

Why you need releases

A release is a 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 model release says the person being photographed has given consent to be photographed and to the use of the images you capture. It doesn't just apply to professional models or situations where people know they are posing for photos. You should seek to get a signed model release any time that your photos contain recognizable images of people, unless you are certain that you will never want to use them for anything other than editorial purposes.

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 buildings (although you may run into problems just from photographing them, for security reasons). 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.

The releases you obtain should be saved forever and should be 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

Although the laws of the 50 states vary, all states recognize that individuals have a right to be let alone in their daily lives and that harm (in the form of embarrassment, scorn or loss of status) can result if that right is violated.

However, the right of privacy is not absolute. In particular, 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. Therefore, images that are part of the public colloquy about events have usually been exempt from privacy lawsuits. In contrast, the courts have generally held that making money is distinctly less valuable to society than the right to be let alone.

Thus, privacy issues typically arise when an image is used for purposes of trade or advertising. That is, 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.

Therefore, if you are on an advertising assignment, you will need to collect releases from every person in your shots. News assignments are a little trickier. You are always better off if you have permission to photograph your subjects and can prove it. But it's not always possible to get permission and, in the U.S., you can report the news without it. Lacking a release, however, you are limited 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 you need to 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 his 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. Rights of publicity also tend to be more specific in their prohibitions than rights of privacy.

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 his reputation. (The term “defamation” includes both slander, which is spoken, and libel, which is published in some tangible medium.) The falsity may be direct, such as by compositing several images to depict a scene that did not happen, or indirect, such as advertising a rehabilitation clinic with a picture of someone who has never been a patient there. As always, 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. But the people who are closely associated with those objects *do* have rights and could claim that your photo of their property has caused harm. This is a tricky area of law, with few precedents to guide us. We discuss property releases in more detail on [a separate page](#). In general, though, we advocate following the cautious rule, "When in doubt, try to get a release."

Why we take this seriously

Most of the time, you take your pictures, everybody gets paid and that's the end of it. Once in a while, though, things can go very wrong.

An article in the Los Angeles Times for Feb. 1, 2005 (no longer available online) described how Nestlé got slapped with a \$15 million jury award because it used a model's picture without taking care of the paperwork. In this case, there was no blame on the photographer; rather, the client (Nestlé) was accused of failing to pay all the fees that were specified in the model's contract. But the size of the verdict shows that juries do take model's rights very seriously.

The passage of time doesn't necessarily reduce your risk. In the Nov. 22, 1999, edition of the New York Observer, an article relates that Peter Beard was threatened with a lawsuit for a photo he'd taken a dozen years earlier. In 1987, Beard had photographed a 17-year-old girl near Lake Rudolph in Kenya. But by 1997, that girl had moved to Los Angeles, where she was waiting tables and looking for work as a model. A New York friend called to tell her that a SoHo gallery was selling her picture for thousands of dollars. She reacted by hiring a lawyer and demanding \$50,000 plus 15 percent of Beard's sales. (It appears that the matter was settled out of court, so we don't know what really happened.)

21st Century Worries: Digital Editing, Sensitive Subjects

In recent years, two changes have come to pass, one technical and the other social. Both require special care in the wording of your releases.

Digital manipulation

It used to be said that “the camera cannot lie.” No one says that Photoshop can’t lie, however. 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.”

We’ve included a version of the above language in our general Adult and Minor model releases, because Photoshopping has become a normal aspect of advertising photography. But that’s pretty broad language: It allows every conceivable digital effect. Depending on the model’s concerns (and the client’s needs, of course), you may need to accept certain limits on the digital reworking that may be done. For instance,

“However, this compositing or distortion shall be done only by Photographer or by persons working under the direct supervision of Photographer, and it will be limited to images and image components that are photographed on the same day.”

If you need the “however” part and you are using a pre-printed release, you can hand-write the extra sentence, and both you and the model can initial and date the change.

