

capture

AUSTRALIA'S TOP-SELLING PRO PHOTOGRAPHY MAGAZINE

Immortalise your work

Comprehensive guide
to self-publishing

Big action movie stills

Jasin Boland's
blockbuster career

The perfect assistant

How to be
indispensable

PHOTO COMP RIP-OFFS
**Just how much are
you giving away?**

Beat the wedding day blues
Strategies for smooth shooting

Top Emerging Photographers 2012
Entry details inside – page 23

January/February 2012
\$7.50/NZ \$8.20 (INCL GST)



PRINT POST APPROVED PP255003/00490



Competition

rights-grab, and how to avoid it

Having one's work recognised in photographic competitions was, in the past, a rare opportunity and source of pride and prestige for professional photographers. Today, this once infrequent event has become ubiquitous, and at any time there is a competition out there to suit every genre and every level of expertise. Offering covetable prizes, from cash to equipment and priceless exposure, the allure of competitions is powerful. But before your next entry, pause for a second and consider: Conditions apply. Armani Nimerawi investigates.



© ALISON MITTON



© JODI BIBER, INSTITUTE FOR ARTIST MANAGEMENT/GOODMAN GALLERY FOR TIME MAGAZINE

For many photographers, the lead up to their favourite competitions is akin to a child's countdown to Christmas. The frisson of excitement, the promise of victory's spoils, the anticipation of capturing a nano-second of award-winning perfection with their very own camera is heady indeed.

Unfortunately, many competitions use that compelling lure of winning to distract from their terms and conditions. Some audaciously require photographers to relinquish copyright for the privilege of entering. Others may be more lottery than competition of excellence. Like all endeavours, the key to avoiding potential disasters is knowing how to recognise them.

The rights-grab

In 2001, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) stated that just as labour and raw materials had been key resources in the first industrial revolution, intellectual property would be the central resource of our current information-based economy. This means that while the proverbial picture may be worth a thousand words, to some, the picture's copyright could potentially be worth a hell of a lot more.

Many organisations that are looking to avoid paying for images have found the photo contest a very fiscally rewarding endeavour. They not only gain a stock library by requesting photographers relinquish the rights to their work, sometimes just to enter, but they also profit from the entry fees. "Yes, they are competitions," says commercial photographer and AIPP and ACMP Competitions Watchdog William Long, "but they are also producing a fairly good amount of money. If you've got five thousand to ten thousand entries at \$30 apiece that's a lot of money."

The acquisition of the rights to creative works through the guise of a competition, known as rights-grabbing, is by no means a recent phenomenon. In 1999, well-known publisher M.I.L.K. launched a global photographic competition that received 40,000 submissions from 17,000 photographers, professional and amateur alike. Still one of the richest competitions in photographic history, the competition terms and conditions required all entrants, not just finalists, to grant the competition organisers a non-exclusive, unlimited license, thus

gifting the competition organisers with a massive library of images. According to Long, some of the images from the original competition can still be seen on M.I.L.K. products today.

What is new however, is the advanced systems that are being developed to specifically deal with the massive quantities of images. Long describes the use of Digital Asset Management (DAM) experts who are hired to collate and keyword the sometimes immense number of images acquired from competitions. This allows organisations to easily maximise the use and sharing of their ill-gotten booty.

Keeping one eye on what's beneath the water

When asked how photographers could best protect themselves from rights-grabbing competitions, those interviewed for this article were unanimous in their answer: educate yourself. Always reading terms and conditions and being aware of those clauses that will lead you into danger is your best defence. Unfortunately, many competition organisers are not going to make this easy, creating terms and conditions that are not only impossible to understand, but often impossible to read.

"The terms and conditions for many contests are densely written, often in unfriendly legalese, sometimes displayed in a tiny window with scroll bars," says Gordon Harrison, campaign manager at the Artists' Bill of Rights (ABoR) in London. "We are sure these are deliberate devices to make reading terms and conditions as troublesome as possible."

