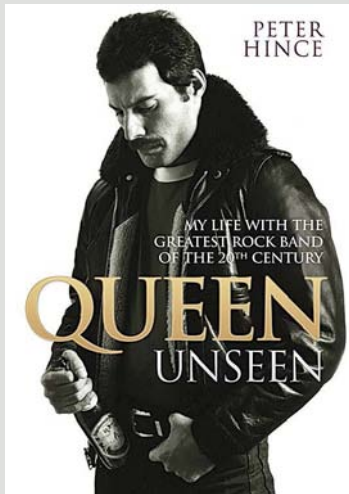
FIGURE 4.2 The Easy Release model release app by ApplicationGap.



PETER HINCE

SPECIALIZATION: IMAGE LIBRARY AND UNDERWATER PHOTOGRAPHY

For many years Peter Hince worked in the music business with artists such as David Bowie, Mott the Hoople, and Queen, whom he spent ten years with touring around the world (Hince recently published a book about these experiences: *Queen Unseen*, John Blake Publishing). It was around this time that he first picked up a camera and became interested in photography. During his music career he had already learned a lot from photographers who worked with the band as well as on the video shoots. So after leaving the music business, Hince decided to become a professional photographer. The experience of working in the music business stood him in good stead for producing photographic shoots: when commissions did start to roll in he was already well versed in controlling budgets and making sure things got done on time.



QUEEN UNSEEN BOOK COVER

IMAGE LIBRARY WORK

In the early '90s Hince was approached by the Image Bank picture library to do some shoots. The London office was owned at the time by Mark Cass, who was quite forward-thinking in commissioning photographers to do shoots and generally raising the quality of work held by the library. Hince cleverly made sure he retained his right to a percentage of the royalties, which still to this day are generating sales. As he became busier, he started financing his own shoots for Image Bank as well as other libraries. Instead of giving money to the taxman, he would reinvest it by shooting more library pictures. "When you are an approved photographer with an image library, you are given access to information about which types of images are in most demand, and the image libraries will art-direct shoots as well," says Hince. "If you invest so much, you should make so much back again. However, things have changed a lot over the last 15 years. Firstly, with the Internet, and latterly, royalty free. It's gotten to the point now where it's hard to tell the difference between royalty free and a commissioned image, and usage fees have gone way down. Clients don't have to spend so much money to do a commissioned shoot if they can purchase a ready-made shot for a tenth the cost. Never mind that someone else might be able to use the same photo. This approach is very cost-effective if it is just for a one-time brochure usage. But it is just not such a viable business model these days. My images are still selling, but they are not earning as much money now. Instead of photographers getting \$100 per usage, it's now more like a dollar."

Hince points out if you are going to shoot specifically for image libraries, you need to make sure you have all the paperwork in order. “Twenty years ago there were photographers who would submit to the libraries test shoots and outtakes from commissioned shoots as a way to earn extra money. But this caused all sorts of problems, where models would see photographs of themselves being used without their knowledge. Images had to be pulled, and it all got quite messy, tracing where photographs had been used. It was a wakeup call for the industry that everyone needed to be more careful.” These days everything is checked more carefully, and the lawyers want everything to be absolutely watertight. “Submitted images also have to be checked for technical quality,” says Hince. “Agencies are now very strict regards digital submissions. Once upon a time, grainy photographs shot on film would be allowed, but they won’t be passed now. Everything needs to be shot digitally using approved cameras. They must be correctly exposed, sharp, and of a minimum pixel size.”

AGENCIES ARE NOW VERY STRICT REGARDS DIGITAL SUBMISSIONS... EVERYTHING NEEDS TO BE SHOT DIGITALLY USING APPROVED CAMERAS.





WORK WITH QUEEN

Hince worked with the band Queen over a ten-year period. Looking back, it is remarkable that a band as image-conscious as Queen didn't have official photographers working with them. "They would simply ask me if they could use some of my photos inside an album or tour brochure," Hince says.

After leaving the band and starting work as a photographer, Hince didn't want to flaunt his connection with the band or be seen as an ex-Queen roadie. So he never really did anything with them. It was only recently that the Proud gallery contacted him to do an exhibition in Central London, which then went on to Australia. "It was an interesting experience and exciting to see these shots that had been hidden away for so many years in a new light," says Hince. "There were images I found of Fred that I'd never printed before and had gone unnoticed. For example, the one I used for the cover of my book *Queen Unseen*—Fred asked me to make him look mean and moody. This was shot on tour in



Germany in a backstage corridor using basic flash lighting.” The photograph of Fred wearing a crown and ermine robe was shot at Hince’s London studio. “It was a personal favorite of Fred’s,” says Hince; “it summed him up as the ‘great pretender,’ which was what he was, really. In this context, having the nuts and bolts of the studio in the background made sense. It summed him up very well. It was always the show, Freddie the showman, but outside of that he was a very private person.”

UNDERWATER PHOTOGRAPHY

Hince learned how to dive during the '80s but wasn't interested in taking photographs underwater because the equipment needed then was rather cumbersome and he just wanted to enjoy the diving. However, one day on a trip to the Middle East, he picked up a Nikonos 5 underwater camera at the duty-free shop. “I bought some fast-speed black-and-white film and started taking pictures underwater using just available light and started to experiment,” says Hince. “The thing about photographing in black and white is it’s very different, because the colors you see underwater can be camouflaged.” He got his favorite printer, Klaus Kalde, to make the toned prints, and the series he produced won an Association of Photographers award. He then went on to have exhibitions at the AoP Gallery in London, and another in Brighton, as well as at several dive shows. Some images did well with the libraries, and he was able to license others directly to clients.



