

Model Releases

Are they necessary?



Some Issues

American Society of Media Photographers (ASMP)

<http://www.asmp.org/commerce/legal/releases>

- Why you need releases
- The Right of Privacy
- The Right of Publicity
- Defamation
- Property owners' rights
- Special considerations for the 21st century

Why you need releases

- **Provides written agreement between you and the person you are photographing, or the person who owns the property you are photographing. The purpose of the release is to protect you from any future lawsuits the person might file for claims such as defamation and invasion of privacy.**
- **A property release says that the owner of a certain property, such as a pet or a building, has given you consent to take and use images of the property. You don't need one for public property, such as government. But for images of private property — and particularly of objects that are closely identified with specific people — you are safer if you get a release.**

Why you need releases (con't.)

- **Should be saved forever and linked in some way with the photographs to which they relate. You can expect to be asked to produce them whenever you license an image, and you will need them if you ever have to defend yourself in court.**

The Right of Privacy

- **The laws of the 50 states vary; all recognize that individuals have a right to be let alone in their daily lives.**
- **The courts have generally held that making money is distinctly less valuable to society than the right to be let alone.**
- **The right of privacy is not absolute. The courts have long held that news reporting and social, political and economic commentary — the things the First Amendment was designed to protect — are more valuable to society than an individual's right to be let alone.**

The Right of Privacy (con't.)

- It's not the picture, but how it is *used* that determines the need for a release. For instance, an image that is printed in a newspaper, shown in an exhibition or reproduced in a book might well be immune from a privacy suit. But the commercial sale of coffee mugs or t-shirts with the same image would probably not enjoy such protection. An advertisement almost certainly would not be immune.
- You can report the news (photo) without a release, but lacking one however, limits you in how you can license the image later on.
- These days, even editorial clients are requiring releases — and releases using their specific forms — with more and more frequency, so check the terms of your agreements with your clients and stock houses to see what is required.

The Right of Publicity

- **In an increasing number of states (California in particular), a famous individual has an additional “right of publicity”: the right to control how their fame can be exploited for commercial purposes.**
- **Unlike rights of privacy, which die with the persons to whom they belong, rights of publicity survive their owners and can be passed along for generations.**
- **For photographers and their clients, the right of publicity can become a problem when people become celebrities after you have taken their picture. It can especially be a problem with crowd scenes.**

Defamation

- **A defamation lawsuit alleges that a person has been portrayed falsely or maliciously in such a way as to damage their reputation.**
- **There is a distinction between commercial use and editorial use, with commercial uses being held to stricter standards of truthfulness.**

Property owners' rights

- **Privacy and defamation cannot apply to objects (although defamation can apply to business entities). Things — cars, buildings, statuary, costumes, animals, etc. — don't have legal rights.**
- **The people who are closely associated with those objects *do* have rights and could claim that your photo of their property has caused harm.**

Special considerations for the 21st century

- **Digital manipulation - Nowadays it is routine to alter colors, morph shapes and assemble scenes by compositing portions that were separately shot. Your release should state that the subject gives permission for this to occur. *“I hereby release Photographer from any liability by virtue of any blurring, distortion, alteration, optical illusion, or use in composite form, whether intentional or otherwise, that may occur or be produced in the taking of such photographs or in any subsequent processing of them.”***
- **There are certain subjects about which many people have concerns about being associated. Typically, they are subjects related to sex, religion, politics and health. Your licensing agreements should contain language that disallows using your photos for any sensitive subjects except those specifically identified. You would then grant such permission only where you have a model release that covers that use.**

The Model Release [Dan Heller's Photography Business Series]

<http://www.danheller.com/model-release.html#1>

Summary

- You don't need a release just because you take pictures.
- Releases *may* be necessary for those who publish photos.
- Unless a *use* of a photo is determined, no release is necessary.
- It is not your responsibility to know whether a release is necessary,
- It is your responsibility to disclose whether you have a release for a photo you may be providing to someone who wants to buy it.
- Just because you may profit from the sale of picture, it does not automatically trigger the need for a release.
- If someone refuses to sign a release, it does not mean that you can not sell or license the photo to someone else to use in a publication, provided that such use does not require a release.

Sample Model Release

For valuable consideration received, I hereby grant to _____ , and his legal representatives and assigns, the irrevocable and unrestricted right to use and publish photographs of me, or in which I may be included, for editorial trade, advertising and any other purpose and in any manner and medium; and to alter the same without restriction. I hereby release photographer and his legal representatives and assigns from all claims and liability relating to said photographs.

Name:

Address:

Phone:

Email:

Signature:

Date:

RECORDING RELEASE

I (We), the undersigned individual(s), for valuable consideration received, grant R.N. (Norm) Babcock, hereinafter called "Photographer" and his legal representatives and assigns, the perpetual, non-exclusive, royalty free, and unrestricted right and license to:

1. Photograph and/or record me and/or the buildings and/or structures authorized herein, using digital or film photography, video, audio, or any other medium (collectively, the "Recordings").
2. Use my name (or any fictional name), likeness, voice and biographical material in connection with these Recordings to be used in or for written, printed, electronic, and web publications and/or presentations.
3. Reproduce, distribute, publicly display and/or publicly perform, in print, electronic or any other medium, copies of the Recordings, in whole or in part, which may be altered without restriction, and copyrighted by the Photographer. Grantor represents that he or she possesses all rights necessary to grant this permission for and in connection with this purpose. This grant of rights is made voluntarily by me. I further agree to release and forever discharge the Photographer, his or her agents, employees, and designated representatives, from any and all claims in law or equity that I, my heirs or personal representatives, have or shall have, arising out of Recordings.

