



Smile for the Camera: Taking and Legally Using Photos

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Purpose

- This brief presentation covers considerations for your non-profit organization when it takes and uses photographs.

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To maximize the impact of pro bono engagement by connecting a network of attorneys with nonprofits in need of free business legal services.

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 - ✓ Be a 501(c)(3) nonprofit.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
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Legal Information:

- ✓ This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.
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Background on Presenter

- Bryan Cave LLP
- Focus on technology and intellectual property issues, including copyrights, patents, trademarks, trade secrets, and data privacy.

Background on copyrights

- Copyright protects expression, not facts.
- Copyright includes the right to restrict reproductions.
- Copyright is not the only right implicated when someone is photographed.

Can you reprint either photo?



Considerations

- Who owns the photo?
 - ✓ If not the owner, do you have permission to use it?
- Where was the photo taken (in public or private)?
- ***How will you use the photo?***
 - ✓ Will you draw attention to the people in the photo in a way they would not have expected?
 - ✓ Will you misrepresent the circumstances in the photo?
 - ✓ Will you expose private information?
 - ✓ Would your organization's relationship with a donor or volunteer be damaged?

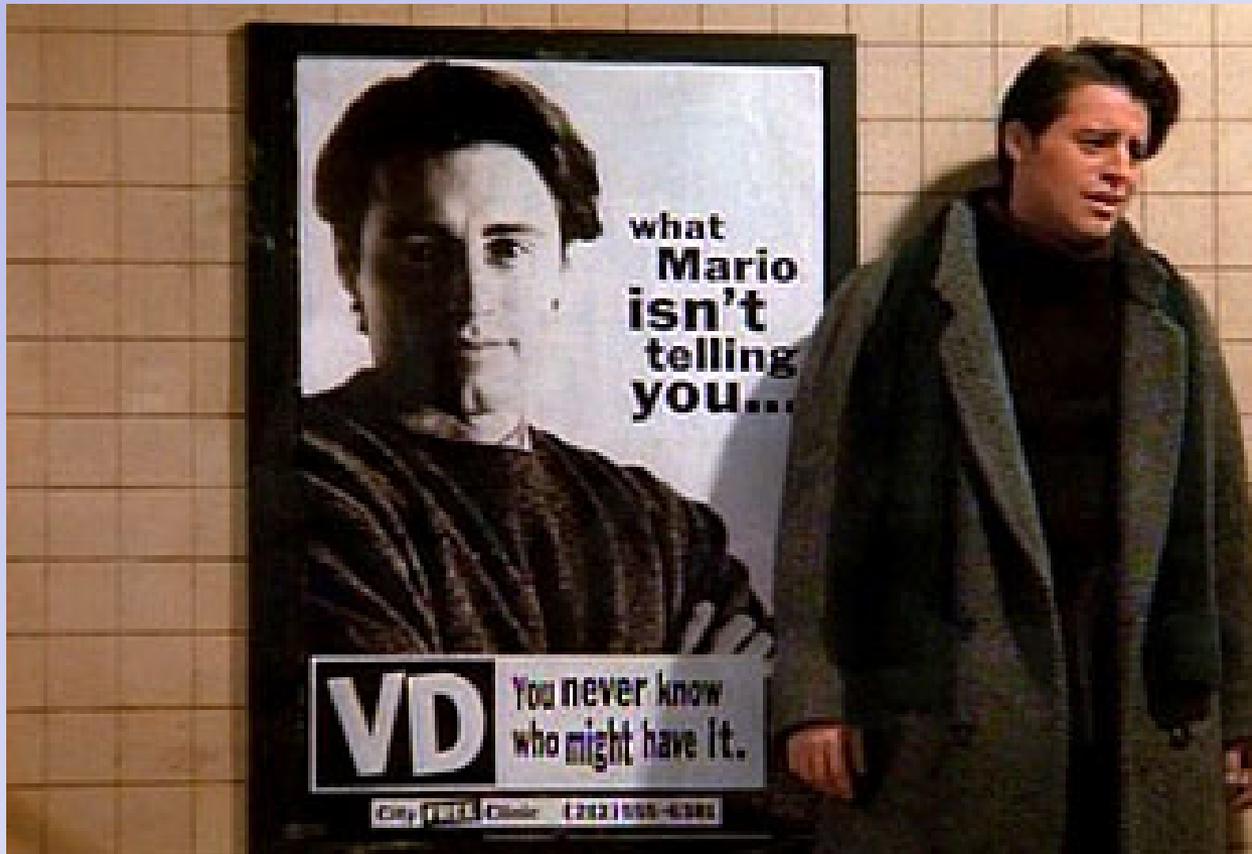
Authorship

- In general, a copyright is owned by the person who created the work.
- The creator can subsequently sell his interest to someone else or license someone else to use his interest.

Rules of thumb

- The right to privacy is reduced – but not eliminated – in public spaces.
- Photos are more likely to be acceptable when they do not publicly disclose private facts.
- Photos should not misappropriate a person's identity for a commercial purpose.
 - ✓ Example: Using someone's image or identity to endorse a product that they do not intend to endorse.

Misappropriation of identity



Can you reprint this photo?

- You've received permission.
- The photo is in a public place.
- How will you be using the photo?
 - If to show a public place, it's fine to use.



Can you reprint this photo?

- You've received permission.
- The photo is in a public place.
- How will you be using the photo?
- Does the presence of Star Trek / Star Wars copyrights matter?



RECURRING ISSUES FOR NON-PROFITS

Scenario 1: Ownership

➤ Scenario:

- ✓ Someone volunteers and photographs an event.
- ✓ Does the organization own the photos or does the volunteer?

Work Made for Hire