Peter Hince Photography
Peterhince.com



FIGURE 4.3 The underwater scene images and studio shot used to create the final composite image.

UNDERWATER AD FOR ARALDITE

A few years ago, Hince was commissioned by an agency based in Cambridge, England, to photograph an ad for Araldite, an epoxy resin glue. The intention was to demonstrate the versatility of the product and how it is water-resistant. They wanted a glass fish tank held together with Araldite glue photographed underwater. When Hince was first approached to do this ad, he knew that the best way to handle this would be to photograph the various elements underwater and produce a montage from the best shots. The fish tank would need to be photographed separately in the studio. “There wasn’t very much money, and the job had been put on hold because the agency couldn’t afford to fly me out to shoot specifically for the job,” says Hince. “It so happened I had a trip coming up to the Red Sea, paid for by one of the dive magazines, and I was able to offer this as an opportunity to shoot the stills needed for the ad.”

It was quite a challenge shooting in color with an underwater housing and a regular SLR camera. It was necessary to filter quite heavily so as to deal with the blue color cast. Hince knew from his diving experience that the best and easiest dive location to go to would be the southern Red Sea. “This area offers particularly good diving,” he says. “There are lots of companies out there that offer first-class diving opportunities, and this location also offers a much greater abundance of tropical fish compared to other popular dive locations.” For example, while the Caribbean is a very popular place to dive, you won’t get to see quite so many exotic fish. For this particular job, he booked himself to go to Hurghada on a live-aboard dive boat. He used a Nikon SLR camera with a 50 mm lens in a Subal underwater housing. Subal, by the way, mainly makes underwater housings designed to encase the latest Canon and Nikon dSLR cameras, as well as for smaller compact cameras such as those made by Sony and Panasonic. A warming filter was used to help reduce some of the blue color at the time of capture.

He returned from the dive trip with a number of possible images (see **Figure 4.3**). After he showed the photographs to the art director, the shots shown here were chosen to create the final composite. Hince adds, “The tank itself was custom made for the shoot and photographed in a studio. The task then was to combine all these elements.”

The biggest challenge was to make the glass tank look realistic within the underwater scene. This was mainly achieved using the Multiply blend mode in Photoshop to merge the studio-shot tank with its underwater surroundings. The fish were cut out using paths and vector masks. These were added to the composite image so the fish appeared to be swimming inside the tank. As you can see, some of these fish were duplicated, or flipped, to make it

look like there were lots more fish. The client wanted greater color contrast between the fish and the water, so color adjustment layers were added to the squirrelfish to make them appear more orange. Reflections were added internally, as well as externally, to make the fish look like they really were inside the fish tank and that the tank itself appeared to blend with its underwater environment. It was also necessary to add more shading to some of the fish. For example, the squirrelfish placed at the bottom of the tank needed extra darkening in order to blend in with its shaded surroundings. On the other hand, the two squirrelfish at the top of the tank needed to be kept looking lighter, as they weren't in a shaded area. You will also note that a lid was added to the tank. This was created using the same master aquarium tank image and edited in Photoshop to match the base. Lastly, a duplicate was made of the coral image in the foreground and placed at the top of the layer stack so the tank appeared to be behind it (see **Figure 4.4**). Says Hince, “The client and agency were both very happy in the end.”



VIDEO INTERVIEW WITH PETER HINCE.

