

IMAGE SUBJECT TO COPYRIGHT

BY MARISSA BOHM

If you are a rock photographer, beware of what you sign, and always know your legal rights.

Photographer Eric M. Townsend was about to capture the world's latest and hottest super group on the planet, Them Crooked Vultures. Before arriving at the venue, and with knowledge that this shoot came with a contract, Townsend walked away, refusing to sign the photographers release that effectively signs over all copyright ownership to the band, waving all "moral right of authors".

Uploading the photographer's release on October 15th opened the floodgates of opinion, which were primarily in favour of photographers retaining their copyright. Townsend posted: "Why are photographers on a whole such sheep and so stupid, when will people learn that you are the only one who should have rights to your work unless you get paid a Brinks truck full of money. It's called a copyright for a reason, because you decide who has the rights to make a copy!"

US photographers are feeling the pressure to sign away their copyright ownership, for fear of not being booked for another job, but how does this affect Australian photographers? The common consensus amongst local photographers matches international indignation; this is where the perplexities of copyright ownership begins.

Under Australian copyright law, the general rule is that the photographer retains ownership of the photographs they take, says Michael Easton, lawyer at leading entertainment law firm Brett Oaten Solicitors. There are a number of exceptions which apply to 'domestic' photographs (e.g. family portraits) or photographers employed by Government or newspaper or magazine publishers.

Photographers also have 'moral rights' in the photographs - which means that they may be able to sue if they think they have not been properly credited, or if the photographs

have been used in such a way as to damage their reputation as photographers. "However this is only the starting position" says Michael, "the parties are then free to make whatever agreement they like in relation to ownership of copyright and use of the photographs. Photographers commonly insist on retaining copyright and granting licences for specific uses to the client, but they may concede these points where the money is right, or where they lack leverage in the negotiations."

Well respected 'rock photographer' Tony Mott says, "the contracts are obviously extreme and sort of unworkable, I always date and time contracts at gigs as often they appear on the night, which is signing under duress so wouldn't hold up." Michael does not recommend this tactic, "Duress, or 'unconscionable conduct' is a rule that applies only in very particular cases. You should only sign something if you are happy to be bound by it."

Retaining the copyright ownership is a topic close to photographer Daniel Boud's heart, which has impacted on the number of live music shoots he now agrees to. "Contracts are commonplace - but most of them you don't actually sign over your copyright. I find that too restrictive already, but in theory, if you assign over your copyright, the band has a license to exploit your image in any way they want. Simply by letting you into a show to shoot it, they could demand the image to place on their next album cover without paying the photographer a cent." Boyd also states, "I'm no lawyer, but I'm fairly certain no right minded legal advisor would recommend anyone sign a document like the Them Crooked Vultures photo contract. I've never had to sign over my moral rights."

Imposing restrictions of when photographers can shoot pictures in a live scenario is also an issue. Tim Levy shares his experience on the

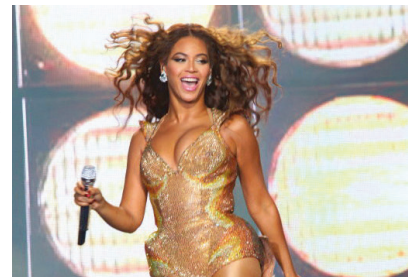


Photo credit: Tim Levy

Beyonce

Beyonce tour. "Tighter and tighter restrictions are being made with every major gig you shoot. At the Beyonce gig, you only had 90 seconds of shooting time. Fortunately the show was so visually amazing in those 90 seconds it was worth the one hour wait outside the venue. But there are other gigs where the first two songs (you usually get the first two or three) are so dimly lit that photographs are almost impossible.

But these limitations are more about image control. Kent Matthews is one photographer that understands the artist's perspective "I have never signed over my copyright, I do sign agreements giving publishing houses syndication rights in limited time frames and I also sign agreements with record companies and artists to give them approval over shots. It has never happened to me but I know of photographers who have been paid "kill fees" by record companies to stop images they don't like from being printed as compensation to the photographer."

Copyright ownership is complex and shouldn't be signed away without understanding the consequences, and you should always consult a solicitor before signing a contract.

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