



APA Responds to Getty Images' Proposed Changes to Contributor Agreements

April 2011 – Getty Images recently announced that it intends to make a number of significant changes to its standard contributor agreements. For instance, the new agreements will allow Getty Images to include all royalty free (RF) content in any subscription products and also will eliminate the ability of contributors to prevent their content from being licensed in multimedia products. Getty Images also has proposed changes that will allow it to move image content across license models by “removing the ability for contributors to opt out of images moving from RM to RF.” For editorial contributors, Getty Images also intends to make changes that will enable it “to more easily modify content use across more and new license models, products, services and selling environments, including subscriptions, high-volume customer deals and new or emerging pricing, licensing and payment models.” According to Getty Images, these changes are intended to allow Getty Images to more freely use content in ways that were unforeseen previously in order to meet current and future customer needs.

Following on the heels of its Premium Access subscription product—which has eroded significantly the licensing fees being achieved for rights managed (RM) content—these modifications clearly signal that Getty Images’ top priority is expanding its own market share by whatever means necessary, irrespective of the damage it causes to the rights and interests of contributing photographers and image partners.

It is APA’s position that these changes are unnecessary and that it is inappropriate for Getty Images to continue to leverage its position in the industry to force contributors to relinquish control over which licensing model shall apply to their creative works. Rights managed licensing has been in existence for decades and is the preferred method of licensing high-value content. Allowing Getty Images to place RM content into subscription products and move content between licensing models irrespective of the author’s wishes are major departures from industry norms, and they come at too significant of a price. If Getty Images is permitted to move imagery from the RM to the RF paradigm without the consent of and without previously informing the contributor, it becomes almost impossible to license that imagery as RM ever again. Moreover, because Getty Images controls both the marketing of contributor content and the parameters for prioritizing its customers’ search results with very little accountability, there is a tremendous risk in also allowing Getty Images the authority to siphon RM imagery into the new and different models.

The erosion of the RM model also is concerning because it makes it more difficult for copyright owners to track usage of their creative works and protect their copyrights. Getty Images obviously realizes the importance of tracking third-party usage and monitoring copyrights because it does so vigorously for its wholly-owned content. APA is disappointed that Getty Images fails to appreciate that these same concerns also are important to its contributors and image partners. For the stock photography industry to flourish, major distributors like Getty

Images must respect the fundamental tenets of the rights managed licensing model and they must cooperate with and assist photographers in protecting their copyrights rather than consistently deferring to their customers who are infringing copyrights.

Because APA is *very* concerned by the changes being proposed by Getty Images, we have retained Nelson & McCulloch LLP, a New York-based law firm which focuses its practice on copyright law and litigation (<http://www.nelsonmcculloch.com>), to help us develop a response to these changes and open a dialogue with Getty Images to address this issue. Nelson & McCulloch have handled a number of cases and matters involving Getty Images and have served as litigation and arbitration counsel for contributors and image partners in disputes with Getty Images relating to the licensing of Rights Managed imagery. Nelson & McCulloch thus offers APA and our membership invaluable experience and expertise in addressing this particular issue.

Please send your concerns and individual situation comments on this subject to Nelson & McCulloch. They will use them to compile and frame dialog with Getty and for other stock issues in the future.

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