There’s nothing magical about this particular set of limits. If you and the model have reached a different agreement on what may and may not be done, you should write it down in plain language. If it’s a short statement, you can write directly on the release. If it’s long, write it on the back or on a separate sheet of paper, and on the front, put a note that refers to the extra material. (Get the model to sign the extended statement and initial the note.) That way, the deal is recorded and there’s less chance that you will later be accused of doing what you promised not to do.

Sensitive uses

There are certain subjects about which many people have concerns about being associated. Typically, they are subjects related to sex, religion, politics and health. In some cases, appearing in the “wrong” ad campaign can spell ruin for a model’s career. For those reasons, if you are going to use a photograph for any purpose that some people may find discomforting, offensive or even distasteful, you should make sure that your release specifically authorizes that use. Since the nature of that kind of permission is specific, having a general authorization to use images for “sensitive uses” would probably not be effective.

Instead, when needed you should insert language similar to the following, on an as-needed, case-by-case basis, filling in the blanks and changing words like “suffer” to fit your particular situation:

“I understand that the pictures of me will be used in public-service advertisements to promote AIDS awareness. Knowing that such advertisements may intentionally or unintentionally give rise to the impression that I suffer from this disease, I nevertheless consent to this use.”

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.

What's in a release (the language of law)

At its heart, every release says the same things:

1. I have given you permission to take pictures of me and use them for commercial purposes.
2. In exchange, I have gotten something of value.

Along with the subject’s signature and a date, these two statements would be enough to constitute a bare-bones, but entirely legal contract. Law students are taught that a contract records a “meeting of the minds” and, to be complete, must contain three elements: an offer, an acceptance and a consideration.

Offer. Often, the subject is offering to give you permission, along with a promise not to complain about things later on. Most of the words in the release are there to describe exactly what the subject is willing to permit and not complain about.

In some cases, e.g. where you are working with professional models, you are offering to pay the model for his services, and granting the permissions in the release is one of the conditions that must be met before you will make payment.

Acceptance. Where you are using unpaid subjects, your behavior (your making or using the photos, or accepting the signed release) indicates your acceptance. Where you are paying your subjects, their signatures show that the offer was accepted.

Our recommended releases have space to write the subject's address and to place a witness's name. These are not legal requirements, however. If there are no witnesses and the subject declines to give an address (or gives you only an email address — it has happened), the signed release is still a contract.

It is always good to have witnesses, of course. And it is useful to get the subject's address. For one thing, you may want to contact the subject later on. For another, you want to make it clear that the John Smith who signed your release is the same John Smith whose photo you took.

Consideration. A contract is complete only if value is exchanged. Consideration is the legal term for whatever your subject has gotten in return for the permission. It could be money; it could be tangible goods; it could be a promise to do something in the future, such as use your best efforts to get the photo published and thus increase your subject's renown. But it has to be something that has value, at least in your subject's eyes.

None of our releases say what the consideration actually is, but they all say that it exists and has value. Again, the subject's signature is an acknowledgment of the value.

When you are shooting in the field, it can be awkward to approach people and ask them to sign a release. But it becomes less awkward if you offer something tangible, yet tasteful — we often recommend handing out business cards and offering to mail a print from the shoot. Not only might this engender some good will, but it could lead to future business.

Formal language. The releases that we recommend are a bit longer and more formal-sounding than the bare-bones statements above. There are a couple of reasons why.

- By spelling out the nature of the permission in great detail, the release makes it harder for the subject to claim that he didn't intend to grant quite so much permission.
- The use of formal language alerts your subject that this is serious stuff and can't be lightly repudiated. In court, this would help reinforce the fact that the subject really did intend to give consent.

On the other hand, too much legalistic wording might scare your subject into refusing to sign. You have to strike a balance. That's why we offer four general-purpose releases, ranging from the Adult and Child versions, which detail everything in formal language, to the Pocket version that summarizes the deal in less than a hundred words.