Long, who has campaigned for decades against rights-grabbing, agrees that this is often the case. He recalls one competition run by a major camera retailer that presented its terms and conditions in grey text on a light grey background. "The only way I could effectively read them," he says, "was to go in and copy the entire thing and then paste it into a Word document."

While photographers can do little to change the presentation of terms and conditions, they can do much to help themselves understand them. Outback photographer Fiona Lake, who has also dedicated much of her life to fighting rights-grabs, suggests getting a pen out and going through terms and conditions highlighting anything you don't understand. Once you've read through them, go back and re-read the parts you highlighted, looking up the terms you're not familiar with.

According to Long, you should be looking for competitions that ask for "a non-exclusive license, and preferably even a license limited to a number

MAIN: 1st Prize General News Single, World Press Photo 2011. Old Iron Market burns, Port-au-Prince, Haiti.

ABOVE LEFT: ACMP Projections 2011 finalist (Art category).

ABOVE RIGHT: World Press Photo of the Year 2011. Bibi Aisha, 18, who was disfigured as retribution for fleeing her husband's house in Oruzgan province, Afghanistan.



ABOVE: 2nd Prize Nature Single. World Press Photo 2011. Atlantic sailfish attack Spanish sardines, off Yucatan Peninsula, Mexico.

of years" though he admits very few offer that. According to the ABoR, 16 months is the maximum time a competition should need to hold a license.

All those interviewed argued that photographers entering competitions should expect to be asked for some kind of license in order to promote the competition or showcase winners' material, in print or online for example. However, if organisers stipulate they will use images for third parties related to the sponsors, entrants should reconsider.

Those competitions that request an exclusive license or, even worse, copyright, should be avoided. "Many competitions say in their terms and conditions that they 'respect your copyright' and/or that 'you retain all ownership rights in the material you upload,'" says Harrison. "This may

seem reassuring, but it's not. It's what follows such statements that matter. These, or similar terms should raise warning flags for the potential entrant and they need to ask themselves if they want their work exploited like this when there are other contests that don't do this."

Finally, the biggest red flag of all is the clause asking entrants to waive their moral rights. "Such contests should never be entered," says Harrison. "Waiving moral rights means entrants give up any right to object to what is done to their photograph. For example it could be altered in ways that the photographer would object to, or it could be used to promote something that the photographer might be horrified about."

To further compound the danger to photographers, according to Lake, such clauses can sometimes be combined with an indemnity clause, which, once agreed to, means the photographer has consented to deal with any legal issues that arise from the use of their photo, "even though they've completely given away control of what the images are used for. They could be cropped, altered or sold on to anyone," she says.

And it's not just entrants that should be aware of what competition terms and conditions contain. According to Long, professional photographers who agree to judge competitions should also be well-versed in what the competition is asking of the competitors. "I would never, ever judge a competition where I wasn't 100% confident of the usage and the intent, and what the terms and conditions looked like," he says. He asks other judges to do the same. It pays to always treat competition terms and conditions with the gravity they warrant. Once you agree, you are forming a binding contract between you and the

TERMS TO WATCH FOR

Gordon Harrison from the ABoR explains the terms that should be raising red flags.

- **Royalty Free:** there will be no payment for any usage.
- **Worldwide:** images can be used anywhere.
- **Perpetual:** they have the right to use them until the end of time to display, reproduce.
- **Distribute:** use and distribute as they see fit.
- **Create derivatives:** modify the photos in any way they wish.
- **Without further review:** you will not be able to object to what they do with your photograph.
- **In any medium existing or subsequently developed:** can be used in print, electronic display, film or any new technology that happens to come along.

Rights-grabbing competitions are viewed by many as a malignancy within the industry that has the potential to affect its longevity.

competition organisers. "I think a lot of artists, and this is probably more of an education issue than a legal issue, don't always treat the sets of terms and conditions with the level of seriousness that they should," says Suzanne Derry-Bahadori, a solicitor at the Arts Law Centre of Australia.