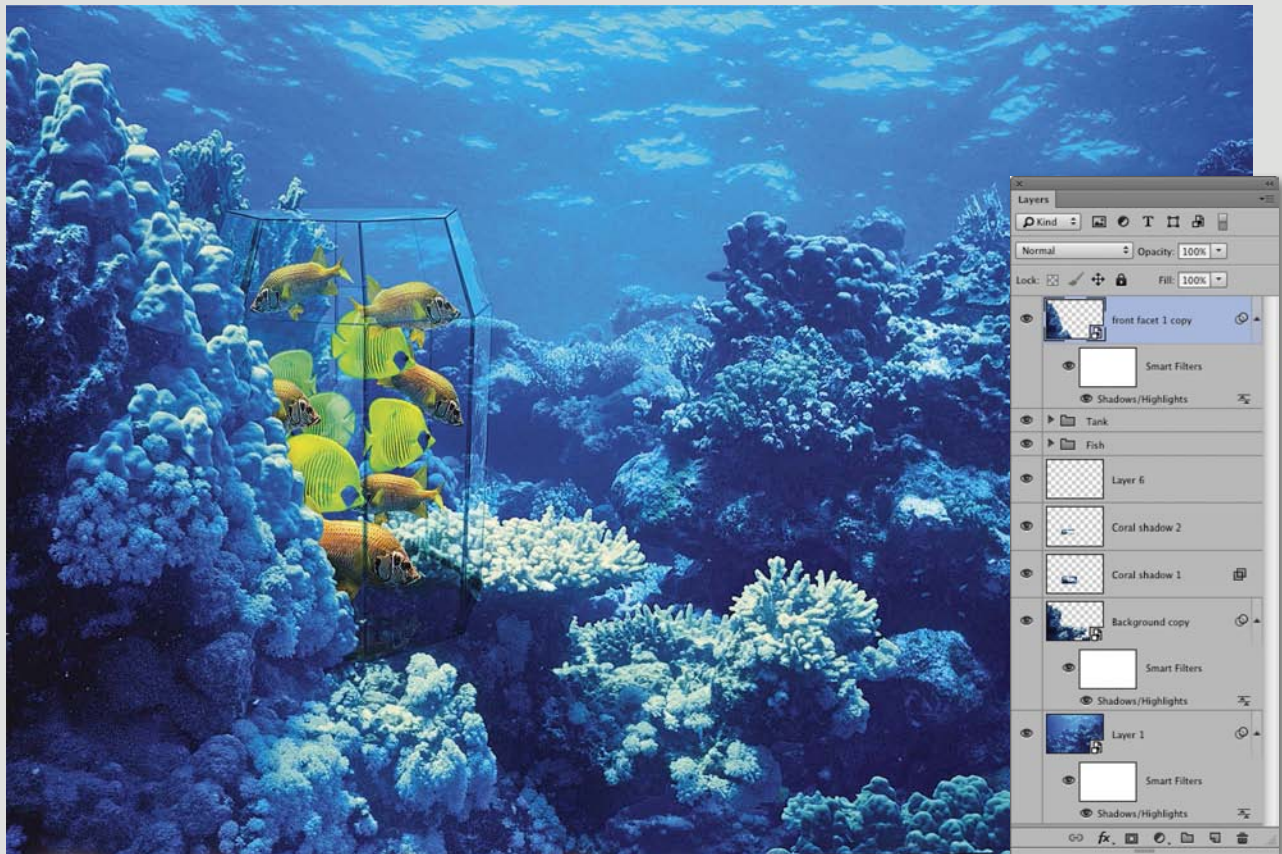


FIGURE 4.4 The final composite image.

COPYRIGHT RESOURCES

The ABCD of UK Photographic Copyright

Epub.org/files/ABCD_of_copy-right.pdf

ASMP: The Photographers' Guide to Copyright

Asmp.org/free/guide-crcf

Beyond the Lens

The-aop.org/shop

Copyright Workflow for Photographers

Tinyurl.com/jwvwet9

IT'S YOUR COPYRIGHT

Copyright is a property right that is vested in the works created by an author or artist. Copyright law can be used to protect authors against most unauthorized reproduction of their work, allows them to control how a work is reproduced, and is the lifeblood of our photography industry. In the case of musicians who write a piece of music, if they own the copyright, they control how that music can be used. They can license it to be used in a recording, whether they are the ones playing the music or another artist is. With photographs, copyright ownership puts the photographer in control of how an individual photograph can be seen, whether in print, posters, online, or on TV, and is just as valid and important to photographers as it is to any other artistic creator. While many aspects of national copyright laws have been standardized through international copyright agreements, the copyright laws in most countries do still contain some unique features.

Photographers haven't always been automatically recognized as first holders of copyright. Around the time of the early 20th century, copyright laws were primarily intended to protect the work of writers and painters. Photography was seen as a "technique for copying" (rather like engraving). Because of this, photography wasn't deemed to be deserving of copyright protection status. It's taken a long time for the rights of photographers to be recognized, and almost as soon as this goal was achieved, photographers started being pressured to give these rights up.

COPYRIGHT LAW

US copyright is governed by the federal Copyright Act of 1976. It was this copyright law statute revision that made photographers first holders of copyright, except for what were regarded as "works for hire" (more to follow on that). In the UK it is governed by the Copyright, Designs & Patents Act 1988. This, too, automatically recognizes photographers as first copyright holders. Because of the need to harmonize European law, this act was later amended in 1996 to fit in with European-wide legislation on copyright. South African copyright law has been largely based on British law, and the 1978 Copyright Act is the one currently in force there. It differs from European law in that commissioned photographs are owned by the commissioner (client). The default position is therefore a work made for hire, although this can be overridden by mutual agreement, even one that is made verbally.

Copyright law has also been determined by international treaties, such as the 1886 Berne Convention, which set out minimum standards for legislation and has been widely adopted by countries all around the world. However, it has only been in the last few decades that these principles have been fully implemented in copyright legislation for all types of creators.

COPYRIGHT DURATION

Copyright typically lasts the duration of an author's lifetime, plus somewhere between 50 to 100 years beyond his or her death. The exact number of years varies from country to country. In the UK and European Union, the period is 70 years beyond death and is currently the same in the US, but there are some exceptions. In the US, copyright held by corporations lasts 95 years from the publication date or 120 years from when the item was first made, whichever happens to be shorter. Also, the copyright duration has changed several times in the US, and in a couple instances Congress has retroactively extended copyright. For works created prior to January 1, 1978, figuring out the duration is enormously complicated and very fact specific. In the UK the time limit is 50 years after creation for computer-generated works, which are images created by a computer directed by an author, such as a fractal-rendered image. In the UK, at least, it is not a good idea to describe your computer-edited photographs as being "computer generated."