Our releases are designed to be all-purpose, and so they call for a very broad grant of permission. If your subject raises an objection to signing a release with broad language, you can counter by offering to write a restriction into the document. Adding a restriction actually makes the release stronger, legally speaking, than a general release; the addition shows that your subject understood the document well enough to want a change, and that a real negotiation of terms took place. Besides, in practical terms, your subject's cooperation is always your best defense against lawsuits.

Using plain language. There are no magic formulas; the words in a contract mean what they say. If you add a restriction to a standard release, it's best not to get fancy with the language. Just write, in plain English and as exactly as you can, what you and your subject have agreed.

Further points of contract law

Competence. Not everyone is legally able to make a contract. Signers have to be able to understand the consequences of their acts. That means they must be of legal age and of sound mind. A minor who signs a release can repudiate it when he becomes an adult, or his parent can repudiate it for him. In general, the legal age for entering into valid contracts is 18, though younger persons can, in certain circumstances, get a court order that makes them legal adults.

The “sound mind” requirement can be tricky. Crazy people can seem quite sane, and neither senility nor mental retardation are necessarily obvious in a brief conversation. Just as you need a parent’s signature on a minor’s model release, you need a guardian’s or conservator’s signature on a release for a legally incompetent person.

Illegality. The courts won’t enforce a contract for illegal activity, or one that is contrary to public purpose. For instance, in some circles, a few dollars’ worth of hashish might be welcomed as the “consideration” element of your release — but a court of law isn’t likely to see it that way. And if your pictures are used for blackmail, a model release is likely to be treated as evidence of conspiracy, not permission.

On a more practical level, there are plenty of gray areas and “iffy” situations. If you are in doubt, stop reading web sites and consult a lawyer!

Ideas for getting signatures

Experienced models are familiar with model releases (perhaps more familiar than you are) and will expect your request to sign the papers. Others may be surprised by such a request, and you may need to do some explaining, or even some bargaining, to get the signature. There are no sure-fire techniques that work every time, but we offer a few strategies in the spirit of information sharing.

Elsewhere, we note that it is often useful to give out your business card and offer to send a print if the subject will sign your release. And we suggest using the “pocket” release for shooting in the field — it’s short and unthreatening.

It’s for stock

A lot of times, people will ask how you intend to use their picture. The more specific you can make your answer, the more likely that they will sign your release. Except, of course, you often don’t know all the possible uses. But you *can* say that you are shooting “for stock” and explain what that means. If you work with a stock agency, tell your subjects its name and web address. Tell them that the images may or may not ever be licensed, that you find out when and where the photos are used only after the fact. It can’t hurt to add that you get but a small fraction of the license fee.

The celebrity release

If you photograph performing artists and celebrities for purely editorial projects, you don’t need a release. However, you do need consent for any commercial use — and that includes self-promotion, such as showing the images on your web site or in your portfolio. Rare is the artist who will sign a broad model release, though. A bit of creativity is called for.

“I have had the opportunity to photograph several music artists this past year for major music magazines. These have been editorial assignments; the artists have already agreed to be interviewed and want their photos to accompany the article. Everybody is agreeable to the use of the photos, and the magazine and the artist do not require or desire me to interject a model-release issue.

“I introduced a ‘Celebrity Release’ on one of the assignments and secured a signature from the artist. I modified a basic model release to specify the publication and that initial usage, and added a usage for me to use the photos in my own self-promotion. I intentionally did not include a broad unlimited release, believing that it would be rejected by any artist’s management.”

Timothy H. Wright
The Wright Studio

Keeping track

It is not enough to get the signature on the release. You also have to be able to produce the signed paper when it is required. It will be required if you ever have to defend yourself against accusations of wrongdoing. In addition, many licensors insist on getting a copy of the release along with a copy of the photo, because they might someday have to defend themselves. You need a reliable filing system.

