Welcome to
5 Sins of Copyright & 5 Legal Issues to Bear in Mind

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5 Cardinal Sins

1. “Put the Camera Down! Delete Your Photos and Videos!”
2. “Here’s a photo of us you can use…”
3. “Just grab something from Facebook”
4. “You know, if we just edit this photo a little…”
5. “Don’t worry about editing that at all…”
Cardinal Sin # 1

“Put the Camera Down! Delete Your Photos and Videos!”
“Put the Camera Down! Delete Your Photos and Videos!”

Tommy Russo (Maui Time) Takes on Dog the Bounty Hunter & MPD
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MANNIE GARCIA,

Plaintiff,

v. 

MONTGOMERY COUNTY,
MARYLAND, et al.,

Defendants.

Civil No. 8:12-cv-03592-JFM

STATEMENT OF INTEREST OF THE UNITED STATES

The United States addressed the central questions raised in this case – whether individuals have a First Amendment right to record police officers in the public discharge of their duties, and whether officers violate individuals’ Fourth and Fourteenth Amendment rights when they seize such recordings without a warrant or due process – in a Statement of Interest filed in Sharp v. Baltimore City Police Dept., et al., No. 1:11-cv-02888 (D. Md.), attached here as Exhibit A. Here, as there, the United States urges the Court to answer both of those questions in the affirmative.
“Put the Camera Down! Delete Your Photos and Videos!”

**Partner** with others from your publication, with other publications and with authorities (both formally and informally)

**Regularize** your operations to create systematic procedures for communication of threat, arrest or injury, or a call for "rescue" or a meeting place should a retreat be necessary.

**Educate** yourself and your staff on various media law topics

**Pacify** the authorities and *only pick those fights worth fighting*. Learn to live to fight another day

**Acknowledge** your limitations by having an open, honest discussion about how far you’re willing to go to get the story and by having conversations with attorneys and insurance companies

**Retain** an attorney; formalize that relationship or – at least -- identify a possible attorney you might eventually use and start the engagement process, since that process often takes time.

**Editorialize** to anyone and everyone; use these controversies as an opportunity to start or continue valuable discussions about the meaning of and need for vibrant freedoms of speech and press.
Cardinal Sin # 2

“Here’s a photo of us you can use…”
“Here’s a photo of us you can use…”
“Here’s a photo of us you can use…”

**Determine Ownership**

Is the material eligible for copyright protection?  
(Is it an original work fixed in a tangible medium)?

Who owns the Material?  
How long do they own it?  
What rights do they own?

**Avoid Substantial Similarity**

Can you Purchase or License the Content?

**Key Terms to Remember**  
Statutory Licenses

Are you Engaged in a Fair Use?

Do other Defenses or Safe Harbors Exist?
“Here’s a photo of us you can use…”

A copyright is owned by the creator (or joint creators), except:

Work for Hire (owned by employer):

Something created within the scope of one’s employment

Agreement at the outset of work that it will be a work for hire

Federal government works are not copyrightable
Cardinal Sin # 3

“Just grab something from Facebook”
“Just grab something from Facebook”
“Just grab something from Facebook”

MySpace via AFP/Getty Images
“Just grab something from Facebook”

<table>
<thead>
<tr>
<th>Nature of Original Work</th>
<th>Fair</th>
<th>Unfair</th>
</tr>
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<tbody>
<tr>
<td>Noncommercial</td>
<td>Commercial</td>
<td></td>
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<table>
<thead>
<tr>
<th>Nature of Use</th>
<th>Fair</th>
<th>Unfair</th>
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<tbody>
<tr>
<td>Noncommercial Transformative Parody First Amendment Protected: News Editorial Criticism</td>
<td>Commercial</td>
<td></td>
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<table>
<thead>
<tr>
<th>Amount and Substantiality</th>
<th>Fair</th>
<th>Unfair</th>
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<tbody>
<tr>
<td>Very Short Not Integral</td>
<td>Longer Amounts Key Elements</td>
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<table>
<thead>
<tr>
<th>Effect on Market</th>
<th>Fair</th>
<th>Unfair</th>
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<tbody>
<tr>
<td>Sends Readers or Viewers for More</td>
<td>Satisfies the Reader or Viewer</td>
<td></td>
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</tbody>
</table>
“Just grab something from Facebook”
“Just grab something from Facebook”

Suspect Dylann Roof wearing flags of Rhodesia and Apartheid-era South Africa in his Facebook profile picture.
Cardinal Sin # 4

“You know, if we just edit this photo a little…”
SPORTS REPORTERS SEEKING TO HOOK into a teleconference with University of Central Florida football coach George O'Leary got a little more action than they bargained for, according to an article in the Chicago Tribune.

