

WHOSE PICTURE IS IT ANYWAY?
The issues surrounding Copyright and Equine Photography
By Scott K. Trees

You had a photographer out to your farm taking pictures of your horses and paid a fee for their services. Then you ordered enlargements of your favorite shots and now assume you can use them in any manner you choose; magazine ads, brochures, Internet ads and anything else you desire. After all, you paid a fee, and you should be able to use them any way you want, right? The actual answer to that question is “No”, you can’t. Use of images after a photo session is an often misunderstood concept on the part of the people wanting to use the pictures and leads to a lot of frustration and misunderstanding about just what can and can not be done with photographs taken by a professional photographer.

A bit of background. Use of any creative work be it a photograph, song, story, or painting is protected by copyright law. Without going into a lot of legal speak about copyright let me put it simply as it relates to your horse pictures; when you hire a photographer to take your pictures, even though you pay them for that session, the rights to those photographs belong to the photographer. “What!” you say, “I paid good money for those services and now you are telling me I can’t use them?” In a manner of speaking yes, that is exactly what I am saying. Ok wait, before you decide to rush out and by a camera to avoid the hassle of dealing with rights issues, lets look at this a little further.

When a photographer creates an image the Copyright Act of 1976 grants them what is called “creators rights”. This act made clear the fact any artist including photographers are the copyright owners of their images except when those images were made as an employee, or when the photographer has conveyed the copyright to another party in a written and signed agreement.

Copyright is a legal right to control the copying, reproduction, distribution, derivative use, and the public display of images and to sue for the unauthorized (infringement) of that work. That right is created the instant the image is recorded in a tangible form.

What this all means is the rights relating to how that image is used and or reproduced belong to the creator, which in this case is the photographer. This is true even if they are paid to create the image. What this in turn means is that legally speaking, you need to obtain a release of rights in order to be able to use the photograph as you desire.

There is a notable exception in copyright and creators rights, and that is when the photographer is contracted as a “work for hire”. This is usually the case for photographers that work for newspapers or magazines on staff. They are provided the tools to create the image, and receive compensation in salary to do so. This is a rather simplistic explanation of a complicated issue, but when a photographer is under contract as “work for hire”, the rights to the images then belong to the employer. As freelance

photographers, coming to a farm taking pictures, equine photographers do not fall into the “work for hire” category.

Over the course of a 30-year career photographing horses I have seen a lot of changes as to why horse pictures are taken and how they are used. What started out a long time ago as horse portraiture has now evolved in to more commercial application whereby the images are more complicated to create, and have wider commercial applications in their use. It used to be people just wanted a nice picture of their horse. Now they are used in ads, brochures, stallion cards, Internet promotion and a myriad of other possible applications. Add to that the fast evolving digital applications and the possible uses of any image are astounding!

Don't forget that any equine photographer is doing this as a business and not a hobby. I have said often and say again; horses are an industry for the people that own them. For those of us that service the industry, such as trainers, farriers, vets and photographers it is a business. I say this because often times people that own horses overlook the fact that a photographer is not doing this just because they enjoy taking pictures of horses, but also because they want to put food on their table!

Before the digital age a photographer could control the use of their work easier because reproductions usually had to be made from the original negative, which in turn meant the photographer could realize income and control distribution of the image. Because of the changing digital technology rights copyright issues have become more of a factor in the business of photography. This is because once an image is digitally reproduced it can be used in any number of ways without compensation to the photographer. What most people do now is buy one 8X10 then scan it and have a copy as good as the original. Once in digital form it can be distributed in a variety of ways.

In the commercial field of advertising photography, it has long been a practice to charge a fee for the session, materials, travel, and then to negotiate rights depending upon how the image was to be used and in what mediums. Indeed, for many commercial photographers the fees obtained from rights usage are a significant portion of their income.

Today's equine photographers fall more into the category of advertising photographers as opposed to portrait photographers. Therefore, the use of the images they create after a session is important to the financial well being of their business. It is also a matter of artistic pride. A lot of work goes in to creating a good image in the first place, and no photographer likes to see a bad reproduction of their work because of a cheap scan or bad copy process.

Lets face it; if horses were that easy to photograph there would be a lot more equine photographers. Horses are very difficult subjects and the skill required to capture their image on film is a unique talent. The primary fee that any equine photographer charges for is their talent to produce their art and that is going to vary depending upon their skill, experience, reputation etc.

Nobody in the business of photographing horses wants to keep clients from using their pictures. That would be self defeating in terms of continuing an on going business relationship with the client. With the advent of the Internet, rights usage as become more of an issue for all photographic fields, not just for equine photographers. As such it is important to understand what rights are conveyed with the pictures you purchase. It is going to vary from photographer to photographer.

For example in my business, I convey the rights for magazine and brochure promotional advertising which covers the majority of their advertising needs. Additional usage for such things as color copies and or Internet applications is subject to an additional use fee.

Therefore, I suggest the following when obtaining the services of an equine photographer. Find out in advance what their fee covers for a session and what rights they convey with their images when you order them. Obtain a written release of those rights whenever possible in order to avoid misunderstandings. Be clear what you need the images for and how you intend to use them in your advertising and marketing program. Ask to see a rate sheet of their services in order to be clear just what you are paying for.

The main thing for both photographers and their clients to remember is communicate from the beginning what services are available and what the needs are for those services. As with any endeavor in life, approaching the relationship from a win win perspective is going to bring about results satisfactory to everyone.

Scott Trees is a respected international equine photographer. He has traveled the world photographing all breeds of horses for 30 years. His talents are in constant demand and he is noted for his artistic and emotional images. In addition to shooting he lectures throughout the country about his work. Samples of his images can be seen at www.treesmedia.com