Here’s a tip from a Baltimore photographer that could make your system work better:

“After any shooting session in which I use a model I have used previously or might use again, I make thumbnails of all the images and print them on the bottom or back of the release, or on separate pages which I attach to the release. That way, if I shoot the model again and have a second release, I can quickly see which images are covered by which release.”

Ed Ross

Frequently Asked Questions

Q: How do I know when I need a model release?

A: The answer to this question can be reached by asking a series of questions about the subject and the use of the photograph. A model release is needed from each person whose likeness appears in a photograph that is used for advertising or trade (business) purposes when the person is identifiable. Look at the photograph and the person(s) in it and ask these questions:

1. Could the person in the photograph be recognized by anyone? Be warned: It is very easy for a person to show in court that he or she is recognizable.

If the answer to question #1 is No, then you do *not* need a release.

2. Is the photograph to be used for an advertisement? (In law, “advertisement” is broadly defined.)
3. Is the photograph going to be used for commercial business purposes, like a brochure, calendar, poster, web site or other use that is intended to enhance a business interest?

If the answers to question #2 and question #3 are both No, then you do *not* need a release.

Otherwise, the answer is that you do need a model release.

Q: What is the legal age for signing releases?

A: Eighteen is generally legal age across the USA. However, it is an individual state determination, and we do not have the legal stats on each state. If you want to know the answer for any state, we suggest that you call the state attorney general, state solicitor's office, or whatever your state calls its legal arm. You can also call local attorneys, as they could not pass the bar exam in their state without knowing the answer to that question.

A safe course is to use ASMP's recommended release forms. You are well protected because we use the words "of full age," which covers you in any state. ("Full age" and "legal age" mean the same thing in legal jargon. "Full" allows you to keep the word "legal" off the paper. Some folks fear the word legal when they see it on paper.)

When the subject is not of legal age, you must get the signature of at least one parent or legal guardian on the release. Getting the signatures of both parents is better, so that one can not seek to rescind the consent of the other.

Q: What are the differences between having a photograph appear in an ad and in a magazine's editorial pages?

A: The two differences are the need for model releases (see [an earlier answer](#)) and money. Generally, photographs used for advertising are worth substantially more money to everyone involved than photographs used for editorial purposes.

Q: If I photograph a large group of people and plan to sell the picture, would I need model releases from every person?

A: If you just want to sell fine art prints, or even posters, you should be OK without releases. If you license the picture for use in a book, you should be OK without any releases as long as you don't allow the publisher to put the photo on the cover of the book or use it in promotional materials.

But if you put it on coffee mugs or allow its use in any way that would be considered purposes of trade or advertising, you are probably going to be liable for the invasion someone's right of privacy unless you have gotten releases from every person who is recognizable in the photo. A bank once made a photo of about 300 of its own employees standing in one of its lobbies. When the picture ran in an ad campaign, some of the employees sued the bank, and won.

Q: If I photograph a clown in the circus and the picture appears in a magazine, can the clown sue me for depicting his trade dress without permission?

A: If the photo appears as an editorial illustration, rather than an advertisement, he could sue you, but he probably would not win. Just like trademarks, trade dress can be shown in photographs as long as the use does not create confusion in the mind of the public as to the origin or ownership of the trade dress and the usage doesn't damage the value of the trade dress.

"Trade dress" is like a trademark, in that it is unique or distinctive and helps to create a business identity for the clown. (The term is actually quite broad; the feminine shape of a Coke bottle is protected as trade dress.) To learn more about trade and related marks, [go here](#).

Q: How do I know when I need a property release?

A: The answer to this question can be reached by asking a series of questions about the subject and use of the photograph. A property release is advisable and may be needed from each property owner whose property appears in a photograph that is used for advertising or trade (business) purposes when the property owner is clearly identifiable by the property. (Note that the owner can be a corporation as well as an individual.)

