

The value of copyrights

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“The critical issue overseas is the ownership of product.” “Those who are in control of the copyrights are the ones who are going to call the tune in the 1990’ s.”

Well what else needs to be said – ASMP has been shouting the same tune for years. The copyright to your work belongs to you. Think hard before you sign a work for hire agreement, and/or transfer ownership of copyright for a fee.

Copyright is an asset – assets build wealth.

IMPORTANT! THE VALUE OF COPYRIGHTS

RE: STANLEY MICHAELS CASE

+
RE: HARLEQUIN NATURE GRAPHICS

Buy Ten Thousand Eyes

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IN REGARDS TO STANLEY MICHAELS
HARLEQUIN NATURE GRAPHICS
ET AL

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ASMP Members Only

August 1992

Volume 4, Number 8

A closer look at the ASMP copyright licensing agency

A number of members have queried ASMP's national office for specific details about the operation and structure of the ASMP copyright licensing agency. Here's some of the popular questions and the answers.

1. Will the agency be part of ASMP, and if not, how will it be set up?

The licensing agency will not be a part of the ASMP. As a trade association, ASMP cannot engage in negotiating for its members. However, ASMP has the right to invest and/or own stock in a corporation. Therefore, ASMP will become the sole stockholder in the licensing agency, which will be set up as a for profit corporation. In effect, the agency is owned by ASMP, which in turn is owned by its members.

2. Who will select the management and leadership of the agency, and have the ultimate control?

The ASMP's board of directors will vote to elect the board of the new corporation, and select the chairman of the board and C.E.O. They will also set up the new corporation's charter, that is, the rules which govern it. Finally, as the voting representatives of the ownership (ASMP membership), the ASMP board can exert the traditional powers of stock holders, virtually total power to reverse or control major policy decisions. However, that power should not be needed, since the policy making board of the agency will be elected by the ASMP board.

3. Can an ASMP member who is currently represented by a stock agency be represented by the ASMP agency?

That depends upon the nature of the contract between the member and his/her stock agency. If there are no exclusivity arrangements between the parties there would be nothing to pre-

vent the member from being represented by the ASMP agency.

If there is an exclusivity arrangement the particular wording of that contractual provision will have to be examined to determine the extent of the exclusivity. ASMP will be prepared to review members' contracts and advise them of their eligibility to participate.

4. Won't this agency compare with stock agencies and therefore be in competition with members already represented by stock agencies?

There will be some element of competition, but it does not come from the existence of the ASMP agency. The competition comes from the members who elect to be represented. This is not new competition. These members are currently in competition with agencies. The ASMP agency could actually be a stabilizing force, if there is widespread participation, as it will help create practices of the trade that will benefit both existing stock agencies and photographers unrepresented by stock agencies.

Finally, most agencies earn the vast majority of their revenues from sales to print media. ASMP's agency is not aimed at that market.

5. Will the ASMP agency represent only ASMP members, and will there be a fee to participate?

Yes - only ASMP members can elect to be represented. There will be an enrollment fee to be represented. The amount of the fee has not been set. Suggestions have ranged from \$100 to \$1,000. The board will decide this in November.

6. What will the enrollment fees be used for?

These fees will be the start up capital of the agency, and will provide the money needed to administer the agency

till its commission or revenues can carry its operation.

7. What percentage will the agency receive on sales?

Presently, we are looking at 30%. If costs can be held down it could go lower. This fee does not represent much more than a sub-agent's fee in the traditional stock business. And it would provide the member with 70% which would, as far as we know, be better than any split between photographers and existing stock agencies.

8. Is there any way a member who has an absolutely exclusive contract with their stock agency participate in the new agency?

We are examining the idea of acting as a sub-agent in such deals, if the stock agent and member agree. In such a case, ASMP's agency would conclude the deal, the stock agency would supply the photo(s) and the fee would be split. ASMP's agency getting 30%, with 60% being split between the stock agency and the member. Very much the same deal that exists in sub-agent and foreign agent deals.

9. If I become a member of the ASMP agency can I refuse to participate in a specific deal if I don't like its terms?

Absolutely. - The ASMP agency will be a true agent and this means that the member, as principal, can set the terms, conditions and price of his/her work.