- The employer is the author of a work made for hire.
- 17 U.S.C. § 101
 - ✓ A work prepared by an employee within the scope of his or her employment; or,
 - ✓ A work specially ordered or commissioned.
- For an organization with volunteers in this scenario, meeting this threshold will not be easy.

Potential Solution

- Balance
 - ✓ Do not want to offend volunteers.
 - ✓ Want to protect critical materials so that the organization can use them in the future.
- When necessary, obtain permission by the simplest means possible.
 - ✓ In some circumstances, a simple, one-page form.
 - ✓ Possibly by email or another indicia.

Scenario 2: Photographing people

➤ Scenario:

- ✓ Your organization hosts an event and pictures are taken of the attendees.
- ✓ Does the organization need the permission of the attendees to use the photos?

Photographing people

- In general, you may photograph a person, but how the image is used can raise questions.
 - ✓ Consider whether the subject has a right to privacy in the situation.
 - ✓ Consider whether the photo is being used to show endorsement.
 - Staged photo versus a crowd shot

Solutions Employed by Others

- Some obtain written consent from the subject of a photo before using it.
 - ✓ The authorization in the consent is the limit to which one may use the photo.
- Other organizations consistently post their photos of their events such that photographed people should expect to be posted.
 - ✓ Some tell at the time of taking the photos.
- Some simply takedown if there's a any objection.

Scenario 3: Photograph of another work

➤ Scenario

- ✓ Someone sees a graphic in a magazine and photographs the graphic with a mobile phone.
- ✓ Can the photo of the graphic be posted to the organization's website?

Photographing another work

- No, the photo cannot be posted without the original author's permission.
- The graphic is copyrightable.
 - ✓ The photo is merely a copy of the previous graphic. This is the essence of "copying" in copyright infringement.

Scenario: News coverage of event

➤ Scenario:

- ✓ The AJC covers an event run by your organization and publishes a nice story with a memorable photo.
 - Can you display the photo on your website?
 - Can you copy the story and send it to your mailing list?

Seek permission

- The article and likely the photo are owned by the AJC.
- Ask the AJC for permission to republish.

Fair use and copying from the internet

- “Fair use” is a defense
- Four factors that must be separately applied to each situation. 17 U.S.C. § 107.
 1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 2. the nature of the copyrighted work;
 3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 4. the effect of the use upon the potential market for or value of the copyrighted work.

QUESTIONS?

For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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