Look at the photograph and the property in it, and ask these questions:

1. Could the owner of the property in the photograph be identified by anyone just by looking at the photograph of the property?

If the answer to question #1 is No, then you do *not* need a release.

2. Is the photograph to be used for an advertisement? (In law, “advertisement” is very broadly defined.)

3. Is the photograph going to be used for commercial purposes, like a brochure, calendar, poster, web site or other use that is intended to enhance a business interest?

If the answers to question #2 and question #3 are both No, then you do *not* need a release.

Otherwise, you do need a release.

When doing this analysis, remember that a property can include, or even be, a trademark. Depending on the details, use of another’s trademark without permission may be a violation or dilution of the mark. For example, if you photograph a building with the logo of ASMP on it, you have to have permission to use it for advertising or trade purposes. Why? because the logo is the property of ASMP. What about the building the logo is displayed on? This is more complicated question. To learn more about trade and related marks, [go here](#).

Q: Can a property owner prevent me from taking pictures of his building, car, etc. from the outside? From the inside?

A: If you are taking the picture from a public place, and the subject is visible from that place, the owner does not have a legal right to prevent you from making photographs (although you could end up with broken equipment or anatomy). The answer is different if you are taking the picture inside (or on) private property. There, the owner gets to make the rules, and if he/she/it says no photos, then you can’t take photos.

Q: Am I legally permitted to photograph strangers in public places? Are city and state parks considered public places?

A: Yes, you can photograph strangers in public places, unless you do it to such an extent and in such a way that you become a harasser or nuisance to the public.

City and state parks are generally public places. Figuring out what is or isn't a public place is usually easy, but not always. If the public is allowed free and unrestricted access to a place, like streets, sidewalks and public parks, it is probably a public place (although parts of sidewalks and what appear to be public parks may be privately owned). Once you go indoors, you are probably no longer in a public place, and some person or entity can probably make the rules, including restrictions on making photographs.

Note that even in public places, police officers have broad powers to protect the public from possible harm and to enforce the local ordinances. If a cop tells you to stop, you'd better obey promptly and defer the arguments until after you've checked with a lawyer.

Q: If I photograph a man doing something silly such as slipping on a banana peel and the picture appears in a newspaper, can he sue me for holding him up to ridicule?

A: In the areas of defamation, libel, etc., truth is almost always a good defense. Assuming the photo is not staged or manipulated, *i.e.*, that it is a true and accurate image of what really happened, and assuming it is used for editorial purposes and not trade or advertising, the photography by itself will probably not be a source of liability. However, if the newspaper decides to do something like run it with a headline that says "King of the Klutzes" and an embarrassing or humiliating story, there could easily be a successful lawsuit. The liability, though, would belong to the publisher of the newspaper, not the photographer, although the photographer would probably be stuck having to defend him- or herself in the suit. Even worse, the photographer may have signed an agreement with the publisher in which he/she promised to indemnify the publisher. In that case, the photographer would be stuck with all of the costs and liabilities, even though the fault would be the publisher's.

Q: If I photograph a crowd at a baseball stadium and it's published, but the boss of one of the people in the audience recognizes him as an employee who called in sick that day and fires him, can he sue me for causing him to lose his job?

A: If it is published as an editorial photo, not as part of an ad or used for other trade purposes, he would be unlikely to win such a suit.

Q: If I take a picture of a seedy neighborhood and a magazine editor writes a caption describing it as a red light district, can I be sued for defamation by someone shown in the picture?

A: Yes, which is why your paperwork with the magazine has to make it clear that there is no model release (if there is none). Ideally, the magazine should agree to indemnify the photographer against any damage from publishing the picture, since the magazine is the one that controls the use of the photo, and it is the use — not the photograph — that creates the liability. Unfortunately for photographers, in today's world, that seldom happens.

Q: When does the right of privacy protect someone from having his picture taken?