Hidden traps

Another potential pitfall is that people with whom you collaborate may not be as selective about the competitions they enter. If you are photographing for artists of other disciplines, ensure that they are checking terms and conditions before they enter your images. Sydney-based commercial/advertising photographer Daniel Linnet found that a make-up artist he had collaborated with was about to unwittingly enter his image into a rights-grabbing contest.

"We discovered that, as part of the entry conditions, competition organisers were asking entrants to sign over the rights to all the images, all the original negatives, prints etc. to the company for unlimited use for an unlimited duration of time," he says. While Linnet found out in time, he wonders how many other professional photographers had forfeited their rights without realising.

Conversely, if you are collaborating and you decide to enter an image into a competition, make sure you are the sole copyright holder or you have permission from other copyright owners. This year the ACMP's competition *Projections*, which is aimed at emerging photographers, had to disqualify the winner due to claims they weren't the sole copyright holder.

"I think it was an accidental oversight," says ACMP President and Melbourne-based advertising photographer Lisa Saad. "I think it's because a lot of people are collaborating on projects these days and things aren't made very clear in the beginning. Even if they are, it's done in a mate's arena not a professional one, so lines are blurred." To avoid possible infringements, Saad suggests having copyright release forms signed before a shoot and conducting each shoot in a formal, business arena.

David vs Goliath

The proliferation of rights-grabbing competitions has dismayed many in the photographic community. Online, forums are rife with updates of "just another rights-grab" and there is palpable frustration that not enough is being done to address the problem. "It's a seriously under-rated issue," says Long. "We need a lot more exposure and I think it is a constant fight."

Fortunately, there are some willing to go into battle against

© MARTIN ROEMERS FOR REUTERS



© WILLIAM LONG



© FIONA GALBRAITH

TOP: 1st Prize Daily Life Stories. World Press Photo 2010. *Metropolis*.

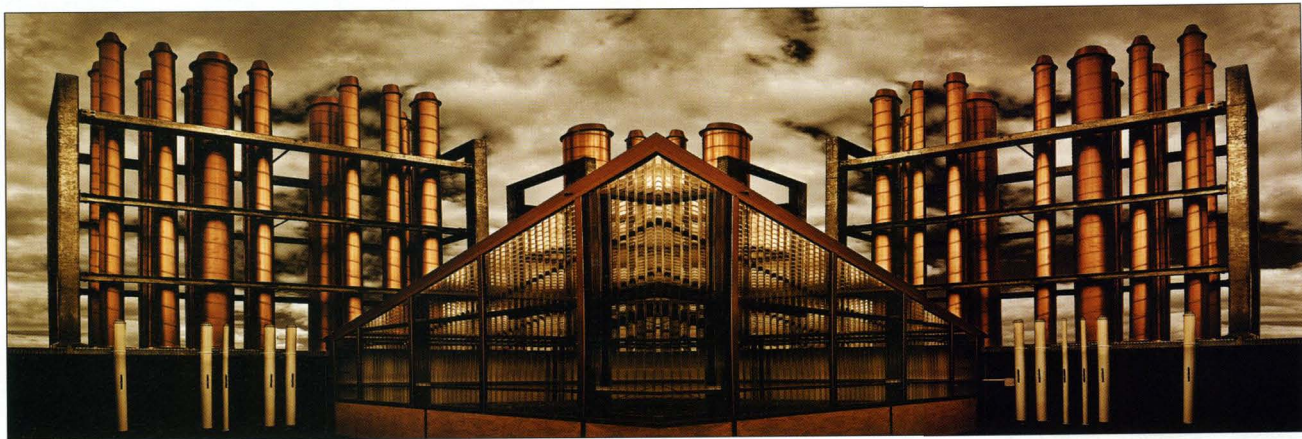
ABOVE LEFT: French Civil War Soldier. Reanctment series/self-commissioned personal project, 2011.

ABOVE RIGHT: Head On Portrait Prize finalist 2010. *Renny*.

competition organisers on the photographers' behalf and, in spite of the uneven terrain, those campaigners are actually making progress.

