

THE MONTHLY NEWSLETTER OF SCIENCELENS LTD

Copyright

photography
and the law

FOCUS ON EVENTS

NZ Petroleum conference
NZ Soil Carbon conference

85 mm

AF NIKKOR

science **lens**.

PHOTOGRAPHING
SCIENCE, INDUSTRY
AND TECHNOLOGY



gerry@scencelens.co.nz

From the editor

IT'S NEWSLETTER TIME
AGAIN, FOLKS!

This month we focus on events, with a duo of conferences lined up as featured shoots. Scencelens was privileged to provide photographic coverage to the NZ Soil Carbon Conference in Wellington and the NZ Petroleum Conference in Auckland, with both events providing exciting photo opportunities.

Our feature article for the month addresses the issue of copyright law as it applies to photography, and commissioned photographic works in particular. This is a very interesting subject that continues to divide opinion. To some extent the jury is still out – I would love to hear your opinions on the matter!

Finally, just a reminder of Scencelens' rates discounts until the end of the year. We are offering a 33.3% discount on all assignments until the end of December 2010, so now is the time to get your calendar and annual report photography done at excellent rates.

In terms of conference and events photography, please note that we will also honour the 2010 discount rates for 2011 events booked before the end of the year.

Enjoy this months features, and do let me have your thoughts and suggestions on how we can continue to improve the newsletter!

Gerry

I shoot it. You pay for it. But who owns it?

WHENEVER A PHOTOGRAPH IS TAKEN, a creative act is committed, and copyright comes into play. In New Zealand's Copyright Law of 1994, a photograph is protected as an artistic work. As such, it is automatically copyrighted the moment it is created – there is no need to apply for, or register, copyright for the photo.

However, in the act of taking a photo, a number of parties are involved. In corporate and commercial photography the main actors are the photographer who invests his creativity and intellectual capital into the photo, and the client, who pays for the photo and may also provide creative input into the process. The immediate question is who owns the copyright to the photo? And what rights do this give one party and take away from the other?

What the Law says

When looking at the New Zealand Copyright Law as it applies to photography, the situation is reasonably simple. In terms of ownership, the default scenario is that the person who takes the photo is the first owner of copyright of the material. However, there are two important exceptions:

1) **Employees** – if a photograph is taken by a photographer in the course of his/her employment, the employer is the first owner of copyright, unless there is agreement to the contrary.

2) **Commissioned material** – if a client commissions and pays for a photograph to be taken, s/he become the first owner of copyright unless there is agreement to the contrary.

The commissioning rule

Point two above, known as the 'commissioning rule', has long been a matter of debate in copyright law worldwide, and is currently under review in New Zealand (see *The Commissioning Rule, Contracts and the Copyright Act 1994: A Discussion Paper*, at www.med.govt.nz).

In a number of other countries, including the UK and Ireland, the commissioning rule has been removed from copyright law as it pertains to creative artifacts. Australia and Canada are also moving towards the situation where copyright is retained by the photographer, independent of commissioning.

A number of arguments have been put forward for and against the commissioning rule. Those against the rule argue that treating commissioned photographers differently from non-commissioned photographers may undervalue the creative contribution of these photographers. While the commissioner may have creative input into the creation of the photograph, it remains the photographer who ultimately decides the composition, light, point of focus and other specific settings that make the taking of a photograph an act of artistic creativity. On a more practical level, photographers argue that they are unfairly disadvantaged where a work is used for subsequent purposes that are not reflected in the price paid. By retaining copyright, the photographer also retains more control over the use of the photo, thus allowing him to protect his ideas from being stolen, replicated, or misused.

In defense of the commissioning rule, it is argued that if copyright is retained by the photographer, it places the client in a difficult position, as he has to get permission from the photographer each time he wants to use the photo in a different context. Over time it might become difficult to get hold of the original author, or even the subsequent owner of the image (since copyright applies up to 50 years after the death of the copyright owner).

