



Privacy and Photo Policies

PRIVACY

Why is there an expectation of privacy?

The Fourth Amendment to the U.S. Constitution guarantees that citizens are free from unreasonable search and seizure. The greater the expectation of privacy, the more the police need a warrant and other governmental agencies need permission when entering protected private zones.

Where do we have an expectation of privacy?

The greatest expectation of privacy is in one's own home, in locker rooms/dressing rooms where one would change clothes, in bathrooms—anywhere private matters are conducted. Next is one's own vehicle, but there is a lesser expectation of privacy because some of the vehicle can be easily seen by the public at large. There is no expectation of privacy when walking down the street, walking into a public building, sitting in a park (but an expectation of privacy in the park bathrooms).

RIGHT TO USE PHOTOGRAPHIC IMAGE

1. The right to use a photographic image is different from a person's right to privacy. An individual generally has a right or "owns" their own image regardless of whether or not they are in a public space.
2. Distributing copies of photographs is considered "publishing" the photographs.
3. Putting copyright symbol on photos is no longer required.
4. As of January 1978, copyright of a photo begins the moment the work is created. This makes it more difficult to tell if a work is registered. Published and unpublished works can be registered. There are many different rules and regulations depending on whether the work is published or unpublished and the date it was created. If in doubt you can check to see if the work is copyrighted: www.copyright.gov/records.
5. Restrictions on reprinting or using a photographic image include electronic reproduction, scanning to create a digital copy, posting a digital copy on the Internet, selling posters or postcards with the image or publicly displaying the work.
6. Licensing for "reproduction for publication" involves all aspects of use.

FAIR USE

Excerpting, quoting, photocopying or summarizing generally applies to the following categories:

- » Criticism
- » Comment
- » News Reporting
- » Teaching
- » Scholarship
- » Research

Questions to ask:

1. What is the purpose or the use? Commercial or non-profit?
 2. The nature of the work. Someone's image, a painting, author's writings.
 3. How much of it am I using?
 4. The effect of my use on the market for the work. Will it devalue the original?
- » Non-commercial use is often considered fair use. Copyright laws are in place to prevent another person from profiting off of something someone else has created.
 - » Benefit to the public may be fair use even if money is generated.

BEST PRACTICE - WHEN IN DOUBT, GET A RELEASE!

1. If the event is in a large space like a park and there is no easily monitored entrance and exit, a general notice release is your best bet.
2. If you are able to obtain individual releases you should do so. You may not want to get a release from everyone at an event but if you are at an event and decide to take individual pictures of people interacting, children playing, etc., you should obtain an individual release for those photos. Releases may be customized for your department/event, but should contain the following:
 - a. Space for the name of person giving the release (they should print so it is readable);
 - b. Giving their permission to "the City of Madison" and your department/division name, and related foundations like Library Foundation, Parks Foundation, etc.;
 - c. To use name, image, voice, appearance—put in what you want to use;
 - d. As may appear in pictures, video, digital images—the medium you want to use;
 - e. Give City of Madison, department, foundation, complete ownership over the name, image, voice, appearance, including the entire copyright;
 - f. Examples of use;
 - g. Acknowledgement there will be no compensation;
 - h. Release City, department, foundation, agents, staff, from all claims connected with the use;
 - i. Signature and date. Parents or legal guardian must sign for a minor (a babysitter or family friend is not the legal guardian).
3. You want to continue using brochures, flyers, etc., that contain pictures that you did not get a release for—You can continue under "fair use."