

Title: Privacy Statement
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Can you legally publish or exhibit a photograph of another person without getting permission? It depends entirely on how the image ends up being used.

You've taken a street photograph and you didn't get a model release because you thought you wouldn't need one. Now you want to publish your picture, which contains recognizable people. Can you? It all depends on where and how you intend to publish it. When published, your image might violate someone's right to privacy.

Anyone who intentionally intrudes, photographically or otherwise, upon another person's solitude or seclusion can be sued by that person for invasion of privacy. This said, the right to privacy is not absolute. In the legal world it is weighed against the general public good. American courts are more forgiving of photographs used in a way that benefits society, such as in news reporting, editorial commentary, or art. The courts recently reaffirmed this by dismissing a much-publicized lawsuit brought by a Hassidic Jew against Philip-Lorca diCorcia, who photographed the man walking through Times Square without his knowledge or consent. Though the portrait was widely exhibited, even the man's argument that such a "graven image" violated his religious beliefs didn't hold legal water.

Photographs used commercially without a model release, on the other hand, are much more likely to be considered an invasion of privacy in a lawsuit. If you want the option of selling your images for advertising or stock photography (which often ends up as advertising), and they contain recognizable people, always get a model release, keep it forever, and figure out a reliable system to match it with the image. If your photographs are strictly editorial, and you never intend for them to be sold for advertising or trade uses, you can rely on a few general rules.

First, you can photograph almost anything that's visible from a public place, even if what is visible is on private property. If you are standing on a sidewalk or other public space and can clearly see into a balcony or window—a private space—from that position, you can also photograph whatever you can see. (There are some post-9/11 exceptions to this rule: You are not allowed to photograph government buildings, bridges, tunnels, water towers and the like without permission from authorities.)

A person occupying a private place that is plainly visible from a public place can have no "reasonable expectation" of privacy, according to the law. If you can see a person stark naked through a window or on a balcony (celebrities most definitely included), you can photograph them without fear of liability. But a person who has built a high wall to shield her house from the street probably has an expectation of privacy, and a right to it, even though you might be able to see into the house with your telephoto lens if you shimmy up a tree and crawl out on a limb that extends over the wall and into the property.

Taking pictures in public spaces that are privately owned, such as malls and building lobbies, is a different story. You can photograph freely in these places, and the people in them don't have an expectation of privacy. However, the property's owner can ask you to leave unless you stop taking pictures, and if you refuse you are trespassing.

In most circumstances you are allowed to photograph the exteriors of private buildings. Yet many photographers who do this are often intimidated by owners or security guards who demand that they leave and even relinquish their film or memory card. If find yourself in this situation, remember: You have every legal right to take the picture.

Sidebar: How a Church Picture Led to a Lawsuit

Alison Chang used to be a typical 15-year old girl from Dallas. Now a Google search of her name yields more than 16,000 hits. That's because an advertising agency working for Virgin Mobile ran an Australian ad campaign using a picture of Alison taken by her church youth counselor, Justin Wong. They got the image from Wong's Flickr website, where he had posted it along with his 11,000 other photographs. By doing so, the photographer agreed to a special license (Google "Creative Commons") that allows anyone to use his pictures in any way, as long as he is credited. But no one thought to ask Alison's permission, Wong included. Her first reaction when she saw the ad was an on-line comment: "hey that's me? no joke, i think i'm being insulted." And now she's suing Virgin Mobile for invasion of privacy.