

**(q: “I took pictures at a Section event, and I’d like to publish them in our newsletter. Do I need to get a signed consent form from everyone whose picture I publish?”)**

The rights and risks in publishing a person’s image in an Internet or print publication are a hotly debated legal issue, involving the interplay of several Constitutional rights: the publisher’s right of free speech, the public’s right of access to information, and the private citizen’s right of privacy.

As a general rule, if a person’s photograph was taken in a public setting, a publisher does not need to obtain that person’s consent before publishing the image. However, U.S. law has carved out several large exceptions to that rule, in which certain types or uses of a photograph can expose a publisher to civil liability for violation of the subject’s rights. In fact, state courts have recognized as many as four different claims by which a publisher can be held liable for the use of a person’s image: 1) intrusion; 2) false light; 3) disclosure of private facts; and 4) misappropriation.

The first claim, intrusion, involves an intentional intrusion on a person’s private area or affairs. This claim recognizes the fact that, even outside a person’s home, there may be certain areas in which a person has a right to privacy. The most obvious example of a use of photography that may give rise to an intrusion claim is the use of a hidden camera in a dressing room or restroom, but some courts have allowed intrusion claims in less obvious situations. In Arkansas, for example, a court found that a woman whose hip surgery was videotaped by a local news station without her permission had established grounds for an intrusion claim.

The second claim, false light, relates not just to the publication of the image itself but to the context in which the photograph was published. Much like a defamation claim, such as libel or slander, this claim involves communication of false or misleading information, which is done either knowing the information to be wrong or with reckless disregard of the truth and which would be highly offensive to a reasonable person. For example, a D.C. woman successfully brought a false light claim against a TV station when a newscast focused in on her as a pedestrian on a busy street with a voiceover stating, “for the 20 million Americans having herpes, it’s not a cure.”

The third type of claim, the private facts claim, also relates to disclosure of information in connection with an image; however, this claim concerns publication of truthful information about a person’s private life, if the information is not a legitimate public concern and would be highly offensive to a reasonable person. Because of the prevailing concerns against restricting the public’s right of access to information, this is probably the most difficult claim for a plaintiff to win, but some states have awarded damages in cases where the published information was found not to be “newsworthy.” For example, finding that the identity of participants in an in vitro fertilization program was not newsworthy, a Missouri court upheld a private facts claim against a news station that ran footage of a couple’s attendance at an event for program participants.

While the first three claims involve invasion of a subject's right to privacy, the fourth claim concerns a person's right to publicity. A misappropriation suit involves the use of a person's likeness or name for a commercial purpose. This claim does not apply when an image is used to illustrate or advertise a related news story, and is most commonly brought by celebrities whose image has been used, without permission, to promote a product or service; however, U.S. law also allows private citizens the right to control and be compensated for use of their likeness in a commercial promotion. For example, in Georgia, a street musician won a misappropriation claim for use of his picture to illustrate an album cover.

One final point to consider when publishing photographs are the special concerns involved in publishing pictures of minors. The 1998 Children's Online Privacy Protection Act prohibits commercial Web site operators offering services for children under the age of 13 from publishing identifiable information about such children without written consent from a parent or guardian. In addition to more obvious types of information such as a child's full name or home address, COPPA also covers more innocuous information—such as photographs in connection with the name and location of the child's school or youth group—that might allow an online predator to locate and contact a child. While COPPA is not intended to cover all Web sites or the use of information in other types of media, it suggests a course of action that is wise for any organization to follow in publishing images of minors.

Taking care that any photographs you publish were taken in a public place, are captioned correctly and appropriately, and are being used for a newsworthy rather than commercial purpose is crucial for reducing your organization's risk of exposure to litigation, but not even these steps provide absolute protection from a privacy-related lawsuit. As a practical matter, the most risk-free course of action will always be to seek release forms from any identifiable subjects in a photograph you intend to publish.

*Privacy laws vary from state to state, and not all states recognize all types of claims described here. For a listing of state case law related to the use of photographs, please see the *Photographer's Guide to Privacy*, at:*  
<http://www.rcfp.org/photoguide/stateindex.html>

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