One such campaign is the Artists' Bill of Rights which was started in April 2008 by the British organisation Pro-Imaging. The catalyst was a 2007 competition launched by Corbis (the photographic stock agency) entitled 'I Am Buried', which asked entrants to supply images that illustrated how over-worked they were. The terms and conditions claimed not only all right and title to the work, including copyright, reproduction rights throughout the universe, but they also claimed them on all media, even media not yet invented.

"At Pro-Imaging we thought this was outrageous and decided to create a campaign to expose and combat such rights-grabbing," says



© WILLIAM LONG

Harrison. "Until April 2011, we only focussed on photography but as we recognised that all artists suffer from abuse of their rights, we decided to widen our campaign to cover all the disciplines."

At this stage the campaign focuses on education and awareness by contacting organisations that have competitions with unfair terms and conditions and explaining their impact on entrants while illustrating the benefits of supporting the ABoR. "Sometimes we get a positive response to such approaches and the organisation concerned makes the changes," says Harrison. "On other occasions, organisations write to us seeking advice, or submit a draft of their terms and conditions asking us to suggest changes so that they can comply with the ABoR. This has happened quite a lot and it is hugely encouraging to be contacted by an organisation out of the blue like that!"

Unfortunately, many organisations will completely ignore ABoR attempts to contact them, while a few will write back only to say that they will not change anything. "It helps to retain a sense of humour and not get too upset," says Harrison.

The campaign is also raising awareness amongst photographers through its "Rights On" and "Rights Off" lists. An invaluable aid for when deciding which competitions to enter, these lists are a record of competitions that have terms and conditions that comply with the Artists' Bill of Rights (Rights On) and those that fail to (Rights Off).

The campaign's credibility is enhanced by the international support it receives from many reputable organisations and business within the

I would never, ever judge a competition where I wasn't 100% confident of the usage and the intent, and what the terms and conditions looked like.

William Long

photographic industry. "We hugely appreciate the support we have received from organisations from around the world. Without that support the campaign would be nothing," says Harrison.

Locally, the campaign is supported by both the ACPM and the AIPP, two organisations that have done much in their own right to raise awareness of this issue and educate photographers. The AIPP, for example, will warn members when a competition is unfair and the ACPM offers Competition Guidelines, written by Lake, that help organisations develop fair competitions. "We have been lobbying organisers, so much so, that William Long is often asked by government departments and multinational companies to review competition rules before publishing them," says AIPP National President Robert Edwards.

In an ironic twist, the Internet, while playing host to some of the most notorious rights-grabbing competitions, has also done much to advance the movement against them. Social networking sites and community forums allow photographers to not only vent their spleen, but also alert the wider photographic community of competitions to avoid. "It's playing a huge role in educating people" says Long. "Social media can produce such an instantaneous response to unfair terms and conditions."

Photographers can also help the cause by giving feedback to organisers or boycotting competitions they know to have unfair terms of entry. "That encourages other people to be strong and opt not to enter. Social pressure can be effective on people who would otherwise be less inclined to do the right thing," says Lake.

For those photographers interviewed, doing the "right thing" is important, not only because it protects them as individuals but more importantly, it protects the entire industry. Rights-grabbing competitions are viewed by many as a malignancy within the industry that has the potential to affect its longevity.

"It damages the creative industry by reducing the need to commission or purchase works," says Harrison. "The demand for art is not reducing, it's probably increasing, but it is being devalued because it is so much easier now to get it for free via the Internet."

Lake agrees: "Everyone has a digital camera and the idea is you just go out and take a photo. There it is, and it didn't cost you anything to get it, and there's really not a lot of talent involved, and anyone can do it," she says. "They [competition organisers] think they're not taking anything that cost someone much time or talent to make."



© OLIVIER LAGAN-WATTEI

ABOVE: Boggo Road Stacks. Commissioned/ corporate art series, 2011.

LEFT: 1st Prize General News Stories, World Press Photo 2011. Haiti earthquake aftermath. A man throws a dead body at the morgue of the general hospital, Port-au-Prince.