The importance of an agreement

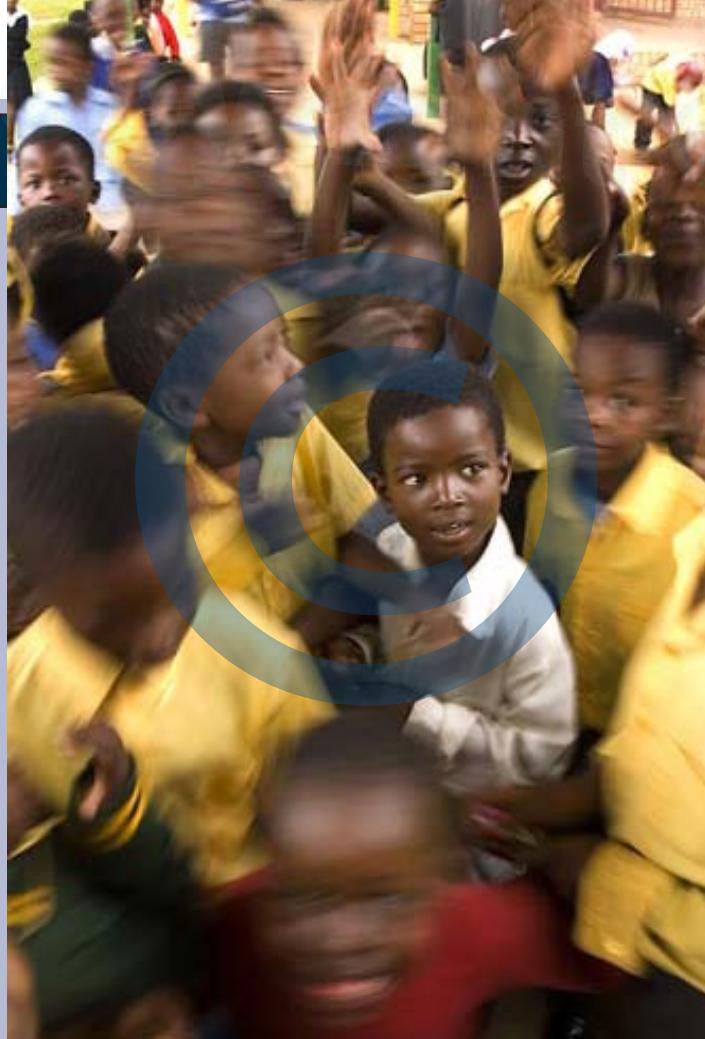
It is important to note that the arguments above pertain to the Copyright Law as is, assuming there is no additional contract/agreement between the photographer and client. As stated in the law, the employee rule and commissioning rule apply 'unless there is agreement to the contrary'.

In drawing up a contract/agreement between photographer and client, the commissioning rule may be cancelled. For example, the standard terms of conditions proposed by both the Advertising and Illustrative Photographers Association (AIPA) and the New Zealand Institute of Professional Photography Inc (NZIPP) include a condition allowing the photographer to retain copyright. The NZIPP states:

All copyright that arises out of the performance of the Photographer's obligations under this contract shall arise not by commission but shall be the creation of the Photographer. The Photographer shall remain the first owner of the Photographic Works and the Client shall be supplied with the Photographic Works for use on the basis of the terms of this Licence.

Aside from overriding the commissioning rule, a number of limiting conditions may be set, protecting the photographer and the client. For example, whether he retains copyright or not, the photographer should be granted the right to use his images for specific purposes such as submissions for awards as well as advertising/promotion. In this regard, the standard conditions of use set out by the AIPA and NZIPP suggests the following:

The Photographer always retains the right to use the Photographic Works in any manner at any time and in any part of the world for the purposes of:



- (a) *Entering the Photographic Works into photographic competitions or awards and for their use in any material published in connection with promoting those competitions and awards; and*
- (b) *Advertising or otherwise promoting the Photographer's Photographic Works; and*
- (c) *Submitting the Photographic Works for display at art galleries or other premises; and*
- (d) *Using the Photographic Works for any other purpose within the Photographer's business activities.*

If the commissioning rule is overridden and the photographer retains copyright, the agreement should of course stipulate the licence that the photographer grants

to the client, i.e. the extent to which the client may use the image. This could, for example state that the photo(s) may be used for any client-specific publications and on the client's website, but that it may not be passed on to a third party (another organisation, an external magazine, etc) to use without the consent of the photographer. Alternatively it can limit the time-period for which the client may use the image.

