

Intellectual Property Rights - At a Glance

Note: These guidelines are based on U.S. Copyright law and California State Privacy Law. This information is provided by BizParentz and is intended to be a guideline only, not legal advice. BizParentz assumes no legal responsibility for its contents or its use. Laws regarding model releases vary depending on the state, and you should always consult your own attorney before using or signing any legally binding document.

GENERAL INFO

- A written release / contract / agreement - will prevail over these guidelines.
- Payment or lack of payment for photos is irrelevant to the legal rights of both parties.
- Right of First sale - It is important to understand that any physical item obtained by someone, can be RESOLD. So, if someone finds a headshot in the trash and they take it they can resell that one item. They can not duplicate that item, however. The only potential prevention is to have something printed on the photo - such as "Not for resale"
- The photographers' use of the photo for their own purposes (i.e. on their business website and professional marketing tools) is a contract/release/agreement related issue.
- The indication on the photo of the photographer as copyright owner is a contract/release/agreement related issue.
- Contracts / releases/ agreements signed for a specific manner, and then used in another manner may be a breach of contract.
- Fraud in the inducement of the contract/ release/ agreement - may make the agreement void.
- The internet is not "public domain" - and images posted there are subject to the same authorization procedures.

Absent of any formal contract / release / agreement, the following defines the rights:

Photographer's Rights

* photographer holds copyright

via Copyright laws a photographer **CAN**

- make copies or reproductions
- make derivative works
- right to distribute (give away or sell) (however - see also publicity laws below)
- right to publicly display (post on the internet) (however - see also publicity laws below)

via California Right of Publicity laws a photographer **CAN NOT**

- make commercial use
- advertising - including on their website or within their materials
- place image on merchandise (t-shirts, mugs, mouse pads, key chains)
- make copies and sell photos - or make available to 3rd party to sell

- Copyright laws generally support those whose image would have no publicity purpose
- Actors have a Right of Publicity regarding their image, and this effects the copyright use

Actor's Rights

- * get copies (sometimes the negative or a .jpg disc)
 - reproduce for business purposes
 - distribute for business purposes

Note: There is an industry pattern and practice which allows a subject to reproduce and alter (touchup) copyrighted images. (i.e. it is very difficult to get a copy made of a Sears photography studio print, yet it is a widely accepted practice at the print houses).

See also **Copyright and the Use of Individual Likenesses** at BizParentz.com for more detailed information
<http://www.BizParentz.com>

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