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# Working with an Architectural Photographer

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AMERICAN SOCIETY OF  
MEDIA PHOTOGRAPHERS

# ESTIMATING AN ASSIGNMENT

As a creative professional, you understand the importance of accurately defining the scope of work in order to determine your firm's design fees. Similarly, in order to prepare an estimate for you, a photographer must have a detailed description of the assignment. One way to help you grasp the scale of your project is to compare it with one that you may have seen in a photographer's portfolio.

An estimate typically involves three components:

- **THE ASSIGNMENT DESCRIPTION**
- **LICENSING & RIGHTS GRANTED**
- **PRICING**

## The Assignment Description

In addition to a description of the project (e.g., name and location), some of the elements you may find in this section include: the number of views, the film and/or digital file format, a description of deliverables and a timeframe for completing the assignment.

## Licensing & Rights Granted

A photograph is considered intellectual property. The photographer owns the copyright to the images he or she creates and has the exclusive right to license their use. Licensing agreements are specific with regard to use and, in general, should answer these three basic questions:

- Who will use the images?
- How and where will the images appear?
- How long will the images be used?

This information may be detailed in the Licensing & Rights Granted section of the estimate or in a separate licensing agreement that grants specific rights to commissioning clients. If several commissioning clients choose to share in

A **LICENSE** is a legal agreement granting permission to exercise specified rights to a work.

A **COPYRIGHT** is a collection of exclusive rights owned by the creator that controls the use of creative works

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the cost of an assignment, make certain that each party is provided with a written licensing agreement describing them as a licensee and detailing their rights granted.

It's important that you and your photographer agree on the scope of a license *before* photography has begun. Should your marketing plans change, be sure to discuss them with your photographer.

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### Sharing Photographs with Non-Commissioning Parties

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Similarly, if you plan to share photographs with third parties who have not been involved in the commissioned assignment (e.g., members of the design team, contractors, consultants, product manufacturers, clients, tenants or magazine editors), permission must be obtained in writing from the photographer.

The right to use images cannot be transferred by anyone without the written consent of the copyright holder. If you've received photographs without written permission for their use, it is your responsibility to secure licensing rights before using them. As a rule of thumb, a good way to avoid any misunderstandings is to contact the photographer before passing along photographs. You should also advise the party receiving the images to contact the photographer directly to secure a license granting permission for their use. Any copying, reproduction, distribution, public display or creation of derivative works of images without specific permission from the photographer is a violation of Federal copyright law.

### COPYRIGHT LAW

Under the Copyright Act of 1976 and the Berne Convention for the Protection of Literary and Artistic Works, photographs automatically receive copyright protection immediately upon their creation. Absence of a copyright notice does not relieve a prospective user from the responsibility of obtaining permission from the copyright holder. In addition, altering or removing a copyright notice can result in liability under the Copyright Act and several other state and federal statutes.

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**Simply having physical possession of photographs, slides, prints, transparencies or digital files does not grant the right to use them.**

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## Pricing

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A photographer's estimate typically has two components:

- ***FEES***
- ***EXPENSES***

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### **FEES**

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There are two kinds of fees: Production and Licensing.

***PRODUCTION FEES*** (sometimes referred to as Creative Fees) reflect the time it takes to complete the entire assignment. This includes intangibles such as the photographer's experience, creativity and vision that he or she brings to the assignment. Other variables contributing to the Production Fee include: the total number of views requested, travel time, scheduling and deadlines, site logistics, and artistic considerations such as vantage point, time of day and composition.

In addition to the actual time spent behind the camera, a photographer's pre-production and post-production time may also be included in the Production Fee. Pre-production tasks commonly include: client meetings, site visits, meetings with the facility's management to organize access to the location, conversations with building engineers to arrange technical assistance with lighting, landscape maintenance and other related site-specific preparation. Post-production tasks commonly include image editing and selection, digital enhancement, client meetings and preparing images for final delivery.

***LICENSING FEES*** (sometimes referred to as Usage Fees) reflect the value of the usage for each image in the assignment. This is determined by a number of considerations including how widely the images will be

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viewed, reproduced and distributed. Typically, the more extensive the usage, the higher the fee. Similarly, the fee increases correspondingly with the number of unique views being used.

To obtain the best value at the outset, negotiate usage for the entire group of images based on your currently planned needs, with the understanding that additional rights and related fees for unique purposes can be arranged in the future.

### **ILLUSTRATING THESE CONCEPTS**

Consider a project of yours which requires two views. One view may be complex and require six hours to complete, while a second may require only one hour. If you require identical usage for both views, the License Fee would be the same, but the Production Fee for the first view would be considerably higher than the second.

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## **EXPENSES**

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Expenses for traditional photography may include: material costs such as film, processing and supplies. For digital photography, they may include: image capture charges, file conversions, post-production charges, archiving, digital retouching and file delivery.

ASMP has established a digital imaging standards committee to help develop industry guidelines on these issues. Be sure that you understand digitally-related terminology and associated costs when negotiating your estimate.

Additional expenses may include charges for assistant(s), travel, photo finishing, special equipment or prop rentals, stylists, costs for location access, models, special insurance and miscellaneous expenses.

Finally, be certain to discuss your final presentation needs as they relate to specific forms of media. Do you require transparencies, slides, black and white prints, color prints, electronic files or other specific deliverables? Remember to specify the sizes and quantities you will need.