For works by unknown photographers, the duration of copyright is 70 years from the time the photograph was first made available to the public or published. For photographs that have not been previously published, the copyright expires 70 years after the photograph was taken. So, with photographs that date back to the mid-Victorian era, there will be no problem reproducing them because their creators (known or unknown) will all be long dead and the photographs therefore out of copyright. With more recent works, from the 20th century, it's less clear what can and can't be used. With a photograph taken during the early part of the second World War, the copyright would last 70 years after the death of the creator. If the photographer happened to have been killed during the war the copyright would only just have expired. If, on the other hand, the photographer survived the war and is still alive, the copyright might well still be in force and won't expire till 70 years after death. If you think the photographer who took the picture was unknown, then the copyright may have recently expired, but if you don't know who the author is, how can you be sure?

Digital Millennium Copyright Act (DMCA)

The US's Digital Millennium Copyright Act (1998) implements two 1996 treaties of the World Intellectual Property Organization and was brought about to help clarify the law regarding online social media website and image usages. It exempts Internet Service Providers directly and indirectly from liability (subject to certain procedural requirements) and also renders it unlawful for anyone to produce technology, devices, or services designed to circumvent copyright protection systems that control access to copyrighted works. It essentially protects companies such as Flickr and Facebook from being sued for secondary copyright infringement. At the same time it provides a mechanism for copyright holders to complain about unauthorized use and for such images to be removed. For example, if someone infringes copyright

STRICTLY SPEAKING,
PHOTOGRAPHERS ARE
ONLY “EMPLOYED” IF THEIR
EMPLOYER HAS THEM ON
THEIR PAYROLL AND DEDUCTS
THEIR TAXES.

on the Pinterest website, it absolves Pinterest of responsibility, but there is a page on the website that allows you to file a takedown notice. In response to this, Pinterest is required to take down the infringing content in a timely manner.

Who qualifies?

Interestingly, in the US a photograph must be regarded as being “original” for it to have copyright. What this means exactly is unclear and has yet to be tested in court. However, the Supreme Court has said that the originality requirement is not particularly stringent and requires only that a work displays some minimal level of creativity. Copyright ownership does not apply to employed photographers, who do not own copyright for the work created during their employment. Strictly speaking, photographers are only “employed” if their employer has them on their payroll and deducts their taxes (in the US what they produce on the job is known as work for hire). Where appropriate, photographers working on a short-term contract should make sure the terms and conditions don’t class them as an employee and thereby take away their copyright.

The author needs to be identifiable, which means if you intend on using a fancy pseudonym or brand name for your photography, people should know who the real you is. It’s a safe bet most people interested in photography know who Rankin, aka John Rankin Waddell, is, but if your working identity remains unclear, this may mean copyright lasts just 70 years from the time a photograph was taken.

Work for hire

In an employer-employee relationship, if the photographer is a true freelancer, then the copyright is owned by the photographer, unless there is an agreement to the contrary. However, if the photographer is an employee, and creating photographs is part of the job, then the copyright is owned by the employer and the art is regarded as a work for hire (WFH). The only exceptions are when the work created by the freelancer falls into one of several categories specifically enumerated in the Copyright Act of 1976. In these cases the photographer and client can agree beforehand to deem this a WFH. The specific categories include things like a contribution to a collective work as part of a motion picture or other audiovisual work, as well as what are described as supplementary works.

WFH agreements were originally designed with specific scenarios in mind, such as wedding photography where several photographers might be working for one photographer who has been hired by a couple to cover their wedding. This would allow the collective work (in this case the wedding album) to easily be licensed to the couple. Otherwise, if you had one or more other photographers covering the event without WFH agreements, they would individually be able to make claims for copyright ownership. What isn’t intended is for companies to try to apply WFH agreements to regular, freelance contractor commissions. For example, a WFH can

be created if it is agreed upon by the photographer and client before the assignment starts and signed in writing (but only if it falls into one of the specific enumerated categories described in the statute). This can serve to pass the freelance worker's copyright to the client as though he or she were an employee, but without the usual employee benefits, of course. It can even be enacted after the work is finished, which has allowed some clients to sneakily include WFH agreements in the endorsement areas of payment checks.

Freelancers also need to watch out for the conditions of work on a long-term project. Such work should be done under a contract for services rather than a regular employment contract, because the latter could be interpreted as a WFH.

Another important point to realize here is that if photographers set their business up as a limited company, or LLC, they become an employee of the business and the company (the employer) will own all the company assets. Should the company ever be sold or go into liquidation, the copyright would be regarded as being part of the company assets. There are ways to circumvent this. You can ask a solicitor or attorney to draw up a document that transfers the rights in the photographs shot for the company to you personally and then relicense these back to the company. A simpler solution is to keep the income from royalties separate to the company, although this requires managing two sets of accounts. In either case, you should always seek legal advice.

Copyright registration

In the US, it's not necessary to register your photographs in order to retain copyright because the copyright belongs to you regardless (unless you choose to sign it away, of course, or unless you take the photos for a company while you're its permanent employee). However, in order to successfully file a copyright suit you will need to register your images. This is because with unregistered images, damages are limited to actual losses. Registration is a requirement to file suit and get into court to sue for actual plus punitive damages. Basically, it is still required for US domestic copyright owners if they wish to receive the full benefits copyright protection can give them and bring a suit for copyright infringement in a federal court. As long as you register before the infringement, or 90 days before publication, then you're eligible for statutory damages and attorney fees. To register you need to use the Copyright Office's online registration system, Electronic Copyright Office (eCO). This can be accessed by going to the Copyright.gov page: click on the eCO link and follow the instructions on how to register your images and what file format and size they need to be, and then upload them via the site. A payment will be required for each registration, which varies slightly depending on which type of form is used. However, groups of published photographs, for example, still require paper forms.