A: When a person has taken steps that would give rise to a reasonable expectation of privacy. If you go into a room with closed doors and window shades pulled down, you would probably have a reasonable expectation of privacy, and someone putting a fiber-optic lens under the door and taking your picture would probably be liable for invading your privacy. If you are sitting at a window table in a restaurant, you are probably fair game.

Q: If I stand outside a store and take a picture for publication of someone inside, either through the door or store window, is that a violation of some sort?

A: Probably not. Standing in a store with glass windows and doors is not a situation that would give a reasonable expectation of privacy.

Q: What are the rules about photographing nudes?

A: This is a huge and volatile topic. First, let's assume we're talking about subjects who are legally competent adults. Let's also assume that you are taking the photographs with the models'

knowledge and permission, and that they have given you valid model releases. The language of the release covers both privacy and defamation issues, so you should be covered on that score.

That leaves the question of whether the photos are obscene. If they are, you could be charged with violating state and/or local obscenity laws. What is obscene? The U.S. Supreme Court has struggled with this question. Justice Potter Stewart characterized it as “trying to define what may be indefinable.” The Court’s guidelines, if you can really call them that, are hardly more than the instinctive reactions of the people in the street:

“(a) whether ‘the average person, applying contemporary community standards’ would find that work, taken as a whole, appears to the prurient interest... (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, political or scientific value.”

The kicker is the “community standards” part, especially in an internet era. Not long ago, a San Francisco couple running an internet website found themselves indicted for violating obscenity laws in Tennessee, and the community standards in those two communities are presumably quite different.

Q: If I photograph my young children in the bathtub and send the film out for processing, could the processor turn the film over to the police? Could I be prosecuted for child pornography?

A: This area is a real hornet’s nest of emotions and political sensitivity. Yes, the processor could, and might, turn the film over to the police, and yes, you could be prosecuted for child pornography. You wouldn’t necessarily be convicted, but the whole process would be enough to ruin or at least severely damage your life and reputation. Just ask some of the photographers to whom this has happened.

There are occasional reports of over-zealous lab employees inappropriately blowing the whistle over photographs no more offensive than the classic naked baby on a bearskin rug. These days, you are better off using digital cameras and printing your own photos than using a lab where unclothed children are in the picture.

Which form to use

Adult's model release

This is the most detailed and formal of our standard releases, and it should be used whenever possible. It is particularly suitable for commercial shoots with professional models. **Exception:** If the model is under age 18, use the Model Release for a Minor Child, which is signed by the child's parent or guardian.

Model release for a minor child

This form, in addition to being detailed and formal, is designed for a parent or guardian to give permission on behalf of a child or teenager. If you can, get both parents to sign, which reduces the risk that one parent will try to revoke the consent given by the other. (If you are photographing grownups, use our Adult's Model Release form.)

Who is a minor? In most states, persons under the age of 18 are minors, who do not have legal capacity to sign contracts in their own name. (There is such a thing as an "emancipated" minor, who is under 18 but by court order is deemed a legal adult.)

Pocket model release

For those times when you need to have something quick and easy that you can carry with you readily and that is likely to be signed with minimal resistance, here is the Pocket Release. This document does not provide nearly the level of assurance that the more intricate releases do, but it should provide at least a reasonable level of protection.

Property release

Use a Property Release to record the owner's permission to take pictures of buildings, cars, art works, pets — in fact, just about anything *except* people.

The following Property Release has an optional section at the end that, if signed before a notary public and notarized ("acknowledged"), will allow it to be recorded as if it were a deed or similar document in most states. Recording it would essentially put the world on notice that you have permission to make and use photographs of this property, and any future owner of it will take title subject to that permission.

Using the text

The language below will provide a concrete illustration of the principles explained in this module. **Sections in bold are place holder text that you are supposed to replace.** The placeholder for sensitive uses (the part beginning 'I understand ...') is optional and may not be needed at all.