

STUDENT PRESS LAW CENTER  
SAMPLE YEARBOOK STAFF MEMBER LICENSE

In light of recent developments regarding the electronic republication of yearbooks, the Student Press Law Center created this Yearbook Staff Member License to settle ownership of the works contained in student-produced yearbooks, such that the yearbook editors of any given year, as an unincorporated association, have the full legal authority to prevent republication of the their books by digital would-be infringers.

*SUMMARY OF STAFF MEMBER RIGHTS*

Under the terms of this agreement, staff members cannot publish ANY of their submitted work ANYWHERE until **at least three months after the yearbook edition comes out**. After that, staff members can publish INDIVIDUAL works anywhere (that is, one picture, or one layout, or one story).

With a few exceptions, staff members CANNOT publish more than one work in one place. The exception: staff members can use as many of their works as they want to submit to contests, portfolios, and use on social media websites—except they can't receive any kind of compensation from the use of the works on social media sites. (This is to prevent sites seeking to copy the yearbook piecemeal from “trading” membership to staff members in exchange for their photos.)

Other uses are possible, but require permission from the editors. The contract spells out how to get permission.

Yearbook staff members **may not** publish more than one of their works outside of those constraints without permission from the current yearbook editors. (If it's 2050 when you want to use the work, the editors of the 2050 yearbook are the ones you ask.)

*SUMMARY OF YEARBOOK EDITORIAL BOARD RIGHTS*

The yearbook editors have the **exclusive** right to use any of the works for at least three months after the book is published.

The editors also have the **exclusive** right to reprint work submitted by staff members when more than one work from the Staff Member appears in the same place, except in the social media, portfolio, contest, and blog contexts described above and in the contract. In addition, the Yearbook has an exclusive right to use any of the works.

The yearbook also has the *non-exclusive* right to use the work by itself, except that for-profit uses of the work alone require an attempt to seek additional permission from the Staff Member. The contract explains how to get permission.

*SUMMARY OF TERMS APPLICABLE TO BOTH THE YEARBOOK AND STAFF MEMBER*

If the yearbook editors don't print the work, or the yearbook doesn't come out within 18 months of the last day of school for the last year the book is supposed to cover, staff members get their works back and can use them any way they want. The yearbook gets a license to use them, but it's not exclusive, and is revocable, as long as the revocation doesn't burden the publication.

Both the yearbook and the student have the obligation, if they sell ownership in their works, to bind the new owners to the terms of this contract.

## EXAMPLES OF COMMON SITUATIONS UNDER THE CONTRACT

Example #1: Joe is a photographer for the 2011 edition of *The Log*, the yearbook at Central High School. He takes a beautiful sunset photo of the school's iconic clock tower that is published in the 2011 edition.

- a) 25 years later, *The Log* wants to create a commemorative issue and reprint Joe's photo. Under the agreement, they can do so without obtaining Joe's permission. (See Section 2.)
- b) 25 years later, a local company wants to use Joe's photo in a calendar it will sell. Joe can license that use directly without talking to the yearbook; the use of an individual work more than 3 months after the publication of the book isn't covered by the contract. (See Section 2.)

If the local company contacts the Yearbook, the Yearbook can pass the request to Joe, or seek permission from Joe to grant the permission themselves. If Joe does not respond, the Yearbook can grant the permission. (See Section 8.)

- c) 25 years later, a local company republishes Joe's photo in a calendar without obtaining permission. Either the Yearbook or Joe can threaten or initiate legal action to stop the use of the photo. (See Section 2(A).)

Example #2: Carla is a photographer for the 2011 edition of *The Log*, the yearbook at Central High School. She takes a picture of cars in the parking lot decorated for the homecoming game. She takes a few other pictures that day of decorated floats.