COPYRIGHT INFRINGEMENTS

Copyright infringement is often worth pursuing, providing your case is strong. In the US the only place that can hear a copyright claim is a US federal court, because US copyright law is exclusively federal. Sometimes it pays to bring your small claim along with a copyright claim, and take it all to federal court, as the potential damages awards from copyright infringement are usually higher than simple breach of contract claims. Alas, there's no one size fits all answer to this issue, so this is one of those cases where it's a good idea to consult with a lawyer to get a sense of what your options are.

IF YOU SHOOT FOR
COMMISSION YOU MAY BE
ASKED TO ASSIGN YOUR
COPYRIGHT. IT HELPS TO
KNOW THAT THE ONLY WAY
YOU CAN DO THIS IS BY
WRITTEN AGREEMENT. UNLESS
OTHERWISE SPECIFIED,
THE COPYRIGHT IS YOURS
AUTOMATICALLY, AND IT CAN'T
BE NEGOTIATED AFTER THE
EVENT.

Moral rights

Moral rights were included in the Berne Convention and are partly implemented in UK and Canadian copyright law. Under UK law, moral rights are granted automatically and cannot be sold or assigned (surrendered) in the way copyright can be assigned. They give photographers the right to be correctly identified as the author and have their work properly credited when published (but this has to be asserted). The rights also allow you to object to derogatory treatment, such as poor Photoshop retouching being carried out on a photograph without your permission. Also included is a clause that safeguards the commissioner's privacy. This means with commissioned photographs taken of social events such as weddings or family portraits, the photographer owns the copyright but cannot publish those photos or exploit them for financial gain without seeking permission from the commissioner. In the US, Section 106A of copyright law provides specific rights of attribution and integrity for visual artists.

Client negotiations

The reality is, many clients haven't liked the copyright law changes that have benefited photographers. Prior to 1976 (US) or 1988 (UK), whoever commissioned and bought the photography (or more specifically, paid for the film used) owned the copyright. Photographers could (and did) negotiate to keep their copyright but had to assert this right prior to agreeing to each job as part of their terms and conditions of business. With prints you could put a stamp on the back to say, "This photograph is subject to copyright." With transparency slides these would need to be mounted and the copyright owner's details written onto the slide mount.

With the advent of digital, it's now much easier to assert copyright. You can mark a photograph as being copyright-protected and include your name, contact info, and other relevant details in the IPTC metadata. None of this is foolproof and you can argue it is just as easy to copy and paste an image to remove all the metadata as it was to remove a slide and put it in a new slide mount. There is a provision in the DMCA that makes it unlawful for someone to knowingly and intentionally remove copyright management information from copyrighted works.

If you shoot for commission you may be asked to assign (give up) your copyright. It helps to know that the only way you can do this is by written agreement. Unless otherwise specified, the copyright is yours automatically, and it can't be negotiated after the event, either. However, you will inevitably meet clients who'll demand all copyright. The main reason for this is that their lawyers have advised them to get blanket waivers from everyone they deal with. Such demands aren't always transparent—the waiver may be contained in a clause on the back of an art order. Worse still are one-time agreements in which the photographer agrees to assign copyright to that client for everything he or she shoots now and into the future. Shortly after the 1988 Copyright, Design & Patents Act became law, a London agency sent letters to

photographers with a pound coin attached stating this letter was a copyright assignment and acceptance of this payment would assign rights for all future work commissioned by that agency. Of course, to be valid, such an agreement needed to be signed by the photographer, but it showed the desperation of some clients to secure all rights, even if it cost them a pound to do so.

Instead of assigning full copyright, you can grant a license specified by usage type (i.e., media usage), time period, and territory, and it is possible to make this an exclusive right. This appeals to clients because it guarantees only they will be able to use the pictures. From the photographers' point of view, an exclusive license agreement assures them the photos can be used only for the requested usages and time period. So it can be fair to both sides. An exclusive license, signed by the copyright owner, also gives the client the right to sue third parties directly for any copyright infringement. Exclusive license agreements are commonly used in advertising photography.

A nonexclusive agreement is one that would mainly be used where the source image was not shot for a particular client but most likely self-commissioned, and the photographer wished to maximize potential sales. The best way to visualize this is to imagine a cake being divided up into lots of different slices. One slice would be to sell a photograph for press advertising in the US for a period of six months. Unless it's made exclusive, that same slice can then be sold again to someone else. Each slice can have a calculated value based on the type of usage, where it is to be used, the time period, plus requests for exclusivity.

As much as clients might like to negotiate to have the whole cake to themselves, it is the photographer's or agent's job to explain why they won't always need it. Photographer Seth Resnick offers some good advice here: "Asking you for a price for unlimited usage is a little like asking for the price of a car but not knowing if you want a Ford or a Ferrari. I tell clients that unlimited usage means usage in every media type in every language, and the cost would be far greater than they need to spend. Are they doing television? If not, they can exclude television rights. Are they going to have usage on the sides of buses? Are they going to use billboards? For example, if a regional magazine charges \$5,000 for a full-page ad, it would make an enormous difference in the price if the ad is run once or six times. Also, there may be one regional magazine or there could be 20. Again, the price would vary greatly."

