

Event Photography and “Rights Grab” Agreements



It is becoming common practice for artist management groups to require photographers to sign “rights grab” contracts before shooting an event. Check out the various contractual provisions below to better understand what it is you are signing away in a “rights grab” contract. Please note: This fact sheet is for educational purposes only, and should not be construed as legal advice. Please seek the counsel of a competent attorney for questions relating to your practice.

Important Information about Copyright and Contract Law

- ✓ With a few exceptions, copyright ownership can be morphed and transferred with a contract.
- ✓ Contract law requires a photographer receive a benefit in exchange for giving up any rights. In the case of event photography agreements, a photographer is given the right to photograph the talent (and likely with the benefit of using a press pass with better access).
- ✓ Contracts need to be reviewed in their entirety. Poorly written (or intentionally deceptive) contracts may scatter related provisions throughout a contract.
- ✓ If a word is unusually capitalized, there is likely a definition within the contract to define that word. These capitalized words are particularly important to read as they typically define the scope of a contract.

Examples of Standard Copyright Provisions

<u>Contract Language</u>	<u>Decoded</u>
<p>Copyright Assignment</p> <p><i>You agree that the Work is a <u>work made for hire</u> for Management Company, and that the Management Company will own all the intellectual property rights, including the copyright. To the extent that the rights do not vest with the Management Company, You hereby <u>assign all rights</u> to the Management Company.</i></p>	<ul style="list-style-type: none"> ✓ To transfer ownership all together, a <u>written</u> contract <u>must</u> include language that the work is a work-made-for-hire, or that the artist is signing away (assigning) all of the rights to the work. ✓ As work-made-for-hire only applies to works explicitly listed in 17 U.S.C. 101, most contracts also include the assignment language as well.
<p>Exclusive License</p> <p><i>The Artist grants to the Licensee the <u>exclusive right</u> to the Photo, which was created and is owned by the Artist, as part of the <u>merchandising of t-shirts and calendars for manufacture, distribution, and sale</u> by the Licensee in <u>Minnesota for a 6-month period</u>.</i></p>	<ul style="list-style-type: none"> ✓ By granting an exclusive license, the artist cannot offer the same license to another party. ✓ Whereas, it is permissible to grant a similar license that goes outside of the scope of the original license. E.g. permitting a company to distribute t-shirts, including the image, in Wisconsin.

Photo Agreements May Include:

- ✓ **The periods that photos may be taken.** E.g. *Photographs may only be taken during the first 3 songs with NO FLASH.*
- ✓ **Whether or not the management company has approval rights over the images.** E.g. *Management Company must approve photos PRIOR to their reproduction or display anywhere.*
- ✓ **A duty to provide digital copies of photos.** E.g. *Should Management Company desire to reproduce any photo taken by the photographer, a hi res digital copy must be supplied within 2 weeks of request, and free of charge.*

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Examples of Real “Rights Grab” Provisions

<u>Contract Language</u>	<u>Decoded</u>
<p>Authorized Uses</p> <p><i>I have the limited right and permission to use certain Photos that have been approved by you solely in connection with one (1) article about you contained in (State Name of Publication).</i></p>	<ul style="list-style-type: none"> ✓ The artist can use the image(s) in “one” (singular) publication article, but not more than one. ✓ For example, the artist can put the image in an article in City Pages, but he cannot also sell the image to the Star Tribune.
<p><i>PHOTOGRAPHER may not show photographs as examples of his work or use for self-promotion without securing prior written permission of ARTIST.</i></p>	<ul style="list-style-type: none"> ✓ In this example, the artist cannot put the images up on his website, Flickr, or in his marketing material, unless he gets permission.
<p><i>Photographs may not be used for any merchandising purposes, including but not limited to calendars or posters.</i></p>	<ul style="list-style-type: none"> ✓ In this example, calendars and posters are meant to serve as examples of prohibited merchandise; however, the language includes all forms of merchandise.
<p><i>I hereby warrant to Management Company that the Photographs will only be used for bona fide purposes such as news reporting, reviews and other media article or such other purpose as expressly agreed in writing by Management Company.</i></p>	<ul style="list-style-type: none"> ✓ This language limits the authorized uses to ones it considers to be “bona fide”, meaning in this case various types of news reporting (newspapers, magazines, etc.)
<p><i>Management Company is entitled to reproduction rights for publicity and non-commercial purposes of all pictures taken of its artists.</i></p>	<ul style="list-style-type: none"> ✓ In this example, only the Management Company can make <u>copies</u> of the image in the promotion of their artists, or in the creation of not-for-profit works. ✓ This does not mean they can alter the image.
<p><i>I undertake that I will not assign, license or permit the use of the Photographs for any unauthorized purpose including but not limited to their inclusion in or use on unofficial merchandise.</i></p>	<ul style="list-style-type: none"> ✓ This language restricts the artist from both selling the image, and permitting others to use it. ✓ This includes, for example, selling the image to a t-shirt company.
<p>Legal Cooperation</p> <p><i>In the event that the Photographs are used in any unauthorized manner, I confirm that I will enter into any documentation deemed necessary by Management Company in order to permit Management Company to take appropriate action against any third party that is making unauthorized use of the Photographs or is exploiting them in any way.</i></p>	<ul style="list-style-type: none"> ✓ This language requires that the artist cooperate in the event that someone else steals the image, and the Management Company seeks action against said person. ✓ For example, a company may download the photo from City Pages, and then use it on their own webpage.

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