

# PSA Model Release Questions Addressed

Model Releases and the concept of requiring a legal release signed by the subject of the photograph before publishing the photograph have been discussed by PSA members over the years. For example:

- Seventy-five years ago **Stanley A. Katcher** defined the need for a model release and suggested the contents of a Model Release Form in an article *The Right of Privacy* on pages 275-281 of the June 1942 issue of the *PSA Journal*.
- **Philip C. Geraci** described the need to get releases before publishing a photograph in his article *Photography and the Law* on page 14 of the January 1977 *PSA Journal*.
- **Steve Traudt, APSA**, delineated copyright and model release concerns in his article “Marketing Your Photography” in the June 1995 issue of the *PSA Journal*.
- **Stan Ashbrook, FPSA**, the *PSA Journal* “New Books on the Market” Editor wrote a review of *A Digital Photographer’s Guide to Model Releases* on page 6 of the July 2008 *PSA Journal*.
- **Elena McTighe, FPSA, MPSA**, reviewed the reasons for requiring a Model Release in a

P-Essay on page 20 of the August 2012 *PSA Journal*.

It is very disappointing when the *PSA Journal* or the *PSA Who’s Who in Photography* has been unable to publish an image because there is no Model Release. Today the requirement for a liability release to protect the photographer and the publication from being sued by the subject of a photo extends to other venues that have not been commonly thought of as a “publication” such as websites, brochures, pamphlets, newsletters, etc. With the recent emphasis on Model Releases being required for these newer locations several questions have arisen that will be addressed here.

## Don’t you only need a Model Release if you are going to use the photo for commercial (for money) purposes?

This is true in some countries and is a frequently mistaken concept regarding the Model Release requirement. All recognizable likenesses of a human face must have a Model Release, unless the photograph was taken in a public location where people can expect that photos are being taken, whether the photo is



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*Tea Service*, original © Nancy Speaker

This image would not need a Model Release to be published as the woman is providing a demonstration of a tea service at an outdoor cultural event.



*Painted Tea Service* © Nancy Speaker

This image includes a recognizable face, the alteration did not alter the face; however, the image would also not need a Model Release as a rendition of the original image.



used for monetary compensation or not. This includes photographs being used by a non-profit organization or for the benefit of a non-profit organization (such as a photograph donated to a fund-raising auction).

### **What does “public location where people can expect that photos are being taken” mean?**

Photos from a model shoot set-up in a public location anywhere in the world need a Model Release. The location is not the determining factor; it is the activity and intent. Anyone brought to a location or asked to pose in a location, is not simply participating in an event (e.g., a reenactment), volunteering at a location (e.g., a historic town or building), or doing daily activities (e.g., outside their home preparing vegetables or washing clothes) and a Model Release is required.

### **Is it true that you only need a Model Release if you pay the model? I thought that if the model poses for fun, experience, or to get the photos (digital files), Model Releases are not needed because it is considered that the model is not posing professionally?**

This is not true. It makes no difference what compensation was provided to the model or the model’s agent or agency, a Model Release is always required.

Additionally, if the model is under 18 years of age, a parent of the model must give consent and sign the Model (liability) Release. If you photograph family members (e.g., your grandchildren) whether in a studio setting or not, make sure that you get a Model Release signed by one of the child’s parents, even if that is your son or daughter.

### **I took photos at a PSA Conference of some models who have now passed away and I do not have a Model Release. What can I do?**

Unfortunately, if a Model Release was not completed before the model passed away or cannot be acquired from a family member who represents the model’s estate, then the photograph cannot be used in any PSA “publication.”

It is important that you establish a regular routine whenever a recognizable human likeness is photographed: a Model Release is signed, your name is inserted, and you file the release where it can be used for any image from that shoot. If this routine is followed, there will be no need to chase down a model who may have moved or passed away.



*The Eyes Have It* © Gary Dibble

This image would not need a Model Release to be published since there are only eyes which are not enough to be a recognizable likeness of a human face.