Where a photographic shoot involves models or incorporates elements that are themselves subject to copyright, this actually strengthens the argument to insist on the need to sell limited rights. After all, if the model booking agreement signed by the client limits the picture usage, then the photographer's agreement should do so, too. In other words, the model agreement already limits the types of usage, and the photographer can't be made liable for extra usages that go beyond the original shoot agreement. This also highlights the problem of losing control of your work when you assign copyright. Your work can then be used anywhere in any context, but the models featured in a photograph may not like the products or concepts they'll be associated with. That can be a problem.

PUBLISHING RIGHTS EXPLAINED

Photographs can be licensed in a number of ways. One-time rights are where a photograph is offered for publication one time only. First rights are where you offer a publisher the opportunity to publish a photograph before anyone else, again on a one-time basis. Serial rights are where a photograph appears repeatedly in a publication, such as a portrait taken of a columnist who writes a regular column for a magazine. Electronic rights covers usage in electronic media, such as apps and websites, which these days are an important part of magazine publishing. Then there are promotion rights, which cover use of a photo in promoting a publication. For example, if your photograph is used for a magazine cover, the magazine cover design may end up being used in press, poster, and TV ads. While magazines pressure commissioned photographers to assign full copyright, it is important to be aware of these terms when selling self-commissioned work.

FAIR USE DEFENSE

Even when the photographer owns the copyright of an image, there is still the opportunity for the work to be appropriated using a fair use defense. This is an exception allowed in copyright law that permits the use of copyrighted material by others without requiring permission from the creator. This particular defense was made use of in *Patrick Cariou vs. Richard Prince*. In this court case Prince was accused of having used photographs taken by Cariou to create new works of art. Prince justified this using a fair use defense, arguing that the treatment applied was “transformative.” At a sitting of the appellate court, two out of three judges agreed and found in favor of Prince. The court of appeals did send the case back to the district court regarding five of Prince’s works, because the judges thought the case required more fact-finding. However, that part of the case was ultimately settled privately between the parties. In some other notable cases, a fair use defense for photographic images has been rejected, and it remains a gray area.

Copyright ownership also gives the photographer some control when collecting payment. As I mentioned earlier, as part of your terms and conditions you can state that the copyright license only comes into effect once payment has been received. It wouldn’t go down well to enforce this to the letter of the contract, but such clauses are useful should you find yourself in a situation where an advertising agency goes bust and the photographs continue to be used by the end client. In such situations you could make a claim against the client for usage of the photographs (even if the agency had already been paid).

As mentioned earlier in the book, be careful when entering competitions or agreeing to license an image. Always read the terms and conditions carefully. For example, it is common for photography competitions to include onerous clauses that are essentially a rights grab (see “Awards and Building on Success” in Chapter 2). Students who enroll in a photography course should read their agreements carefully to make sure the work they will be producing for that course remains theirs and that their copyright is not automatically assigned to the college.

ORPHAN WORKS

Images with missing metadata information are typically described as “orphan works.” A lot of photographs and other artistic works in existence have no indication of copyright ownership, and there’s no way to tell who the author is. Orphan works photos are a problem for picture editors because they can’t use them (except when a photograph is clearly old enough for the copyright to have expired), and photographers who omit their contact details won’t benefit from potential sales. As a result, there are, as you can imagine, a lot of rather interesting historical photographs held in libraries that can’t be published because of the uncertainty surrounding their ownership. The fact that a prospective user cannot identify the owner does not make the work anonymous or pseudonymous.

Some businesses would like to see legislation introduced that would allow them to avoid liability when publishing or using orphan works. This is also being strongly supported by public institutions, as well as vested interests that would like to administer schemes to oversee the use of orphan works. However, if done right, orphan works legislation could offer a fairer deal to photographers. One US proposal would limit damages to a reasonable license fee, so that the photographer would be out no more or less than in an ordinary commercial transaction situation. In the absence of legislation to deal with orphan works, courts in the US have also been more willing to expand the contours of fair use, which has been used as a shield.

The overall situation is not helped by photographers who fail to safeguard their images and who are not taking care to mark their photos as being copyrighted or adding their contact details to the IPTC metadata. At the same time, uploading photographs to social media sites can cause them to lose such metadata and thereby create

orphan works during the process. If you haven't heard about proposed orphan works legislation, I urge you to read up on this.

There was the recent, well-publicized case of Morel vs. Agence France-Presse (AFP)/Getty Images. The story here is that Daniel Morel, a Haitian photojournalist, took photographs of the earthquake disaster in January 2010 in Haiti, and within hours of the event happening, posted these on TwitPic, a website that allows users to put pictures on Twitter. However, another Twitter user took the photos from Morel's TwitPic and posted them on his own. AFP ended up using the photographs from this account without following its own guidelines to check the true ownership of the photographs. AFP then forwarded the images to Getty Images and as a result, both became embroiled in a Southern District of New York court case in which the two agencies were found liable of multiple violations of the Digital Millennium Copyright Act and found to have altered the copyright management information and added false, misleading data. Part of AFP's defense was that the Twitter website allows for the fair use of photographs. At one point AFP even brought counter claims, one of which sought a judicial decree that it hadn't infringed anything, and another for commercial defamation. The judge saw things differently. Twitter allows users to post and retweet but doesn't allow for the commercial use of photographs posted by other users. The jury found that AFP and its American distributor Getty Images had willfully infringed Daniel Morel's copyright and awarded him \$1.22 million. This was a significant victory for an individual photographer who had fought a long battle with the picture library agencies.

