

The
Wow

e-newsletter

by Ken and Dahlynn McKowen

Principles

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Clear as Mud, Part II

Navigating Your Way through the World of Photo Releases

In April's issue, we discussed the idiosyncrasies of photo releases when it comes to "people photos" and how the rules can be "as clear as mud." As promised, this month's newsletter will cover the much more complicated and murkier world of property photo releases.

But before we start, please keep in mind that the following should not be construed as legal advice, as neither of us are attorneys. We are simply sharing this information with you as colleagues and friends.

Now that our disclaimer has been posted, let's continue. When it comes to property photo releases, *similar situations* can be *completely different*. We realize this is an oxymoron, but it is so true; we have seen it all, from publishers demanding to have, in hand before publication, photo releases for properties to be shown in our manuscript, to property owners demanding to approve photos of their places. But here's the clincher—the releases are for photos *we* took.

In terms of copyright issues, *we* are the creators of the photo, thus we own the copyright to said photo. The photo is an expression of our idea (i.e., the way we frame the photo, use of light, angle). It belongs to whichever one of us snapped the photo. But, unfortunately, we live in an age of deep-pocket litigation and must protect our company and our publishers from possible court actions. Thus the need to have either the "legal owner" or the designated person who can permit the taking and use of photographs sign a property photo release form.

Better to be safe than sorry and lose our business and reputation in the process.

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Here are our three top reasons to secure an executed property photo release form:

- 1) Not all the “property” shown in a photo belongs to the legal owner/leasing organization.



Air Force One, found inside the Ronald Reagan Presidential Library and Museum in California, is part of their permanent collection.

This can occur on both internal and external building photos and is an important rule to keep in mind when taking photos of buildings/property for commercial use. Inside, especially in a museum and/or art gallery, some of the collections are loaned. Thus, you would need to get approval from the person loaning the items, which is next to impossible. We always ask which collections are permanent and owned by the facility, then request permission to shoot photos. That way, the property owners or lessees have no problem signing a release.

Shooting photos of facades are a little trickier. One recent example occurred when we were working on our book *The Best of Oregon and Washington's Mansions, Museums and More*. Our unforeseen nemesis was a 48-foot tall sculpture located at the entrance to the Seattle Art Museum. Called the “Hammering Man,” the work is owned by the City of Seattle, not the museum. When we asked the museum to sign a release for our book, they said they could not due to the rights of the sculpture’s owner. As such, another photo was used. (Since we can’t show you the photo because we don’t have a release, you can go to www.seattleartmuseum.org/visit/hammerMan.asp and see the sculpture for yourself.)

- 2) Ugh! Possible private property issues...

This has happened several times, but the best example occurred when creating our 344-page, photo-filled book *The Best of California's Missions, Mansions and Museums*; we hit a snag when we asked a Catholic Diocese to sign forms for several of their missions. They cited

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that they could not allow us to make money from our photos of the missions because they had the right to enjoy the economic gain from those properties. Because we did not have the money or the wherewithal to go up against the Diocese, we negotiated with their representative and augmented our release form to address their concerns.

3) The publisher contractually places the liability for all releases on us/our company.

If it's in our book contract, then we have to do it. Yeah, we can say we did and that we have a signed release on file for the photo, but should a property/legal owner go after the publisher, the publisher will defer to us. Not fun. So we always have a release for every photo...we have so many that they're in boxes in a shed on our property. We typically keep the forms for five years, sometimes longer depending on the edition of the book.




Newsome-Harlow Winery in Murphys, CA, is a great example of an exterior shot that definitely requires a release form. They're also a GREAT winery! www.nhvino.com

There are many more reasons to obtain a photo release; to read up on the subject, go to the website of the Professional Photographers of America (www.ppa.com). You don't have to be a member to use the site's search function, which will more times than not direct you to a blog entry that matches your inquiry.



Because the headstones are the subject, there is no need to secure release forms from the properties in the background. (Boston, MA)

Knowing when to secure a photo release can be difficult. If you have to think twice about using a photo for commercial purposes, get a release. As the late Leo Burnett—an advertising genius and the man behind the creation of Tony the Tiger, the Jolly Green Giant and the Pillsbury Doughboy—once said, “When you reach for the stars, you may not quite get one, but you won't come up with a handful of mud either.” It doesn't hurt to avoid the mud puddle in the first place. 

Property release exceptions -- next page! 