- a) The day the Yearbook comes out, Carla sees her photo of the cars is in it. Carla uploads the photo to a Facebook album. The Yearbook can demand she take it down, because the Yearbook has the exclusive right to use the photo for at least three months after the book comes out. (See Section 11.)
- b) The day the Yearbook comes out, Carla sees her photo of the cars is not in it. Carla uploads the photo to a Facebook album. Carla has the right to do this because the photo ceased to be covered by the contract when the book was printed without the photo in it. (See Section 7(A).)
- c) Carla's photos were printed in the yearbook. Next year, before the homecoming game, she uploads a Facebook album with all of her photos from that day. Carla has the right to do this because it has been more than three months since the publication of the yearbook and her use of the photos is on a social media site for which she received no form of compensation. (See Section 2(B).)
- d) Carla's photos were printed in the yearbook. Next year, before the homecoming game, she uploads her photos to a social networking site in exchange for a year's free membership to the site. The Yearbook has the right to demand Carla or the site remove the photos, because the free membership is "compensation." (See Section 2(B).)
- e) Carla's submits her photos to the yearbook. The day after she submits them, she enters them in a radio station contest for photos showing school spirit. The contest deadline is the day the yearbook comes out. Carla is within her rights, because she does not need permission to use the works to enter time-sensitive contests. (See Section 11.)



## YEARBOOK STAFF MEMBER CONTRACT AND LICENSE

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*Permission to reproduce in unedited form for nonprofit, educational use, with attribution to the Student Press Law Center, is hereby granted.*

\_\_\_\_\_ (the Yearbook), an unincorporated association in the state of \_\_\_\_\_; and \_\_\_\_\_ (the Staff Member), an individual seeking to contribute creative work product to the Yearbook; agree to the following license governing the Staff Member's contribution(s) to the Yearbook (the Work(s)).

In all cases herein, the officers of the unincorporated association "the Yearbook" are the sitting editors of the current yearbook, present or future; past editors, or current editors once they leave the editorial board, are no longer officers or members of the Yearbook, but are Staff Members under the terms of this contract.

1) **License and Rights.** The Staff Member grants all licenses necessary to the Yearbook for the purpose of the Yearbook's inclusion of the Works in its print and electronic media publishing efforts, including without limitation the right to reproduce, distribute, display, perform, and electronically transmit issues of the Yearbook.

2) **Grant of Rights.** By contributing the Works to the Yearbook, the Staff Member grants an exclusive license to the Yearbook to reproduce, display and distribute copies of the Works in the volume for which the Works were originally submitted, future or commemorative issues, the Yearbook's website, third party websites (other than those described in subsection B of this section), or other physical or electronic media now known or later discovered. The Staff Member also grants an exclusive license to reproduce, display and distribute his or her Work when in proximity to any other Work from the same volume, even if additional Works are omitted, unless all Works so published were submitted by the Staff Member. The Staff Member also grants a non-exclusive license to use the works individually as described under the terms of this agreement.

- (A) **Defense of Rights.** The Staff Member hereby agrees that the Yearbook, and its successors and assigns, has the full legal right to defend the Works against infringement, in any proceeding and before any court, for the entirety of the license terms as described herein, unless Staff Member individually chooses to bring an action to defend such rights. If, in any such proceeding, a judge or arbitrator finds that an assignment of rights is necessary to bring or maintain an action, or to create standing or jurisdiction to maintain an action, the Staff Member hereby assigns such rights to the Yearbook.
- (B) **Exception to Rights.** Notwithstanding the foregoing, the Staff Member has the right to share, for noncommercial, non-profit reasons, the Works on the Staff Member's social media profiles or blogs, provided no form of compensation, monetary or otherwise, is received for the upload; in portfolios for educational, employment, or artistic purposes; and in contest entries, without notifying or seeking permission from the Yearbook. Other uses can be endorsed by the Yearbook pursuant to the procedure described in section 8, below.

3) **Reserved Rights.** Except as expressly granted by this document, the Staff Member retains ownership of the Works. Any individual Work contributed to the Yearbook by the Staff Member is not considered a work made for hire and is the sole property of the Staff Member. Any future use of the Works by the Yearbook (beyond normal subscription and reprint fees, if any) requires an additional license from the Staff Member; except that such licenses may be granted automatically under the terms of this contract in Section 8.