I think the main culprit here was the Twitter user who effectively stole Morel's photographs and thereby allowed them to be used by AFP without the original creator's knowledge or permission. AFP had indeed issued guidelines to its editors to avoid using photographs found on social media sites without checking, and its picture editor was clearly at fault. Getty Images was also found liable by association for its role in the infringement, and it is reckoned it may well sue AFP for the legal costs Getty Images incurred. The important thing about this case is that it clarifies how photographers have the right to maintain ownership of their images when photographs are posted on social media. Where picture editors have been inclined to use photographs without properly checking, this case serves notice to them to act more responsibly in the future.

SECONDARY RIGHTS

When retouching is carried out by someone other than the photographer, this implies dual copyright ownership and permission must be granted before the original copyright owner can exploit that image and license it for other usages. It is all a question of how much retouching is done. Basically, retouching that extends to simply cleaning up an image doesn't qualify. But if the retouching work substantially changes the appearance of an image, or includes photographs created by another photographer, then more than one copyright will be associated with that work. For example, the image in **Figure 4.5** is one that I worked on for Makebelieve Beauty through Nude Brand Creation. I took the photograph of the model featured in the design and carried out the preliminary retouching. The Henri Rousseau–inspired jungle foliage was illustrated by Derek Bacon and the final image composition assembled by Allen Luther at Nude. Permission was sought by each of those people in order to reproduce this image in the book.

FIGURE 4.5 Client: Makebelieve Beauty, illustration: Derek Bacon, design: Mike Parsonson @ Nude, image composition: Allen Luther @ Nude, model: Tess @ MOT.



Adding copyright information

You can identify a photograph as being copyrighted in a number of ways. You can add a copyright notice watermark to it, which clearly tells people, “This is a protected photograph.” Be careful when uploading images to social media or image-sharing websites. If you care about the picture you are uploading, be sure to add a watermark that indicates it's copyrighted. Not all sites strip the metadata, but with those that do, this will be your only means of defense. A watermark will survive metadata

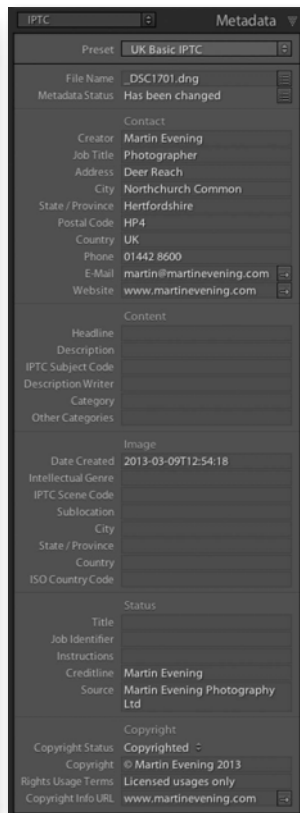
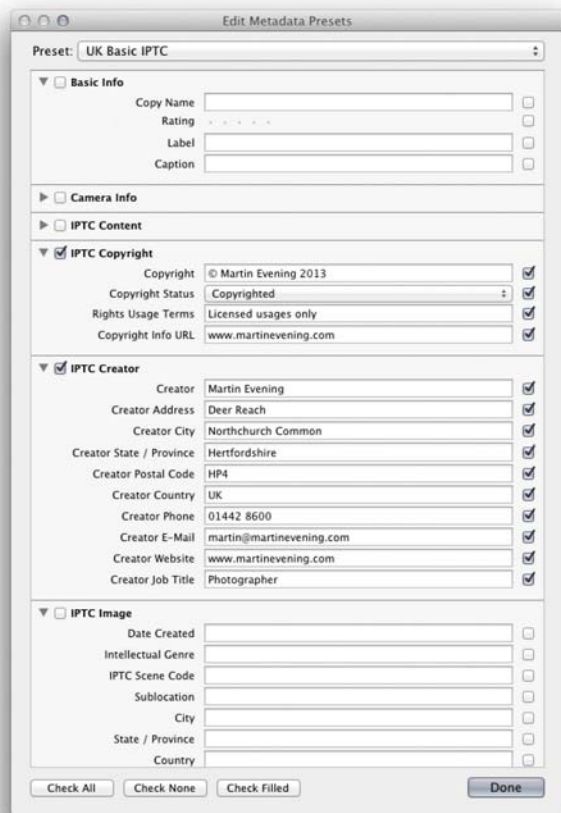


FIGURE 4.6 In Lightroom you can create a custom metadata preset (left) and use this to apply essential copyright information and contact details to photos in the catalog. The Metadata panel (right) lists the IPTC information, including copyright.