10. Won't letting individual members have such control preclude the possibility for success?

No. - The ASMP agency will negotiate what it feels is a fair deal. The member can accept or reject it; in some cases modify it. We don't expect mass disagreement with the deals that we construct.

11. What is the reaction of publishers to this new agency?

Excellent – Warner New Media (Time Warner) has expressed to the ASMP's board, in a letter to each director, its wish to see ASMP create a successful venture. They believe it will benefit them and the photographers, and they are confident that fair deals can be negotiated.

A representative of the Association of American Publishers has contacted us with a similar message indicating that more than 70% of their members (primarily print publishers) had CD-ROM projects underway or in planning. They see ASMP's agency as a means of lowering transactional costs. After all, it's simpler to negotiate with one party than 100 when securing photo content for a disk.

12. How will the ASMP agency communicate deals, needs, etc, to the members it represents?

Probably by a fax and/or a computer network, on which current deals and publishers needs will be posted. If a member accepts the deal, they contact ASMP's agency for a transmittal number and then send work to the publisher.

As monies allow, the ASMP agency will establish an electronic database of images, making it easier to submit images to publishers. But, this is further down the road as the market develops.

Editor's note: More information will be published about the licensing agency next month.

Attention Connecticut members

We recently sent each Connecticut member a copy of our letter to the Connecticut Department of Environmental Protection about the rules of their RIVERS Photography Contest. Our protest centered on the overly generous allotment of rights granted to the state to publish not only contest winners but all entries too.

We have received a reply stating that it is too late to change the rules for 1992, but acknowledging our concerns and advising that our suggestions will be taken under advisement for next year. **MORE IMPORTANTLY**, they have agreed to discuss any photographer's objections about publication rights directly with the photographer.

So, if you objected, but wish to enter, you now have a chance to cut a fairer deal.

Education Week Magazine – BEWARE!

We have recently been notified by a member that after agreeing with *Education Week* to shoot an assignment with one-time rights, and after delivering the film, he received a letter telling him the magazine also allowed its photographs to be published in *TEACHER MAGAZINE* "and/or related materials distributed to education school students and segments of the general public through other media."

Later they say that the photographer, for the check that they promise to send, is granting non-exclusive reprint rights, then it asks the photographer to sign and agree.

We believe that this is an attempt to create a "contract after the fact" (of the original deal made when the assignment was awarded).

Obviously, by promising to send a check, there is a clear implication that signing the document is a condition of getting the check.

Our member has lodged a strong complaint with the publisher, and ASMP is also contacting them.

Automatic copyright renewals

For several years ASMP has participated with a coalition of other copyright oriented groups to eliminate the need to renew the copyright of works, created prior to 1978, when the first term of copyright protection expired.

Our arguments to the legislature centered on the fact that the 1909 Copyright Act placed an unfair burden on copyright owners, when compared to the 1976 Copyright Act. Under the 1976 Act copyright registration does not have to be renewed, but runs its full term automatically. Our plea was to bring works created before 1978 (when the '76 Act took effect) into compliance with the spirit of the '76 Act.

We are happy to announce that the automatic renewal provision was signed into law on June 26, 1992. Members who were required to renew expiring

copyrights, from that date onward, are now not required to do so. The renewal is automatic.

Many photographers lost copyright protection to works by missing the deadline for renewal or by failing to renew. One more burden gone for those of us who worked in "the old days".

Dangerous stock agency contract clauses

We recently were shown a stock agency contract presented to a member in which the subject of model releases was covered in a way that presented a true danger to the photographer.

The danger came from two clauses, which, when considered together, could really spell trouble.

Clause #1 made the photographer indemnify the agency for liability arising out of the improper captioning, lack of model releases, or copyright infringements by his/her image. Fair enough, if a photographer misrepresents or appropriates the images he or she supplies why should the agency be liable for it.

But another clause set up an unusual default. It stated that the photographer should mark any slide that had no release with an "N.R." It further stated that any slide without an "N.R." would be considered released.

Now that means the default is to consider unlabeled photographs to be released photographs.

Dangerous Default – Here's why.