4) **Term.** The Staff Member agrees that the licenses granted under this agreement shall exist as long as the intellectual property is entitled to protection under the laws of the United States and cannot be revoked except with written consent from the Yearbook.

5) **Territory and Media.** The Yearbook shall have the right to reproduce, publish, and distribute the Works in any format now known or later discovered, including without limitation any physical, broadcast, electronic, and

network-based medium, and any future uses controlled or authorized by the Yearbook; save that the Yearbook shall have the obligation to comply with the terms of this contract with respect to uses for compensation as described herein.

6) **Compensation and Royalties.** No compensation or royalties are required from the Yearbook for the use of the Works as described herein.

7) **Termination.** This agreement will not terminate due to a breach, regardless of whether or not it is a material breach, unless the breaching party is given an opportunity to cure (as described herein) and fails to do so, except where The Staff Member is found to have acted knowingly to deceive the Yearbook as to the authorship or ownership of her/his works, as determined by a good faith vote of the editorial board of the Yearbook; in which case, such deceptive work(s) are released from this contract and no future works are accepted, though non-infringing existing works remain under contract.

(A) **Termination by Inaction.** Any of the Works that are not published in the volume for which they were submitted, or for which the volume is cancelled, or the volume fails to print within eighteen (18) months of the last day of school for the last academic year covered by the book, are no longer part of this Agreement. Instead, all ownership and use rights return to the Staff Member; the Yearbook receives a new, nonexclusive license to use the work in future editions of the yearbook, provided that such licenses are revocable upon notice, if such revocation will not unduly burden the publication.

8) **Approvals.** Any future use of the Staff Member's works by Yearbook that do not result in payment to the Yearbook (beyond normal subscription and reprint fees, if any), or are incorporated into a reprint of the entire volume in which the Works originally appeared, or a reprint of multiple pages or Works from the same volume, does not require any additional license from the Staff Member and is covered by the terms of this agreement, regardless of the media in question.

(A) **Approval to reprint individual works for-profit.** Approvals are requested by the editor-in-chief of the Yearbook or her/his designee, or the Staff Member. Approvals sought by the Yearbook are sent to the Staff Member's last known mailing address, physical and digital, which it is Staff Member's obligation to keep current. Approvals sought by the Staff Member are sent to the physical address of the school, care/of the Yearbook.

(B) **Withholding approval.** In the event that either party withholds an approval, that party agrees to explain why approval was withheld. Either party has the right to re-submit a substantially similar request for approval if it reasonably believes that either the substance of the request or circumstances surrounding the request have been changed.

(C) **Prior Approvals.** Once given, the granting party is bound to an approval and such approval cannot be revoked save for an additional contract executed by both parties.

(F) **Communication.** All requests for approval, approvals and/or denials must be in writing, accompanied by appropriate additional materials necessary for the approval process as established herein, and sent by hand delivery, facsimile, standard mail, private courier, established overnight delivery, or e-mail; save that e-mail must be accompanied by some physical method. A failure to respond to a request for approval within thirty (30) business days shall be deemed an approval, a condition that shall be specified in the written request. A request and/or response is deemed given the day after it is sent. If, after diligent efforts to contact the author to obtain such permission, the author cannot be found, such additional permission may be presumed to be granted. *Only an affirmative non-approval is considered a denial of approval.*

11) **Exclusivity.** The Staff Member shall not, until three (3) months following the initial publication of the Works in the Yearbook edition for which submission was intended, permit the Works, or any shorter or longer version of the Works, to be published in any other publication, in any media, without obtaining prior written consent from the Yearbook; except that no consent is required for the Staff Member to use any or all of the Works in time-sensitive uses for the purposes of entering contests, job applications, or applications for higher or continuing education, even if such uses cause the Works to be displayed.

12) **Entire Agreement:** This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes any and all prior agreements or understandings, written or oral, between the parties related to the subject matter hereof. No modification of this Agreement shall be valid unless in writing and signed by both parties.

