Privacy and Publicity Policies
Privacy and Publicity Rights

Privacy and publicity rights are separate and distinct issues from copyright. Patrons wanting to use materials from the Library's collections or website are responsible for determining whether privacy and publicity rights need to be addressed, the nature of the item, and considering how it will be used.

While copyright laws protect the copyright owner's property rights in the work, privacy and publicity rights protect the interests of the people who are the subject of the work. Issues pertaining to privacy and publicity may arise when a patron contemplates the use of letters, oral histories, diary entries, photographs, or reportage in visual, audio, and print formats in the Library collections. Because two or more people are often involved in the work (e.g., photographer and subject, interviewer and interviewee) and because of the ease with which various digital media can be reused, photographs, audio files, and motion pictures represent materials in which privacy and publicity issues emerge with some frequency.

The distinctions among privacy rights, publicity rights, and copyright are best illustrated by example: An advertiser wishes to use a photograph for a print advertisement. The advertiser approaches the photographer, who owns the copyright to the photograph, and negotiates a license to use the photograph. The advertiser is also required to determine the relationship between the photographer and the subject of the photograph. A formal relationship, usually a release form signed by the subject, will permit the photographer to license the use of the photograph for all uses. If no formal relationship exists that permits the photographer to license the use of the photograph for all uses, then the advertiser must seek permission from the subject of the photograph because the subject has retained both privacy and publicity rights in the use of their likeness. The publicity right of the subject means that a person's image may not be commercially exploited without consent and possibly compensation.

While copyright is federally protected under the United States Copyright Act, with statutorily described fair use defenses against charges of copyright infringement, neither privacy nor publicity rights are subject to federal law. However, they are subject to state laws; what may be permitted in one state may not be permitted in another. Although fair use is a defense to copyright infringement, it is not a defense to claims of violation of privacy or publicity rights. Causes of action related to privacy and publicity may also be pursued under the federal Lanham Act, 15 U.S.C. § 1125 (a), e.g., unauthorized uses of a person's identity in order to create a false endorsement.

While a person's right to privacy generally ends with individual's death, publicity rights associated with the commercial value of an individual's name, image, or voice may continue. For example, many estates or representatives of famous authors, musicians, actors, photographers, politicians, sports figures, celebrities, and other public figures continue to control and license use of those figures' names, likenesses, etc.

Although the risks of using an image for comment or criticism or other non-commercial use may be less than for use in advertising or other commercial purposes, the risk can still be high if the person depicted is held up to ridicule or presented in a libelous manner. While it is true that famous or public figures who seek recognition have thereby surrendered some privacy, they may retain the right to control the commercial use of their image (likeness, voice, signature, etc.). This principle recognizes that a celebrity's image can be an asset in trade.