

Use of a Photograph of You—Is It Legal?

Question

At a local dinner meeting of your professional society, a software vendor has been invited to give a demonstration of a product during the networking session, and you spend some time trying it out. When you receive a copy of the society newsletter later that month, you are somewhat disconcerted to see a photograph of yourself at the keyboard; you had not realized your picture was being taken at the time. Shortly after, you discover incidentally that the society is just setting up a Website and that it plans to provide access to issues of its newsletter, beginning with that issue. You are now mildly uncomfortable with the thought that your photo is going to be put up on the Internet with universal access and that still no one has consulted you. You are concerned not only that the vendor might want to download this image for advertising purposes without your endorsement but that your name will appear under the photograph, and you could inadvertently become, at the least, the recipient of all the unsolicited junk mail one receives when signing on to the Internet. You feel it is simply too public and wish to withdraw permission to include your photograph, but since your permission was never requested—how should you proceed? (*CBE Views* 1997;20(1):25)

Solutions

The question presents 2 separate issues. The 1st issue concerns control of the publication of your image or other information about you. In a perfect world, everyone would have that control. At the very least, the local chapter of a professional association should show its members that much consideration. The Northern California Chapter of the American Medical Writers Association recently began including photos taken at our meetings in our chapter newsletter. After a member objected to having her picture there, we published a notice in the newsletter that we would be taking photos at the meetings. We provided a response form so that members could inform us if they preferred us not to use photos of them.

The 2nd and quite separate issue concerns the perception that the Internet poses some particular and unprecedented danger to our privacy and even our personal safety. I would say the risk is very low compared with many other everyday activities. The habitual or even occasional use of a credit card does more than anything else to put into the public domain your name, address, and other personal information. Other risky activities include joining organizations (CBE and AMWA not excepted), buying by mail order, participating in a community activity, subscribing to a magazine, or even listing your name in the telephone directory. The Internet is now a fact of our lives and, by its very nature, is beyond our control. But so are a lot of other things. Think about the telephone: theoretically, anyone on earth can create a disturbing ring in your home at any time, day or night, and possibly invade your mind with an unwelcome message. The best protection any of us has is to contribute to the creation and maintenance of a civil and human social environment and support the enforcement of reasonable laws when anyone has suffered real harm. And don't sweat the small stuff.

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The law recognizes that private people (as opposed to public figures or celebrities) have a right of privacy. The specific laws vary from state to state, but they all aim to protect private people from invasions of their privacy that would be highly offensive to a reasonable person. I doubt that publication of a photo of a society member at a computer keyboard (even on a bad hair day) taken during a society meeting would be highly offensive to a reasonable person. Thus, the member probably has no legal remedy against the society's use of the photo in its newsletter or Website, but friendly persuasion might be the better course in this situation anyway.

Use of the photo by the software vendor

raises an additional issue. Could use of the member's photo in connection with the sale of a software product be construed as an endorsement of the product by the member? If so, and the member has not endorsed the product, then the vendor would be making a false or misleading statement in its advertising. This situation is actionable. The member may have a simpler way to deal with the vendor. The vendor cannot legally use the photo without permission of the owner of the copyright, which, in this case, probably is the society. If the member has any reason to believe that the vendor wants to use the photo, then I recommend that the member explain those concerns to the society and ask the society to inform the vendor that the vendor cannot use the copyrighted photo.

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New Question: A Question of Scholarly Use

As an editor at a teaching hospital, you are invited to give an in-service talk on how to publish successfully. You typically hand out reprints supporting information presented in your slides. Because the group is quite large, with about 100 residents and other clinical staff expected, you decide to request formal permission from both the publisher and the author to reproduce more than 100 reprints, even though you believe this is not-for-profit fair use of the material in a classroom setting. When you receive the responses, you're glad you asked. Although most publishers grant permission with the condition only that you reproduce their credit line clearly, you were not aware that above a certain number, some publishers charge at the rate for which they sell reprints to authors or a lump sum depending on the requestor. Most authors grant permission without hesitation and without charge. Most also express appreciation for having been asked, and several request a copy of your presenta-

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tion. There is 1 exception. A key handout for your talk is an excellent synopsis of copyright law and its use. However, the copyright attorney-author refuses permission because you ought to buy 100 copies of the small book containing the synopsis. At the conference, you are obliged to hastily remove this handout from the binder and even request its removal from some handouts already

taken by participants. Although you believe you have proved good intent, your presentation suffers and you feel dissatisfied that the participants have been denied this tool. What might you have done differently to persuade the dissenting author to allow you to disseminate his information in this teaching context?

Send your responses to the new question by 15 August 1997 to Della Mundy, Kaiser Foundation Research Institute, Department of Medical Editing, 1800 Harrison Street, 16th Floor, Oakland, CA 94612-3429; Telephone 510-987-3573; Fax 510-873-5131; e-mail: Della.Mundy@ncal.kaiperm.org.