

Writing a Licence

FIRST GET IT RIGHT: License OR Licence

For those in the UK, you must know the difference between a noun and a verb because licence is used for the noun, while license is used for the verb. Keep in mind when working with clients in the US, 'licence' does not exist.

What is a licence for and what should all licences include? Here is an overview to this vital part of illustrators' practice.

What a licence is for

When commissioned, illustrators grant the client a licence for a particular use of their artwork, and the fee charged will vary according to the rights of use purchased.

The object of a written licence is to define the usage right, which the client has bought, and to give the client any protection it needs in respect of other uses of the illustration.

A licence can be limited in any way one chooses, but the usual limits are **use, area, duration and exclusivity**. If the client is commissioning on behalf of someone else, the client's customer should be specified. For example

Use

'Use' is often clear, since the client will usually know what it is commissioning the work for. If further uses are known to be a possibility, but are not being licensed as part of the original licence (e.g. a brochure cover which the client may later use for a poster) it may be worth stating specifically on the front of the form that further uses will require a further fee, to avoid any possibility of a misunderstanding. Artwork can be licensed for re-use after the initial usage.

Territory or Area of Use

Territory or Area of Use is the other important element of a licence. There is usually a difference in the fee for instance, for a UK advertising campaign and an international advertising campaign, so it is important to know what the client wants. Common categories are the UK, Europe, the USA or the World. When using terms such as the UK or Europe, you should remember that interpretations of these can change over time, so it may be useful to specify particular countries within these for the sake of clarity. If you

do decide to use collective terms, you should state whether they are to be interpreted as having the meaning as at the date of the licence or whether the definitions should reflect changes in their meaning as they occur.

'Area' is also important where merchandising rights are being sold – for instance an illustrator may want to sell greetings card rights in several different countries to different clients.

In some cases area may not be an appropriate definition – for example book jackets, where the publisher will want to use the illustration for their UK edition, which may be distributed not just in the UK but throughout the Commonwealth, and even find its way into English language bookshops throughout the world.

Duration

Duration also needs to be defined. Often the client will know how long they wish the licence to run, but occasionally they may not have given sufficient thought to the time period they intend to use the illustration for. In these circumstances it is best to licence for one or two years, and then if the client wishes to continue using the illustration they can re-licence the image for an additional fee (usually a percentage of the original fee for the same licence period, territory and usage).

Exclusivity

Exclusivity can be a misleading concept. Often it does not mean totally exclusive to the client, but exclusive only in respect of the licence they have bought. An exclusive licence for use on T-shirts in the UK, for instance, does not prevent the illustrator from licensing the image in other territories, or for other uses. If the client wants no other use of the image at all, this needs to be added made clear and the illustrator will need to consider whether the fee is commensurate with that (considering the illustrator will not have the ability to earn more by licensing it to others). An exclusive licence is required by most clients within the limits of the licence they have been granted, and often outside those limits as well.

In addition to questions of use, territory, duration and exclusivity, a licence should deal with all aspects of the commercial relationship including the fee (lump sum, royalty or both), the payment date(s), audit rights (rights to inspect records – very important in royalty deals) and how the licence can be terminated, especially in the event of a breach or the client's insolvency.