»»» Exceptions to the Rule

Of course, there are always are a few exceptions to the rule:

- Will the photo be used in a newsworthy or editorial fashion? If so, then a property release is not needed.
- Was the photo taken in a national/state facility or park? The best way to see if a release is needed is to visit the property's site: if they have a similar photo posted for free use (NPS posts free photos for commercial use), then you should be okay. But you should check with them just to be sure. This doesn't preclude you from having to obtain a photo permit prior to your visit if you're setting up a major photo shoot for commercial purposes.



- Is the photo considered “generic” with no specific focused subjects? (i.e., photo of a city skyline). Can you imagine obtaining written approval from all the owners in the photo? In cases such as this, it's probably not necessary to secure signed releases.

Sample Property Release Form

Because of the great response from last month's article on photo releases (mainly thanking us for including the actual release), we are going to share with you our property photo release form. But before you use it, please replace our business name in the header, footer and throughout the document, and list your name or business/contact info instead (we love you all, but do not want to receive executed forms on our fax number or at our business address). Because there's more girth to this example than to the one we included in April's newsletter, the PDF can be found and downloaded at www.publishingsyndicate.com/PS/release.pdf (the address is case sensitive).



Pat's Question...

The following was posed by Pat Nelson of Washington in response to April's issue on photo releases: **“What about using old photos from prior to 1950; most of the subjects are no longer living? Are the rules different? I have a release from the person who took the photos, but not from the individuals in the photos.”**

Great question, Pat! Unfortunately, there's no definitive answer to your question. And not seeing the photo, or knowing how you're going to use it, makes our answer broader.

Below are two considerations when using a photo for commercial purposes:

- Right of privacy: Will the photo be used for commercial purposes? If so, then the person in the photo (and/or his/her family) should also “enjoy the economic gain,” just as we talked about in this month's article. You absolutely need a model release if this is the case.
- Portrayal of a person in a false light: if the photo or caption is derogatory or damaging, the subject and/or his/her family can potentially file a liable suit. Hence the cases against the tabloids: while the tabloids may consider their photos “newsworthy or editorial” in nature, many court cases have sided with the subject.

You must also consider the way you are going to use the photo. If it's part of a national advertising campaign, then a release is mandatory from the next of kin. If you're creating a self-published book for distribution to only your friends and family, and the photo does not fall under the two items above, then you're probably okay. Anything in between is a tough call, especially if your photo is important to your book or project. When in doubt, consult an attorney. Many of the major universities have free on-line resources where you can pose questions to law students via e-mail; send along your photo and question. (If you do, we would love to learn what he/she says.) But just like leftovers, if you have to think twice before eating them, don't. The resulting stomachache isn't worth it.



HOT STUFF! HOT STUFF! HOT STUFF! HOT STUFF! HOT STUFF!



A Cup of Comfort

www.CupofComfort.com

A Cup of Comfort for Christian Women

Directly from the CoC site:

“For this anthology of inspirational true stories, we are looking for narrative personal essays (creative-nonfiction short stories) written by and for Christian women that reveal myriad ways in which one’s faith has provided (provides) insight, guidance, comfort, and joy in navigating one’s life. Stories must be original, unpublished, true, and positive. Stories can focus on any of life’s challenges and/or blessings, and can be either serious or humorous or contain elements of both literay tones. We are not interested in ‘preachy’ stories that tell other people how to live their lives and how to practice their faith. Nor are we interested in stories that promote one branch, denomination, or form of Christianity over another. What we’re interested in is how your faith positively impacts your life and, by extension, the lives of and your relationships with your loved ones. You may cite one or more Biblical passages in your story; however, please keep in mind that this is a collection of personal stories and not a devotional.”

Story Length: 750 to 1500 words

Submission Deadline: August 15, 2010

Finalist Notification: August 20, 2010

**Summer writing project! Don’t delay,
as the deadline is in August!**

Chicken Soup for the Soul

www.ChickenSoup.com

New Moms: Deadline: July 31, 2010

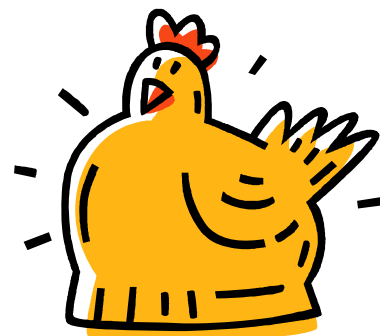
Grandmothers: Deadline: August 31, 2010

Preteens: Deadline: December 31, 2010

Teens: Deadline: December 31, 2010

Young at Heart: Deadline: December 31, 2010

Mothers and Daughters: Deadline: December 31, 2010



Go for it! Get published! 