(Continued on back)

Recording Release (con't.)

Authorization

This release is governed in accordance with the laws of the State of Washington, USA.

Name (Print): _____

List Buildings and/or

Address: _____

Structures:

Signature: _____

Date: _____

Consideration:

If minor, signature of
parent/guardian: _____

Witness: _____

Copyright

Big Myths - [Brad Templeton](http://www.templetons.com/brad/copymyths.html)

<http://www.templetons.com/brad/copymyths.html>

"If it doesn't have a copyright notice, it's not copyrighted." *False*

In the USA, almost everything created privately and originally after April 1, 1989 is copyrighted and protected whether it has a notice or not. Assume other people's works are copyrighted and may not be copied unless you know otherwise. A notice strengthens the protection. You can use C in a circle © instead of "Copyright" but "(C)" has never been given legal force. The phrase "All Rights Reserved" used to be required in some nations but is now not legally needed most places.

LensWork Publishing Copyright Permission Form

“...It is my responsibility to have obtained model releases where necessary and that I must be able to provide copies of them to LensWork Publishing if required” (.....you sign)

Rick Sammon's Take On the Subject

- *When photographing people, do you always obtain a model release?*
“only for advertising”
- *Should releases be obtained when photographing pets?*
“ i don't think so”
- *Should one also obtain releases when photographing buildings, statues, etc.?*
“ yes for ads”
- *Do the same conditions prevail when photographing in another country?*
“depends. yes for a Hilton hotel in Singapore...”

Rick Sammon (con't.)

- *Do most (all) galleries, stock photography sources, publishers, etc require releases?*

“stock yes, editors, no”

- *Do you generally ask permission before you take someone's photo? (This whole approach seems awkward at best and would tend to preclude spontaneity of expressions with people.)*

“no”

- *What steps do you take to protect your own photos from unauthorized copying?*

“none. but if someone uses a photo, i'll sue them!!”

So Why Rick Sammon?



RICK SAMMON'S

Complete Guide to

DIGITAL PHOTOGRAPHY

*107 Lessons on Taking, Making, Editing, Storing,
Printing, and Sharing Better Digital Images*

TUTORIAL CD-ROM INSIDE

- **27 Books**
- **Writer for PCPhoto, Outdoor Photographer, Shutterbug and Layers magazines**
- **Travel, Nature, People, Buildings, Structure, etc.**
- **International and Domestic photos**
- **Many seminars**
- **Many awards**
- **Very approachable**

Seminar - *Intellectual Property Basics*

Protecting your own work

- Sponsored by Washington Lawyers for the Arts – Aug 22, 2007
 - Possible resource - 30 min. appointments - \$20 donation
 - See: www.thewla.org - major law firms participating
- © is no longer required
- You automatically have a copyright as soon as you take the image
- To enforce a copyright, it must be “registered”
- It costs \$45 to register www.copyright.gov
- You may register a body of work (several photos same subject) for \$45
- Registration can be deferred until the need arises
- Independent (photography) contractors *may* own the rights to their work. See terms of “work for hire” agreement.
- *Next seminar: November 15th Legal Help Without Hiring an Attorney*

Significant Legal Differences From One State to Another

Robt. C. Cumbow , Graham and Dunn

- NYC case Nussenzweig v. Philip-Lorca DiCorcia
- Photographed Hasidic Jew w/o permission and selling as art
- Dismissed in favor of defendant. (Courts) have consistently found "art" to be constitutionally protected free speech (and not considered commercial).
- *Would our photoclub members be immune from judgment for publishing a recognizable image (without permission) in a book or periodical or as "fine art" for sale in a gallery?*

..... answer

- *The Washington statute is quite **specific in protecting** "Single and original works of fine art, including but not limited to **photographic**, graphic, and sculptural works of art that are **not published in more than five copies**". Of course a plaintiff could always raise the issue of whether a work was truly "fine art" or was commercial exploitation.*
- *As a general rule, an artist is unlikely to be liable for violating Washington's personality rights act as long as the work is not commercially exploited--and **the fact that a picture is sold or published in a book that is sold does not make it "commercial."** The term "commercial" in right of publicity law generally applies to advertising and to promotional merchandise such as t-shirts, mugs, posters and the like.*
- *Remember that **not being liable doesn't mean being immune from a lawsuit.** Anyone can be sued at any time, and sometimes it can cost a lot of money to prove to the court that you should not be found liable. Most of the time you don't get that money back; so you win, but you lose a lot of money doing so, and it's often not worth it.*

Conclusion

- If you are not on private property, take all the pictures you want, but you may not be free to sell or publish them w/o release.
- Depending on the photo, get a release if you intend to commercialize.
- Carry a “pocket release just in case.

Protect yourself



“You want a what ...a release ???
...you crazy man???”