Suppose you forget to label an unreleased slide or – more likely – the agency remounts a slide and fails to transfer the "N.R." Then, the slide is leased for an advertisement because the error makes it seem OK for advertising. Without a model release, a law suit is quite possible. And, if so, the photographer has to pay for the mistake because of the indemnification clause. We believe that your contract should default the other way – unless a slide is marked "RELEASED", it should be considered unreleased. It could save you a big problem.

ASMP members connect with CompuServe

by Pat Burt

A growing group of ASMP members from around the country are making connections through a new ASMP *members only* section on CompuServe. This new way of networking is in CompuServe's Photography Forum and includes a private message section, a conference area, and a library with files such as ASMP forms for member use. ASMP joins The National Press Photographers Association on CompuServe, with Professional Photographers of America planning to join PhotoForum in the near future.

Houston chapter member Dale Geffs and mid Atlantic member Paul Bowling are currently acting as sysops (system operators) for the section which is available to any ASMP member with a computer and a modem. Additional services available on CompuServe include electronic mail, on line airline reservations, research databases, weather reports, as well as Photography forum discussions on everything from stock locations to electronic imaging.

Simple signup

Sign up for CompuServe is simple. Current ASMP section members recommend purchasing CompuServe Information Manager (CIM) software. As an ASMP member, you can obtain CIM by calling 800-848-8199 and requesting operator #159. Tell the service representative you would like to become a member and that you wish to order CIM (either the Mac or PC ver-

sion) which is \$25. Credits worth \$40 toward CompuServe charges are included. Dedicated computer hackers can sign up without buying CIM if they prefer.

Charges

There are two systems of paying for CompuServe.

1. A standard rate of \$2 a month plus connect time.
2. A basic charge of \$7.95/month (which provides access to many services) plus connect time to forums.

Programs

Several automated programs are also available which will access the system, do pre-set tasks such as posting messages or downloading files, and get off line quickly, saving connect charges. The most popular ones are Navigator for the Mac and TAPCIS for the PC. TAPCIS is being offered to ASMP Members at a discounted price of \$59 by calling 1-800-872-4768 and asking for Bonnie Thomas. Once on CompuServe, new members go to the photography forum (GO PHOTOF), check the message for ASMP members located in Library 1, and contact the ASMP sysops to get access to our private section. Members needing more information can call ASMP computer committee chair Pat Burt at (503) 284-9989.

—Pat Burt, chair of ASMP's computer committee is a former Oregon chapter president.

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Buy Ten Thousand Eyes and help chapters

"I should've bought this as soon as it was published," was a comment from a member buying a Ten Thousand Eyes book at Photo Midwest, Chicago, in June.

"And so should've everyone else," was the reply from one of the volunteers at the booth.

The large format, 232-page book deserves to be on every member's bookshelf. And each sale benefits your chapter – and the Society's Legal Action Fund. At \$40, for members, it's great value. And it won't be reprinted.

Dates for Photo show

Conference Management Corporation has announced the dates for the PHOTO shows through 1996. Here they are for those of you who like to plan ahead.

	1993	1994	1995	1996
PHOTO (NY)	10/29-31	10/28-30	11/3-5	11/1-3
PHOTO WEST (San Fran)	4/23-25	4/8-10	3/31-4/2	4/5-7
PHOTO MIDWEST (Chicago)	3/26-28	6/10-12	6/9-11	6/7-9

Liaison International/ corporate photography agreement

ASMMP recently received a copy of the Liaison International photographer's agreement. While somewhat benign, the agreement called for several conditions that concern us.

First, it asks for exclusivity, that is, it asks that the photographers agree not to accept assignments from another competing agency. Unfortunately, while denying the photographer the right to additional opportunity it promises nothing – no guarantee of sales, no compensation or special treatment. That is they provide no value for the exclusivity. The agency can work with the photographer's competition, but the photographer can't work with theirs.

Second, it seeks indemnification and defense "from any claims, demands, actions, causes of action and damages and expenses arising out of inaccurate information given to the agency by the photographer regarding ownership, captions or model release". While it seems fair, it is quite possible that an unjust claim can be brought in conjunction with one of the items above. Should the photographer be bound to defend the agency against an unjust claim? Additionally, at what point is something, like a caption, inaccurate? The clause needs to be refined through negotiation.

