



## National Press Photographers Association

120 Hooper Street • Athens, GA 30602  
Phone: 716.983.7800 • Fax: 716.608.1509  
[lawyer@nppa.org](mailto:lawyer@nppa.org)

### Via Email

November 24, 2015

Mr. Norman Pearlstine  
Chief Content Officer  
Time, Inc.  
Time-Life Building  
1271 6<sup>th</sup> Ave.  
New York, NY 10020

### **Re: Concerns regarding Time Inc. Commissioned Photographer Agreement**

Dear Mr. Pearlstine:

As general counsel for the National Press Photographers Association (NPPA) along with the Executive Director of the American Society of Media Photographers (ASMP), we write to you on behalf of the organizations listed below to express our very strong concerns over the terms of the *Time Inc. Commissioned Photographer Agreement* which you are requiring independent contractors to accept and without which “no new assignments will be made [ ] after January 1, 2016.”

While we understand your desire “to create a new management system that will allow [you] to track the use of commissioned editorial photography and to foster a consistent approach across Time Inc.,” we strongly object to the draconian terms and conditions you impose on those contractors in order to increase your profitability. Indeed, we believe the agreement as written will have the opposite effect by undermining your longstanding commitment to those who have produced those iconic images for almost 100 years.

A number of photographers have expressed outrage regarding the new terms that negate their capacity to earn fair syndication and licensing fees without any meaningful increase in the “Assignment Photo Day Rate,” which sets maximum payments that are below those paid 35 years ago when adjusted for inflation. By cleverly using the words “up to” you have created a contract of adhesion granting a long list of comprehensive rights to your company while offering only a payment of somewhere between \$0 - \$650 for a day rate and \$0 - \$1,000 for a “Print Mag Cover.”

Many of the egregious inequities of this agreement, which is more a take-it-or-leave-it ultimatum, than it is a fair bilateral contract, have already been pointed out in a number of online posts. But for context we list a few of the more problematic ones:

- “Rights Granted” creates a broad rights grant “to reproduce, distribute, publish, publicly perform, display, download, transmit, and store the Photographs, and authorize and license the exercise of such rights to and by third parties, each and all throughout the world, in perpetuity, in any and all media, formats and methods of transmission now known or hereafter developed” including the right to “crop and re-crop, size, resize and otherwise modify the Photographs in any ways . . .” as well as use the “name, likeness and/or biographical information” of the photographer “in order to credit” them even for a photograph that had been drastically or unethically “modified” by the Publisher.
- “Work for hire” language undermines and to a great extent negates many (if not most) of the reserved and retained photographers’ rights, “including ownership of the copyright” not already “specifically granted to Publisher” and imposes on the photographer the requirement to obtain from their assistants similar work for hire agreements granting “copyright ownership in their contributions” to the photographer “or Publisher.”
- “Embargo/Exclusivity Period” grants even broader control over publication rights not already usurped by already onerous terms and may actually preclude publication of certain images even after the period has expired. It also prohibits use by photographers of their images in self-promotion marketing materials, personal portfolios or social media.
- “Fees & Expenses” provides a frightening loophole for the Publisher to withhold payment until “after delivery and acceptance of the Photographs and Videos and receipt of tax, expense, independent contractor verification, and any other documentation as reasonably required by Publisher” and further provides Publisher with the “right to change the Rate Card at any time upon written notice . . .” Under this clause rates could get even worse and the Publisher could refuse to pay if, for whatever subjective reason, he decides not to accept the photographers work.
- “Photo/Video/Subjects” places the responsibility “for clearing all rights and permissions” on the photographer so that your company may exercise any and all of its rights. Here a photographer would be responsible should an image made (with permission) for editorial purposes be used or licensed by the Publisher, at his sole discretion, for commercial use. This clause may cause photographers to be in breach of contract with previously agreed to usage terms required by sports and entertainment organizations and performers.
- Photographers are required to waive many legal rights and remedies normally available in any contract dispute.
- Other terms grant Time Inc, the exclusive right to market published images, selects, and outtakes from any assignment, eliminating the ability of a photographer to also use outtakes to produce future licensing revenues.
- Photographers would not have the right to use a cover image for personal marketing purposes or to license it for other uses in the future once published without securing Publisher’s permission which can be denied or revoked at any time.
- Photographers who object to specific terms or clauses cannot modify the contract in any way.

The broad grant of rights to Time, Inc. and the severe restrictions on contributors’ rights in exchange for unspecified consideration (except for a cap on that amount) along with burdensome obligations which enure to sole benefit of the company require us to request that

*Time, Inc. Letter*  
*November 24, 2015*  
Page 3

you extend your termination notice and enter into meaningful discussions with those in the photographic community to revise and create a fair agreement.

We realize that some photographers may have already signed this agreement and that you may be relying on many more to do the same. Instead, we ask that you seize this opportunity to elevate your company to the days when photographers felt proud and privileged to contribute to such an esteemed organization by honoring your commitment to not only “original photography” but also to the contributors who create those images. Only “time” will tell which is the best course to take.

Thank you for your attention to this matter. We look forward to your response.

Very truly yours,

*Mickey H. Osterreicher*

Mickey H. Osterreicher  
NPPA General Counsel

*Thomas R. Kennedy*

Thomas R. Kennedy  
ASMP Executive Director

*On behalf of:*

American Photographic Artists  
Digital Media Licensing Association  
Professional Photographers of America