© BRIAN CASSEY



The Good, The Bad, The Lazy

The presence of rights-grabbing clauses is not always due to a sinister intent to rob photographers of their rights and may occur simply because of an organiser's ignorance. "Some are aware that it's not fair but they don't care, whereas others are actually thrilled to have someone give them a hand," says Lake. "Often they've been floundering, looking for help and not known where to find it."

Long agrees, stating that the majority of the time unfair competitions are the results of the laziness of competition organisers who have "borrowed, stolen and reused terms and conditions that they found from somewhere else." Other times, it is overzealous lawyers trying to protect their clients.

For Derry-Bahadori however, it is not the intention that matters but the end result. "I don't think the question is whether or not people have got the base level of knowledge that enables them to draft fair sets of terms and conditions. I think they've got a responsibility to do that," she says, "especially for very big competitions, and especially when the competition is run by government organisations or very large companies. They generally have huge pulling power and they've got a huge number of people who are entering that competition, and so their responsibility to those people is something that has to be very carefully considered."

ABOVE: Head On Portrait Prize 2011 finalist. Carol, burns survivor. "Carol Mayer was severely burnt in a house fire as a young mum. A decade on, she posed for me for a story in a Sunday newspaper."

The Judges

Once you have navigated the treacherous waters of rights-grabbing terms and conditions and have found a competition worth entering, it pays to once again pause and consider the fairness of the judging process. How many judges are on the panel, which fields are they from, and what are their affiliations?

For Head On Festival Director Moshe Rosenzweig, who believes many competitions have become too much about celebrity, the fairest competitions are those with an anonymous judging process. "We wanted to avoid having the same people winning over and over again so we decided to judge blind," he says. "We were very, very strict with that. I made sure that none of the judges could see the names. For some judges, looking for names was instinctive. They would look at the picture and turn it over in an attempt to see who it was by, but we had only numbers on them."

The anonymous judging process is also employed by many of the most prestigious international photo contests, such as the World Press Photo (WPP) contest. Held annually since 1955, the WPP contest is not only one of the biggest competitions, receiving upwards of 108,000 images from over 5,500 photographers (2011 contest), but its exhibition is one of the best travelled, visiting 45 countries through the year attracting more than 2 million visitors.

The WPP contest has a strict judging protocol that safeguards the integrity of its results. "During the judging the secretary of the jury, who does not have a vote him/herself, observes that the procedures are followed strictly," says a spokesperson from WPP. "The voting is electronically conducted and anonymous. The pictures are also judged anonymously and the jury will not learn the names of the photographers, or any other details about the photo other than caption information, until after the judging has concluded. The jury members are required to sign a protocol, agreeing to follow the procedure."

Jade Tran, competition director of The International Photography Awards, another highly-esteemed international competition, advocates a jury of many, from wide ranging backgrounds. "Of course, the larger the panel (this past year was our largest yet), the more pairs of eyes see each image, which levels the playing field and helps to eliminate any personal bias," she says.

Rosenzweig also advocates the use of more than one judge to avoid favouritism of a certain type of image. "There is no question that there is always bias. Every judge brings his or her bias with them," he says. "But, if you've got three judges at least you can discuss these biases. If there is only one judge, the judge may not even be aware that he or she is biased towards a certain type of work. There are dangers there."

But wait, there's more...

Once you have found a competition with fair terms and conditions and a judging process in which you have faith, entering competitions can still be an incredibly rewarding experience, whether you win or not. Stay tuned for the second part of this series on competitions for a comprehensive and invaluable guide to the competition scene. ■



William Long
Fiona Lake
Gordon Harrison
Arts Law Centre of Australia
Daniel Linnet
World Press Photo
International Photography
Awards
Moshe Rosenzweig

www.longshots.com.au
www.fionalake.com.au
www.artists-bill-of-rights.org
www.artslaw.com.au
www.linnfoto.com
www.worldpressphoto.org
www.photoawards.com
www.headon.com.au