

# News Photo Permissions not Usually Necessary

By Gerry Chudleigh and Kermit Netteburg

Sooner or later everyone who produces a church newsletter or Web site will wonder, "Is it OK to include a photo without permission? Will the people in the picture sue me when they see their faces on the Internet or on the cover of the denominational paper or church newsletter?"

In fact, the rules for the use of news photos are quite clear, and they are much less restrictive than many people think. These rules are based on the United States constitution's protection of free speech and a free and independent press, and upon long-established privacy guidelines.

Like all news media, church newsletters and news magazines are not required to ask permission from any of the people who appear in news pictures or stories. Getting permission would often destroy the integrity of the news and would make the production and delivery impossibly slow. A "free and independent press" would become meaningless. Church news media generally print all news-related photos without permission unless doing so would violate one of the four rules that guide all responsible journalists:

1. Do not intrude into anyone's solitude, seclusion or private property without permission. This rule prohibits photos taken without permission in any place a person might reasonably expect privacy. So taking pictures of boys brushing their teeth in a community bathroom might stretch that limit. But pictures of people in public places at a youth camp, school, church, constituency meeting or camp meeting are not an invasion of privacy.

2. Do not publish (whether by photos or stories) private information without permission. Private information would include contact information, such as address, phone number or email address, plus other personal information not required for the story. So when publishing a story about a church-sponsored home for pregnant teen-age girls, make sure none of the individual girls are recognizable in the photos—without permission. And don't publish their first and last names—without permission. The fact that these particular girls are pregnant is private information.

3. Do not print any photo or story that presents the subject in a false light.

4. Do not appropriate any photo of any person for any commercial use (such as advertisements, or even for illustrations months after the news event) without permission. For example, if you take a photo of a child's smiling face at the camp swimming pool in July, you might put that photo on the cover of the church newsletter, or even the local newspaper, in August or September -- if it is related to a news story inside. But if you produce a brochure entitled, "Your Friends the Adventists," do not use that photo on the cover, or even inside, without permission. That would be a commercial use, even if you give all the brochures away for free.

But there are two exceptions to the commercial use principle. Sometimes you can use a person's picture in a brochure or advertisement without permission. First, assuming that the photo is from a newsworthy event (broadly defined) at a public place, if the individual is not highlighted, but is incidentally visible among a large group of people, it is permissible to use the photo. How many people constitute a large group? Six or eight people is getting toward large. A group of 25 is clearly large. Second, you can use the photo for commercial purposes if the person cannot be identified in the photo. So a back shot, or a portion of a person's body, would be permissible.

5. In addition, unlike the public media, church papers generally follow the rule of not publishing photos or stories that present people in a negative light, even if the facts warrant such coverage.

Most schools and summer camps incorporate a photo release in the enrollment application, and because parents and their children usually enjoy seeing their faces in print, most people sign it. This is not necessary for news photos, but by signing the statement the student, camper or parent agrees that the child's photo may be used for broader publicity purposes, including brochures, slide shows, Web sites, etc. This also gives the parent an opportunity to NOT grant such permission in case they do not want the child's location known for some reason.

The five rules listed above apply to Web sites as well as print media. Most church Web sites include both design elements and content. The content, which often includes news, changes frequently, but the design elements are permanent (until a redesign). If you incorporate the photo of any person into the design--for example in an upper corner in conjunction with a logo--you are probably using that person as a model and you must have a release. But news photos that appear with news stories; for example, photos from the most recent youth ski trip, you can put there without getting model releases.

On Web sites the context of the photo is important. If the photo accompanies a news story, the photo is OK without permission. But if the photo is used to promote the purchase of supplies for Vacation Bible School, then the person is being used as a model and must be asked for permission.

All this assumes, of course, that you have permission from the photographer or other owner of the image to use the photo itself. If photographer Jones takes a picture of a child at a school fair, that image belongs to Jones and is automatically protected by copyright laws. If he submits the photo to you with a news story, you can publish it on a Web site and in print. But if anyone else wishes to use that photo, in print or on a Web site, they must obtain permission from Jones.

But aren't there new laws prohibiting putting photos of minor children on Web sites? The answer is no. There are laws about children and Web sites, but none prohibit putting news photos of children on Web sites. The three laws most often suspected of prohibiting pictures of children are the Federal Educational Rights and Privacy Act (FERPA, 1974), the Children's Online Privacy Protection Act (COPPA, 1998 & 2001) and California's Online Privacy Protection Act (CA OPPA, effective July 1, 2004).

COPPA says "the operator" of a commercial Web site cannot gather personal information directly from children under the age of 13 for marketing purposes without the knowledge and permission of the parents. COPPA does not prohibit anything on the web. It only says that whatever you are doing, if it involves using the web to gather information from children, you must plainly state what you are doing and you must obtain permission of the parents ([text of COPPA](#), [explanation of COPPA](#)).

CA OPPA requires prominent disclosure statements on sites that gather personally identifiable information from any California residents, regardless of age. Like COPPA, this law does not limit photos of anyone of any age when the photo is news related.

FERPA gives parents of minor students who attend federally funded schools the right to inspect the "educational records" of their minor children and requires that those "educational records" not be disclosed to anyone else. "Educational records" is defined as grades, GPAs, test scores, religion, citizenship and several other items. But this same law also specifies that schools may disclose, without consent, "directory information" such as a student's name, address, telephone number, date and place of birth, honors and awards and dates of attendance. Photographs are not "educational records," and can be published without permission unless the parent has submitted in writing a request that the school not publish their minor student's photo.

However, schools (that receive federal funding under certain programs) must develop privacy policies related to publishing "directory information," and those policies must be communicated to parents at least annually. Parents then have the right to request that some or all directory information for their child not be made public, and the school must honor that request. If a photographer comes onto the campus to develop a news story, it is the responsibility of school officials to let them know what the school privacy policies are, and make sure they are followed.

So, there are no laws prohibiting photos of anyone in print or on the Internet if those photos do not violate the four privacy rules. But to paraphrase the apostle Paul, "Not everything that is legal is wise." Schools, summer camps, youth clubs and churches are probably wise to develop policies that balance the freedom of the press with the protection of children and the comfort of parents. Your church or other organization may have the right to publish photos of members or their children, but those members and guests also have a right to stop attending a church if the church does not respect their wishes regarding privacy.