# CASE STUDY - Multiple Party Licensing

## IDENTIFYING YOUR NEEDS

An architect wants five views of an office building he designed. He knows that the building owner and one of the contractors may be interested in using some or all of the images.

## ESTIMATING AN ASSIGNMENT

As the primary commissioning client, the architect sets the scope of the photography. An estimate is generated that states the terms of the agreement, names the architect as primary commissioning client and lists both the building owner and the contractor as participating parties.

While all three parties will be sharing the Expenses and Production Fees, each will also need to pay their individual License Fee according to their corresponding use of the image(s).

The architect and building owner sign and return the estimate; however, for whatever reason, the contractor does not. Production of the assignment begins the next day.

## LICENSING & RIGHTS GRANTED

In this case, only the architect and the building owner are participants under the terms of the estimate. The contractor no longer has the option to license the images at the pre-negotiated license fee and terms. However, at the conclusion of the assignment, the contractor and other interested parties may still license the images as stock photography at significantly higher rates.

### KEY POINTS TO MULTIPLE PARTY LICENSING

- All participating parties must sign an agreement *before* photography begins.
- Each participant is charged a Licensing Fee commensurate with their specific usage needs.
- Each participant is responsible for ordering and paying for his or her individual deliverables.

## TIPS FOR CONTROLLING COSTS

If your needs outweigh your budget, don't get discouraged. Here are a few ideas to relieve the pressure on your budget.

- Share the costs of the photography assignment among several parties who participated in the job (e.g., contractors, product manufacturers or tenants). With this option, each party will still be charged separate Licensing Fees; however, Production Fees and Expenses can be shared among all parties. If this is your plan, it is essential to let the photographer know about it *before* the initial estimate is prepared.
- Prioritize the views you'd like and phase the work over a period time. This option may also provide you with an opportunity to highlight your design with a variety of changing seasonal elements.
- Ask your photographer if there are any creative ways for him or her to realize efficiencies.
- Consider reducing the number of views.

**The quality of the photography  
you use to represent your designs is  
a reflection of your firm's values.**

While there will always be someone willing to photograph your project for less, what may initially appear to be a bargain can easily turn into an expensive problem when the resulting images do not meet expectations and have to be rephotographed. In the long run, commissioning a professional photographer is an investment that can save time, money and frustration.

# GLOSSARY

Good contract negotiations require clear communication and understanding.

If you are uncertain of the meaning of specific language or terms, please ask your photographer.

<b>advertising</b>	The promotion of products, services and ideas through paid media space.
<b>archive</b>	The storage and organization of images or electronic data and the ability to retrieve them at a later date.
<b>camera format</b>	The photographic equipment used to record an image (i.e., large, medium, 35mm, digital).
<b>circulation</b>	Total number of copies of a publication that are sold or distributed to readers in a given period.
<b>consideration</b>	Something of value, given by one party to another, as part of a contract.
<b>copyright</b>	A collection of exclusive rights owned by the creator that controls the use of creative works.
<b>credit line/photo credit</b>	A line of text indicating the creator of a photograph and the year in which it was created.
<b>derivative work</b>	A work based on another, preexisting work, requiring permission from the creator of the original work.
<b>desktop publishing (DTP)</b>	Using computers to design text and graphics for printing.
<b>digital capture</b>	To record an image using a digital camera.
<b>digital file</b>	A single electronic image.
<b>digitally enhancing</b>	Transforming or altering an image by manipulating it on a computer.
<b>editorial use</b>	A use that conveys news or information for purposes unrelated to trade or advertising.
<b>electronic rights</b>	The rights to use copyrighted works in digital media (eg., CD, DVD, internet, TV).
<b>exclusivity</b>	A right granted to a user allowing him or her the sole use of an image.
<b>e-zine</b>	A periodical magazine published via the internet.
<b>image</b>	A unique visual representation of a person or object.
<b>intellectual property</b>	Original works protected by laws (such as patent, copyright and trademark) that give the creator exclusive rights to control their uses.
<b>license fee</b>	A charge that is derived from the value of an image's use.
<b>license</b>	A legal agreement granting permission to exercise specific rights to a work.
<b>limited rights</b>	A license allowing restricted use or other reproduction of copyrighted works.
<b>nonexclusivity</b>	The retention by a copyright owner of the right to license a work to more than one licensee.
<b>nontransferable</b>	Prohibiting the transfer of rights from one party to another.
<b>one-time use</b>	The limited right to reproduce an image only once in a manner specifically set forth in a license.
<b>personal use</b>	For private purposes only; not to be reproduced for business or commerce.
<b>placement</b>	The positioning and location of an image within a publication.
<b>press/media kit</b>	A kit of information specifically prepared to announce or inform the media of an event.
<b>production fees</b>	The time component of an assignment (includes both pre- and post-production).
<b>promotional use</b>	Use of an image to sell or market a product, publication or service.
<b>publication</b>	A copy of a printed or electronic work offered for distribution.
<b>reprint</b>	Additional copies of all or part of a publication.
<b>reuse</b>	Second or subsequent use of an image.
<b>stock photography</b>	Preexisting imagery (as opposed to assignment) that is protected by copyright and may be licensed.
<b>trade publication</b>	A publication that is intended for a specific audience based on occupational and commercial, rather than personal, issues.
<b>usage fee</b>	A charge that is derived from the value of an image's use.
<b>use</b>	The handling or treatment of a photograph, qualified by specific licensing terms.
<b>wall decor</b>	A displayed work of art which does not include reproduction rights.