Third, the contract exempts the agency from liability for loss or damage to the photographers work. That might be reasonable since generally an agent is not held responsible for such. However, suppose the agency loses the work before it is delivered to the client, who refuses to pay. Why should the photographer be denied the fee and expenses.

After all, if the agency's actions cause the photographer to lose the fee and expenses shouldn't they be liable for at least that amount. In effect that amount would be comparable to the "replacement cost" of the images, which is a minimal value to which one should be entitled.

We suggest members negotiate if they are asked to sign such an agreement.

More news about Forbes

ASMMP has learned that *Forbes* Magazine has been granting its three foreign-language licensee (German, Japanese and Chinese) editions the right to reproduce photos from the U.S. Edition, and that it is the photographer's responsibility to inquire if such use has been made. According to our source, and our research, such use would seem to be unauthorized.

ASMP suggests that if you have published any images in *Forbes* within the last three years (statute of limitations under copyright law) you write to *Forbes* and ask if they were published in any of the foreign editions, if so, you should inquire of the magazine how they were authorized for such use, and let ASMP know. Write to: Mr. Leonard Yablon, Exec. V.P. *Forbes* Magazine 60 Fifth Ave. New York, NY 10011.

ASMP is also contacting *Forbes* in an attempt to clarify the situation.

Federal auctions

The Federal Government routinely auctions various types of equipment, obtained by the IRS and other agencies. Some excellent buys can be made if they have what you want.

For info on IRS auctions contact your regional IRS office and ask for form 2434 (list of items to be auctioned).

For info on auctions held by Resolution Trust Corp. (savings and loan catastrophe) call 1-800-782-3006.

The Photography Bureau

ASMMP continues to receive complaints about late payment or non-payment of invoices by The Photography Bureau. Although the Bureau has routinely promised to get its house in order, the problems seem to persist. Members should be careful in such dealings.

Legal Action Fund drive

The Legal Action Fund has grown to nearly \$60,000 in the past six months, primarily from the contributions accompanying raffle coupons for quarterly drawings. The next drawing will be on September 29 and included among the prizes are a day on Polaroid's 20x24 camera, \$425 worth of consultation with Sandra Kinsler, a Fisso 3-D arm (for holding components in small product shooting, \$400), Photoflex products, LowePro Magnum camera bag, Olympus camera, processing from ProLab, Seattle, a package of StrucSure (management software for Macintosh- listed in the *Bulletin's* Software Corner), 300 rolls of Ektachrome 100X from Eastman Kodak, and a Strobframe RL2000 Universal flash bracket.

You can try for a prize by clipping or photocopying the adjacent coupon and sending it with you \$10 donation to ASMP. Enter as many times as you choose, but please contribute.

Rules Governing Drawings

1. Only ASMP members and affiliates are eligible to participate in the drawings.
2. You may enter as many coupons as you wish in any drawing.
3. Extra coupons are not available.
4. Drawings will be held on the last Tuesday of September 1992.
5. Upon receipt by ASMP, coupons will be placed in the next drawing.
6. Prizes for each drawing will be published in the *ASMP Bulletin* preceding the drawing.
7. Coupons submitted into a particular drawing will not be carried over to subsequent drawings.
8. All contributions accompanying coupons will be added to the ASMP Legal Fund exclusively.
9. A contribution is not required to enter the drawings.
10. Winners will be notified by mail and their names will be published in the *ASMP Bulletin* in the month following the drawing.

Name _____

Address _____

City/State/Zip _____

All checks payable to **ASMP Legal Action Fund**.
Send checks and coupons to:

ASMP (LF)
419 Park Ave. So., Rm 1407
New York, NY 10016

	WET ESP	DRY ESP	SHARK	LIVING- REEF	CORAL REEF	WET ONE	DRY ONE	PLASTIC CARDS	9X12 DELUXE	SMALL ONE	COLORING BOOK
1990			6,563	1,737	5,046	12,794	15,016	91,413	1,062	6,966	3,415
1991			6,602	300	4,827	12,315	15,043	228,066	815	7,798	6,242
1992	2,600	4,175	3,506		2,460	3,982	7,871	158,565	250	4,291	2,034
			5,808	300	4,596	8,787	13,266		350	7,471	

313,064

4,634

SCHEDULE
A-6

THRU JUNE 30, 92

END OF 1993 IN RED