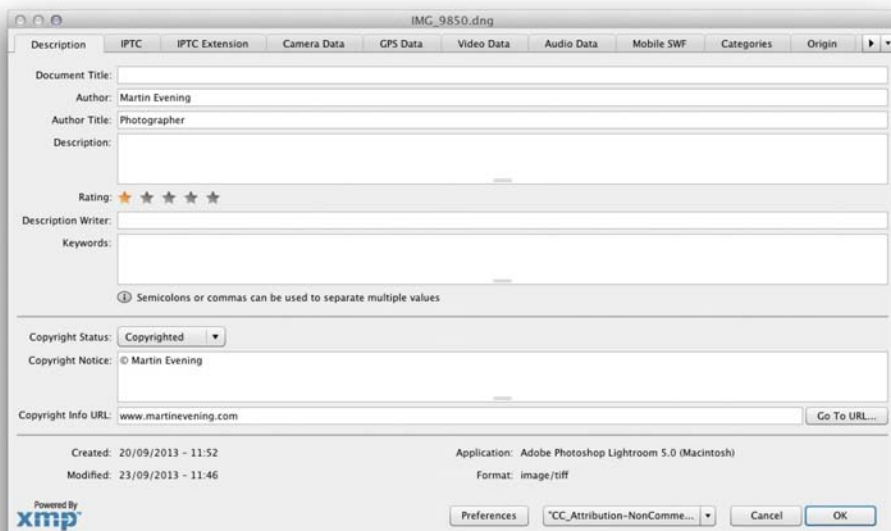


FIGURE 4.7 In Photoshop you can inspect the file metadata by choosing File > File Info... Here you can inspect and edit the metadata information. If a photograph is marked as copyrighted, a © symbol will appear in the document window title bar when it is opened in Photoshop.

stripping but has the disadvantage of defacing your work. You can select the “copyrighted” item from the Copyright Status section of the IPTC metadata. This can be done using a program such as Photoshop, Lightroom, or Phase One Media Pro. This alerts a potential user to the fact that the image is copyrighted and is not available for general use, and copyrighted images opened in Photoshop will display a copyright symbol in the image document window title bar. While you are about it, you can add more information about the picture, such as your name and contact details, your e-mail address, and your website URL (see **Figure 4.6** and **Figure 4.7**). You can also use special plug-ins that are able to embed an invisible, robust watermark. Examples of this are Digimarc and Signum SureSign.

PICTURE LICENSING UNIVERSAL SYSTEM (PLUS)

The PLUS Coalition is an international nonprofit organization (Useplus.com). To quote from its website, its aim is to simplify and facilitate the communication and management of image rights. The PLUS Picture Licensing Glossary helps educate people about the language used to form a license. The main impetus has been to work with the International Press Telecommunications Council (IPTC) to have extended IPTC metadata entries that make use of machine-readable code to define media categories for image usage. The online License Generator can be used to create a PLUS Universal License Statement, which describes the rights information you have granted to a licensee. This creates an XMP file that can be used to embed your license in an image or collection of images. The PLUS Registry at Plusregistry.org allows photographers from all over the world to register their contact details for free, enabling purchasers of images to more easily locate photographers. All of these services are provided as free tools and will offer a vital defense against future orphan works legislation. For a small annual fee you can become a supporting member and receive a unique PLUS Member ID that can be used by your business in images and image-licensing documents.

CREATIVE COMMONS

Creative Commons (Creativecommons.org) is a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools. Creative Commons tools allow creators to retain copyright, while allowing others to access and use their work in limited ways. It offers a “some rights reserved” approach to copyright licensing as opposed to the traditional “all rights reserved” restrictions. It allows creators to retain copyright while enabling others to copy, distribute, and make some uses of their work. It supplies various levels of licensing, all built upon copyright law, that permit different levels of specific usages. Using tools that are

available on the website, users can specify and generate custom XMP metadata templates. Instructions on the site show how you can then use these to edit the metadata in image files to add a Creative Commons license notice.

The growth of the Internet has fueled appetites for free content. The underlying ethos of the Internet is open-access publishing, and few publishing sites require an entry fee other than Rupert Murdoch publications and pornography sites. With this has come the problem of people expecting everything to be free; it has spawned a “freetard” mentality. I should explain here that freetard is a slang term for someone who thinks all digital content should be available at no charge, regardless of the fact that the people who create this stuff need to earn a living. It is neatly summed up by the slogan “Everything should be free, all the time (except for the things I am selling).” Giving content away can work for some publishing media and creative endeavors, but photography is different. An established band might calculate that allowing people to download some of their music for free will help promote future tours, which will make them money. With photography the photograph is everything. You can’t offer a seven-day trial (like you can with software). The only thing you can do with a photograph is to embed a visible watermark that allows people to view the image before deciding to buy it or not. But the freetards want everything to be free on the Internet. It’s become commonplace to accept that that’s the way things should be, and it accounts for why so many of the images you see being used on the Internet are published illegally.

THE GROWTH OF THE
INTERNET HAS FUELED
APPETITES FOR FREE
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ETHOS OF THE INTERNET IS
OPEN-ACCESS PUBLISHING.

COLLECTING SOCIETIES

Collecting societies are bodies that have the authority to collect royalty payments from users of copyrighted works and distribute royalties to copyright owner members. Rather than manage primary usages (such as where a client contacts the photographer to enquire about usage in, say, a book), they manage secondary copyright usages, such as photocopying and TV broadcasting of photographs. End users are able to pay a fee in return for a blanket license indemnity that grants them permission to use images in this way. There are collecting societies in each of the European countries (the Design and Artists Copyright Society [DACS] is the collecting society for UK visual artists). However, Canada and the US have less restricting rules about how these types of societies should be run. There isn’t really a collecting society for visual art such as photographs. The Copyright Clearance Center (Copyright.com) operates as an opt-in clearinghouse for certain types of content, mostly book chapters and journal articles, but it does offer some image-licensing services.

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