

When do Rights of Publicity issues come up?

This is the typical scenario: photographer is hired to do a shoot, selects a model, takes pictures, then posts or publishes those pictures. In those simple steps, without written documentation, there can arise a lot of problems. Then we get into the fight between photographer, model, and possibly third parties that used those pictures or parts of the image.

You Need to Understand Copyright a Little for this Situation

Understand that the photographer is the copyright holder because they authored the picture. Specifically, a copyright is given to anyone who creates “original works of authorship.” Therefore, as soon the photographer takes pictures of guys in cartoonish outfits the photographer is the copyright holder of the photographs. Copyright, is as it sounds, the right to copy. Therefore, a photographer usually assigns or licenses that right to make copies to companies who then use those images for marketing campaigns and the like.

Where Rights of Publicity Comes In

While the photographer is the copyright holder of the photograph the model has right to their face, likeness, even images of their body and the sound of their voice. This is known as rights of publicity; Hawaii law states that, “every individual or personality has a property right in the use of the individual’s or personality’s name, voice, signature, and likeness.”

What is a Good Way to Handle Such Situations?

Both copyright and rights of publicity as two groups of intellectual property are freely assignable and transferrable. IT is just it should be evidenced in writing. Therefore, having licensing agreements, and in the case of using a model, actress, etc . . . consider using a release form that states that they release their rights of publicity. If you are the recipient of one of these forms you might want to review it, as you want to see to what extent you are releasing your rights. The reality is that a lot of this comes from simple negotiating, but you might want to know your rights and obligations before you sign anything.

What to Watch Out For

So what happens now that we have the Internet, social media, and smartphones? We share images, we edit them, change them, see something we like and snap a shot of them, then share them. So let’s say that photographer takes a picture of model, and then posts the image to a sharing site. A company sees the picture and likes it, takes it, then slaps it on its merchandise to sell them. Let’s say the sharing site has a Creative Commons licensing agreement. Therefore, photographer actually licenses the right to copy to the site, which in turn gives that right to other users. Thus the copyright holder (photographer) has licensed the right (to use the photo) to third parties (the company) through the sharing site (due to Creative Commons licensing agreement). However, do you see the hang up? The model has NOT given up their rights of publicity to the company. They have every right to control their image, especially in terms of commercial use. Thus, while the company may have licensed the copyright for the photograph it has not gotten the right to use the model’s image/likeness in conjunction with its goods.

If you are a photographer and want to draft a waiver or are a model and want a contract reviewed contact me today!