

## TALENT RELEASE INFORMATION

The use of a person's image may implicate two or more personal rights: (i) the right of publicity (to use your image to sell a product – see: athletes and movie stars); and (ii) the right of privacy – intrusion into one's private life (taking a picture from your rooftop down into your neighbor's backyard where she is sunbathing topless) or portraying a person in a false and offensive light (publishing a picture of the local pastor with those of some escaped convicts). The first right involves using a person's photo for purposes of advertising goods or services without that person's consent and the latter simply protects the right of persons to maintain private lives. When using someone's image, you have to be aware of both rights.

Oklahoma has a statute pertaining to the right of publicity. The statute states in pertinent part:

A. Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, for purposes of advertising or selling merchandise, goods, or services, without such person's prior consent shall be liable for any damages sustained by the person or persons injured as a result thereof.

The statute recognizes some exceptions when you don't have to have a release, two of which apply to advertising using photographs of persons: (i) if the complaining person or persons in a photograph are not readily identifiable; (ii) if a readily identifiable complaining person in a crowd is not singled out as an individual in any manner but is represented in the photograph solely as a result of being present at the time the photograph was taken. (**If you are going to single one out, you must get a talent release.**); and (iii) if the name, voice, signature, photograph, or likeness in a commercial medium is deemed not to be for the purpose of advertising or selling goods or services. There are special considerations if the subject is a minor.

Conversely, you must have a release when: (i) you are using a person's name, voice, signature, photograph (readily identifiable), or likeness in commercial advertising for the purpose of selling goods, or services; (ii) if in a crowd photograph used in the ad, you use the photo of a readily identifiable person who is selected and held out as an individual rather than solely as a member of a definable group shown in the photograph.; or (iii) you use a person's photograph, albeit not for commercial purposes, but where the person has a reasonable expectation of privacy (intrusion or false light). Generally when you are out in public, you have a more limited expectation of privacy although it's not absent. For example, a photograph of a mother in a hospital waiting room grieving at the news her child just succumbed to cancer would be an unwarranted invasion of privacy. Also, beware of the context in which the picture is placed; e.g., an innocuous photo of recognizable students in a story about the rise of drug abuse on campus.

There is a broad exception in the statute not just related to commercial use of a person's image, which provides:

D. For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subsection A of this section.