### **I took photos of some models at a club shoot. I know the club received Model Releases from each model, but I do not have the Model Releases.**

When a photo organization (e.g., club, Council, Chapter, Federation, or Society); photo class, or photo workshop/tour hold a model shoot of any kind (e.g., cowboys outside on horses, ballerinas, a young woman with incense, an old woman cooking over a fire) one Model Release can be signed by the model; however, a copy of this release must be available to each participant and each participant must be able to place their name on the line as the person being released



*Little Red Riding Hood* © **Norma Warden**. This image requires a Model Release signed by the child's parents, who happen to be the maker's daughter and son-in-law. The child's face will change rapidly; however, the parent's control the child's exposure in all media and must sign a release for any publication.

**All recognizable likenesses of a human face must have a Model Release, unless the photograph was taken in a public location where people can expect that photos are being taken, whether the photo is used for monetary compensation or not.**

from liability. If the group name is listed as being released from liability, there must be space for each individual who participated to include their name on their copy of the Model Release.

You need to communicate with the leadership of any club where you are a member this information regarding Model Releases. If the leadership does not agree or see the necessity (the club also has a liability if any member "publishes" any image from a club photo shoot), volunteer to be the one to bring the Model Release Form and have it signed. Club members can then request a digital copy from you and you know that you will have the required Model Release.

It is important to ask tour or workshop companies and leaders, **before** signing up for the photo opportunity, whether signed Model Releases will be provided and, if not, whether you can bring your Model Release and have it signed by each model. This may be difficult in a country where you do not speak the language and there is not such a legal requirement in that country.

#### **If you can only see the model's eyes, is a Model Release required?**

When determining the amount of a person's face that is visible in order to require a Model Release, the significant phrase to keep in mind is "recognizable likeness." Sometimes a silhouette is recognizable (e.g., Alfred Hitchcock) and a Model Release would be required.

It is easier to simply always get a Model Release signed when doing a portrait shoot or photographing portraits outside and not have to worry about whether a release will ever be required for a publication.

#### **If the human image has been creatively altered, is a Model Release needed?**

Again the important phrase is "recognizable likeness;" therefore, in the case of an altered image, was the alteration substantial enough to significantly alter the face to no longer make it recognizable. Since you will likely only alter a few images from a particular shoot, a Model Release would be required anyway.

#### **How small in the photo does a human image need to be so that a Model Release is not needed?**

Even the smallest portion of a photograph can be enlarged by a viewer and, if the face does not become too pixelated and can be recognized, the photo must have a Model Release. Size within the image is not the key factor, the possibility of recognizing a person is the key.

#### **In the UK our photo organizations do not have such extensive Model Release requirements. What is the reason for all this paperwork?**

As an organization based in the United States, PSA's governing documents and financial



transactions must conform to US laws for a non-profit organization, and all other US laws apply to all PSA activities and services including all publications.

**Is PSA aware of the efforts of the Professional Photographers of America (PPA) to allow photo copyright infringement litigation in small claims court?**

Yes, PSA is following the work of PPA regarding photo copyright infringement litigation. One of the biggest concerns presently is the cost of fighting any liability regarding photo copyright infringement litigation.

**Who is giving PSA legal advice? Does PSA have legal counsel experienced in the field of photography copyright law?**

PSA is fortunate to have Nancy Wolff, an intellectual Property Attorney and partner with the New York office of Cowan, DeBaets, Abrahams & Sheppard LLP, advising the society in this regard

Mrs. Wolff has published various articles regarding copyrighting photography including

*Copyright Protection of Images*, which was published in the June 2015 *PSA Journal*; and can be viewed by logging in to the Members Only area of the PSA website, clicking on PSA Media, clicking PSA Journal Online, and downloading the pdf of the June 2015 issue. The article is on pages 32 and 33.

Mrs. Wolff has also authored a legal book, *The Professional Photographer's Handbook*, which is available on Amazon and most bookstores.

**How can I learn more regarding how I can protect my images and any images of others that I handle as a volunteer? How can I protect myself from being sued?**

Nancy Wolff will be presenting *Legal Issues for Photographers* at the 2017 PSA Conference from 1:45 to 2:45 pm on Friday, October 13, in Salon 2. She will address the Model Release requirement, and the legal exposure that the Society and its members face when publishing photos with recognizable faces.

For those who are unable to attend the Conference this year, a video will be made of this presentation for future PSA webcast. ■



*Thought* © Kathy Newman. The alteration of this face was substantial enough to significantly alter the face to make it no longer recognizable and a Model Release is not required for publication.