13) **Governing Law and Choice of Forum:** This Agreement shall be governed by and construed in accordance with the internal laws of the state in which the Yearbook has its primary office, without regard to its conflicts of laws principles, and the intellectual property laws of the United States of America. Both parties irrevocably consent to exclusive jurisdiction and venue in a state court of federal district court in which the Yearbook has its primary office. The parties hereby agree that United States intellectual property laws will

exclusively govern any intellectual property subject to this contract and no other conventions or rights, state or international, will have any effect in the application, enforcement, performance or adjudication of this contract.

At the Yearbook's sole and exclusive discretion, a legal dispute raised by either party can be sent to binding arbitration, in which the substantive and procedural laws dictated by this document will continue to apply. The Yearbook has up to six (6) months from the date served with a complaint to force arbitration and will pay the fee required by the administrator of arbitration. The parties may mutually agree on an arbitrator, but if mutual agreement is impossible, the parties agree to permit the American Arbitration Association, or a similar nationally-recognized arbitration organization, to select a neutral arbitrator in the Yearbook's geographic area. In no event with the Yearbook be bound to an arbitration that would require more than one hundred and twenty (120) miles of travel. The prevailing party shall be entitled to all filing fees, related administrative costs, and the costs of enforcing the award, including Attorney's Fees and other fees specified under Section 18.

**14) Binding Effect and Merger:** This Agreement shall be binding upon and inure to the benefit of Yearbook and Staff Member and their respective successors and assigns. This agreement constitutes the complete, final and entire understanding between the parties and supersedes all prior representations, negotiations, promises, understandings or agreements, whether oral or written, between the parties with respect to the subject matter. No amendment of this agreement will have legal force unless in writing and executed by the authorized officers of the respective parties.

**15) Waiver:** The waiver by either party of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance with every term and condition of this Agreement.

**16) Severability:** If any provision or any portion of any provision(s) of this contract is illegal, invalid, or unenforceable for any reason, including (without limitation) any restrictive covenants and/or any law(s) of this or any other jurisdiction where this contract is enforced or construed, the offensive provision(s) or portion(s) thereof are considered void and eliminated from the contract as if never incorporated herein, unless striking the illegal, invalid or unenforceable part of the contract frustrates the purpose of the contract.

**17) Indemnification:** The Staff Member agrees to indemnify, defend, and hold the Yearbook harmless from any and against all losses, costs, and liability incurred due to a third party's claim, lawsuit, cause of action or arbitration (including, without limitation, reasonable attorneys' fees and expenses; settlements; judgments; and arbitration awards) arising from or related to a breach by the Staff Member of the representations and warranties set out in this agreement. The Yearbook agrees to indemnify, defend, and hold the Staff Member harmless from any and against all losses, costs, and liability incurred due to a third party's claim, lawsuit, cause of action or arbitration (including, without limitation, reasonable attorneys' fees and expenses; settlements; judgments; and arbitration awards) arising from or related to a breach by the Yearbook of the representations and warranties set out in this agreement.

**18) Attorney's Fees:** In the event any party employs an attorney to enforce any of the terms of the Agreement, the prevailing party shall be entitled to recover its actual attorney's fees and costs, including expert witness fees.

**19) Opportunity to Cure:** For any breach or material breach that does not expressly give rise to immediate termination as described herein, the breaching party shall have a reasonable opportunity to cure the breach with no effect on the contract or its terms. Upon being notified of the breach, the parties will attempt to agree on an appropriate cure period; if the parties are unable to reach an agreement, the breaching party will have ten (10) business days to cure any breach.

Each party represents and warrants that, on the date first written above, that they are authorized to enter into this Agreement in entirety and duly bind their respective principals by their signature below:

EXECUTED as of the date first written above.

Staff Member  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date signed: \_\_\_\_\_

Yearbook  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date signed: \_\_\_\_\_

Parent (if Staff Member is a minor)  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date signed: \_\_\_\_\_