Moral rights

Whether there is a specific agreement in place regarding copyright and the allowed use of a photograph or not, an additional factor that comes into play in creative works is the moral right of the creator. Artists are, by law, granted certain moral rights pertaining to their creations. Specifically, the artist has the right to be identified as the author of a work when it is published/displayed, and has the right to object to derogatory treatment of a work. In the photographer/client agreement, moral rights may also be defined in more detail, and penalties specified for cases where the moral rights of the photographer are not upheld.

In conclusion

Whichever option one goes for, it is important to remember that copyright and ownership of a photograph is an important matter, that needs to be addressed when contracting a photographer. Whether the photographer or the client retains ownership of the photo, some agreement should be in place to (1) give both parties sufficient rights to the image, and (2) protect both parties from misuse of the image by the other party.

Professor Tim Flannery



Discussing the science of

biological farming

THE 2010 SOIL CARBON CONFERENCE, arranged by Integrity Soils with support from event organisers Game Plan Ltd, took place at Te Papa, Wellington in mid-September. Sciencelens was fortunate to be commissioned to photograph the proceedings.

This very informative, down to earth ('scuse the pun) event brought together an interesting mix of attendants, including academia, the farming community and representatives from industry. Hats off to Integrity Soils' Nicole Masters for bringing together such a diverse group of people.



Discussing the science of biological farming (continued)

From a photographic point of view, the venue provided good opportunities to capture speakers in action. Being a more intimate, and very interactive event, many opportunities also presented themselves to capture delegates in workshopping mode and breakaway group sessions. The size of the group also provided the opportunity to stage a big, all-inclusive group photo.

Included in the formal presentations were plenary sessions by 2007 Australian of the Year, Professor Tim Flannery, and Dr Christine Jones, an internationally renowned and highly respected groundcover and soils ecologist from Australia.





THE BI-ANNUAL NEW ZEALAND PETROLEUM CONFERENCE was held in September at the Sky City Convention Centre in Auckland, with Scienclens being privileged to provide photographic coverage of the event.



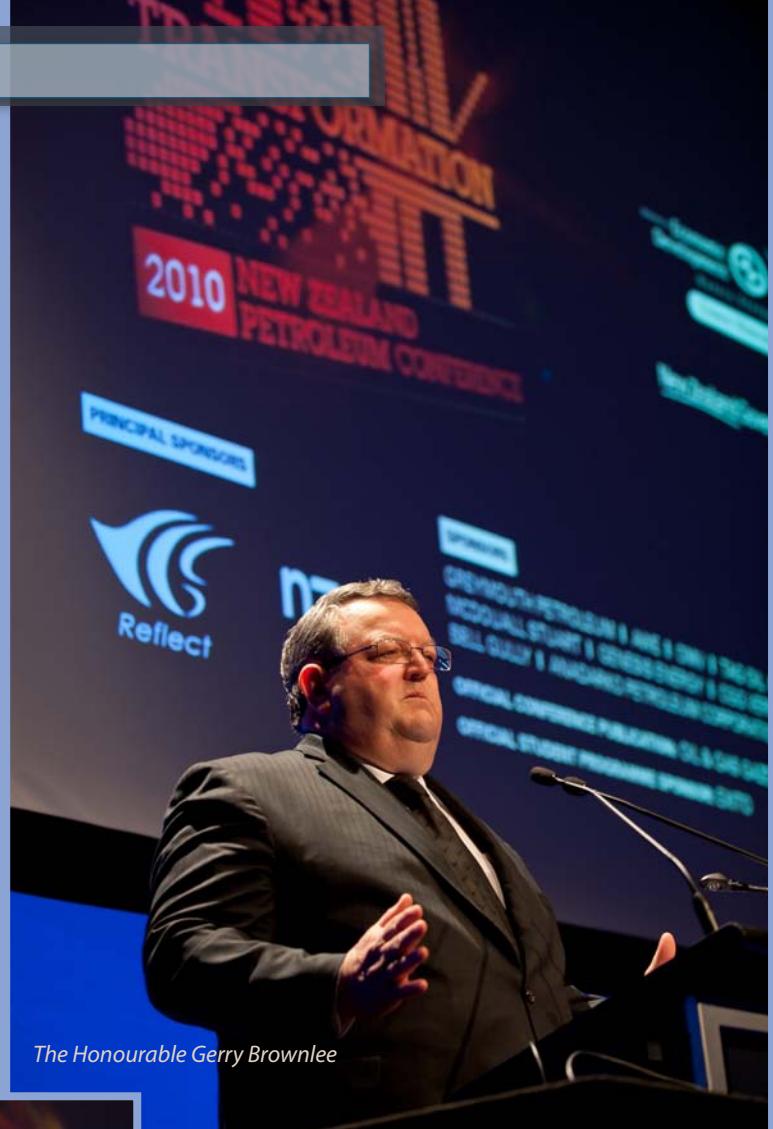
The NZPC is a huge, high-profile conference, bringing together all the key players in the New Zealand petroleum industry, as well as numerous international experts. The event, attracting about 400 delegates, was presented and organised by Miriam Wilkins and her team from The Conference Company.



