

The Commission, the Contract and Copyright

CONTRACTS

What is a Contract?

- Every illustration commission should start with a contract which ensures both the client and the illustrator understand exactly what is being asked and under what conditions.
- Complications can be avoided if the client or illustrator use fair and reasonable standard terms of trade, and sort out any concerns or issues at the beginning of a job, rather than leaving it until after artwork has been delivered.
- If there is anything in a contract presented by the client that you do not understand, the client's art director or legal department must be able to explain it to you.

- Most people think of a contract as something written on a piece of paper, with numbered clauses, signed and dated by the parties concerned. But this is only one type of contract. In fact any agreement – written, verbal or even partly unspoken – is contractually binding provided it contains the following three elements:
 - An Offer (from a potential client)
 - Consideration (something in exchange – usually money)
 - Acceptance (by the illustrator for the ‘consideration’)

- Once these three elements are in place, the contract is created and is binding on the parties to it. Neither can alter the contract after the event without the agreement of the other.
- In practice, without having a written record of a contract it can be difficult to prove exactly what terms were agreed, or sometimes even that a contract existed at all. Therefore you should try to record any important agreements in writing and make sure it is signed and dated by all the relevant parties.
- A contract should also contain the terms of the licence being granted by the illustrator to the client: how the artwork is to be used, in what territory and for how long. See Writing a Contract (on Moodle).
- Contracts can be quite simple, and others can be extensive with multiple clauses, especially in publishing. But if you are agreeing to it you should understand all the points that you are agreeing to.
- As mentioned, you can ask your commissioner for explanations of clauses you do not understand, or contact the AOI for an assessment of the contract.

Contracts can be:

Written (formal)

Verbal (informal)

Unspoken (implied/informal)

Contracts - What they can do for you:

- Make an agreement binding.
- Give clarity and certainty: Flushing out points which aren't actually agreed, avoiding arguments later.
- Demonstrates professionalism and shows you don't intend to be ripped off.
- Provides an evidence trail for later disputes.

Contracts - What they can't do:

- They won't stop clients trying to rip you off – they'll just put it in the small print, **WHICH YOU MUST READ!**
- They won't mean what you want them to mean unless you make sure they do!
- They won't force clients to do what it says – you may still have to go to court. BUT a contract is much easier to get a court to enforce than copyright is.

Put it in writing every time!

- Otherwise it is just your word against theirs.
- Before commencing artwork.
- **WHO** is going to do **WHAT** by **WHEN** and for **HOW MUCH**.
- See AOI Acceptance of Commission Form.

DON'T:

- Convince yourself it is all too much trouble and you don't need to – it is much more trouble later when you are not paid or your work is re-used without your permission in a massive advertising campaign and the client claims you agreed!
- Agree to anything you don't understand – make them explain it and record it, preferably in writing (emails are great – save and file).

CLIENT CONTRACT CHECKLIST

These are a few basic points to look out for:

- Appropriate licence or rights grab?
- Fee detailed?
- Delivery date realistic?
- Credits?
- Warranties (any use of 'alleged' breach?)
- Is the client supplying picture reference? (Is it copyright cleared by client?)
- Physical artwork ownership
- Governing law of the contract (UK is best)
Especially for long / high price jobs
- Cancellation fee
- Rejection fee

RIGHTS GRABS

- Delivery of illustrations does not give commissioner any express rights in the copyright.
- Licence is implied for them to publish for the specific purpose discussed between you, and preferably spelled out in the contract.
- They will ask for assignment of the copyright!

Watch out for these phrases:

- Assignment of copyright
- 'All rights'
- Standard contract
- 'Work for hire' (USA only – not a UK legal term, but it means an assignment of copyright)
- Blanket agreement (covers all future work as well)

It is a commercial issue:

- Are they prepared to pay for it?
- What do they actually intend to do with the work?
- Why isn't a licence exclusive for that purpose sufficient for their needs?
- Or a licence exclusive in time e.g. 5 years, 10 years?
- What is the downside to you?

Organisations campaigning for creators:

Creators' Rights Alliance - creatorsrights.org.uk

The Creators' Rights Alliance (CRA) brings together the major UK organisations representing copyright creators and content providers throughout the media - particularly, television, radio and the press.

The British Copyright Council - britishcopyright.org

(BCC) was established in 1965 and is a national consultative and advisory body representing organisations of copyright owners and performers and others interested in copyright in the UK. It lobbies the British Government, the European Commission and Parliament and international bodies on matters of copyright and related issues.

Design and Artists Copyright Society - dacs.org.uk

(DACs) is the UK's copyright and collecting society for artists and visual creators. DACs exist to promote and protect the copyright and related rights of artists and visual creators. Payback - If you've had work published in magazines and books or on TV contact DACs for a form