The background lighting and presentation screens in the main auditorium provided an excellent visual backdrop for the coverage of the conference speakers, including the keynote address by the Honourable Gerry Brownlee, Minister of Energy and Resources, and Minister for Economic Development.

The glamorous gala dinner on the second evening also presented many exciting photographic opportunities, with impressive event lighting and a wonderfully entertaining guest appearance by All Black legend Ian Jones.

All in all, this was a showcase conference that Sciencelens is proud to be associated with.



The Honourable Gerry Brownlee



Science **lens** special rates

Normal rate 33.3% discounted rate

Photography:

Hourly rate	\$ 150.00	\$ 100.00
Half-day rate (4 hrs)	\$ 525.00	\$ 350.00
Full-day rate (8 hrs)	\$ 960.00	\$ 640.00

Processing:

Hourly rates	\$ 120.00	\$ 80.00
Half-day rate (4 hrs)	\$ 400.00	\$ 267.00
Full-day rate (8 hrs)	\$ 750.00	\$ 500.00

Valid until 31 December 2010

in the media

SCIENCELENS
RECEIVED a reference
(thanks Jon!) in
the Dominion Post
recently (Business
section, Thursday, 23
September 2010). The
article by the paper's
Farming Editor, Jon
Morgan, where he
discussed the NZ Soil
Carbon Conference,
featured a number of
photographs taken at
the event.

At the Soil Carbon Conference, Sciencelens also had a trade stand in the exhibition area of the event. Thanks to everyone who stopped to chat - we appreciate your interest and hope to be of service to you in future.



SCIENCELENS

RECEIVED a reference (thanks Jon!) in the Dominion Post recently (Business section, Thursday, 23 September 2010). The article by the paper's Farming Editor, Jon Morgan, where he discussed the NZ Soil Carbon Conference, featured a number of photographs taken at the event.



Quote of the month:

Light makes photography. Embrace light. Admire it. Love it. But above all, know light. Know it for all you are worth, and you will know the key to photography.

George Eastman, founder of the Eastman Kodak Company and pioneer of modern photography

science **lens** .

PHOTOGRAPHING SCIENCE, INDUSTRY AND TECHNOLOGY

CONTACT US

PO Box 20037 • Palmerston North • 4471

Phone: 06 3566 377

Mobile: 027 510 5177

Email: gerry@sciencelens.co.nz

www.sciencecelens.co.nz

Editor – Gerry le Roux

Acknowledgements – Miriam Wilkins, The Conference Company; Sarah Price, Crown Minerals; Nicole Masters, Integrity Soils; Carol-Ann Stubbs, Game Plan Ltd; Jon Morgan, Dominion Post.

Design & layout – Wouna le Roux, wouna@sciencelens.co.nz