When school officials handed out the phone number for reporters to gain access to the teleconference, they were off by one digit. Instead of getting the coach, reporters got another kind of fantasy league. According to a blog by an Orlando Sentinel staffer, the voice on the other line said, "Hi sexy, you've reached the one-on-one fantasy line."

The reporter hung up, rechecked the school news release again to make sure he hadn't typed in the wrong number, and dialed again. Instead, he got the same phone sex hotline, "complete with offers" that the blogger wrote, "I can't really post on this blog."

The culprit was the school's new director of athletic communications, who accidentally listed one digit incorrectly when he released the teleconference contact information. The September teleconference was postponed until the school could come up with a less personal connection.
Cardinal Sin # 5

“Don’t worry about editing that at all…”
“Don’t worry about editing that at all…”

From: “The Blues: Godfathers and Sons, PBS”
“Don’t worry about editing that at all…”

Copyrights

Music
Photos/Art
Language

Image Rights

Credentialing Issues

EDIT TIGHT!!!
5 Legal Issues

1. Newsgathering and Drones
2. Fair Use and Dancing Babies
3. Photography and Public Lands
4. Photography and Sports/Entertainment
5. Access to Law Enforcement Photos and Videos
Legal Issue # 1

Newsgathering and Drones
Newsgathering and Drones

Hobbyists can use UAS (Unmanned Aircraft Systems) but commercial use (including media) is prohibited.

Can get a “Section 333” Waiver to Operate a Drone but still must also have:

- Certificate of Waiver or Authorization (COA)
- Pilot in Charge
- Aircraft registration
- Compliance with restrictions in waiver
Newsgathering and Drones

Without Section 333 Waiver

**CANNOT** use drones for newsgathering

**CAN** use drone-collected images, video, etc. – and may even pay to acquire such material – **as long as** the material to be used was obtained from a drone operated by somebody who is **not** affiliated with the media organization

**MAY** be able to use drone-collected images if the drone operator obtained the images, etc., with the intent of selling them (whether to the media or any other buyer), then an FAA authorization would be required

**HOWEVER**, if the drone operator were merely engaging in recreational flying, happened to get some excellent images, and only afterward decided to sell those images, no authorization would be necessary
Newsgathering and Drones

Without Section 333 Waiver

Three neighbors happen to be drone hobbyists. Each takes pictures and video of some dramatic fire-fighting efforts, and offers those to media organizations. Legal? It depends.

Neighbor #1: Pure hobbyist who decides to sell video only after taking them

Neighbor #2: Has history of selling his dramatic drone shots to TV stations, newspapers, etc. When he launches his drone and sends it to the fire, he's already figuring out how he's going to approach potential buyers and how much he's going to ask for his images.

Neighbor #3: Hobbyist, who happens to be an employee of a newspaper but has absolutely no intention of cashing in on his images, and even if his employer doesn't pay him for them.
Newsgathering and Drones

Proposed Changes from FAA

Daytime-only operation

Stay clear of airport flight paths, restricted airspace, always give right of way to other aircraft

The drone may not “operate over” any persons not “directly involved” in the drone’s operation unless those folks happen to be inside or under a “covered structure”

Constant, unaided “line of sight” contact with the drone

Weight limit of 55 pounds

Height restriction of 500 feet

Speed restriction of 100 mph

Cannot operate in a careless or reckless manner & cannot drop physical objects
Legal Issue # 2

Fair Use and Dancing Babies
Fair Use and Dancing Babies

"Let's Go Crazy # 1" by Stephanie Lenz
Section 512(f) of DMCA says: “any person who knowingly materially misrepresents under this section – (1) that material or activity is infringing, or (2) that material or activity was removed or disabled by mistake or misidentification, shall be liable for any damages…”

Would include filing of a Notice and Takedown request by a copyright owner when that person or entity isn’t really complying the required “is not authorized by the copyright owner, its agent, or the law”

Court says:

Fair use = Authorized by law

Copyright holder need only form a “subjective good faith belief that a use is not authorized”

NOTE: “Subjective” not “Objective”

A copyright owner’s review doesn’t have to be searching or intensive, but it must be more than mere lip service
Legal Issue # 3

Photography and Public Lands
Photography and Public Lands

National Forest Service proposed a permitting requirement that those engaged in commercial filmmaking or still photography if they are using models, props, etc or would have an impact on the land, though there was an exception for “breaking news”
15 media organizations filed comments arguing:

Replacement of “breaking news” with “journalism”, defined as:

Including but is not limited to: breaking news, feature stories, explanatory reporting about resource issues on NFS lands, b-roll and stock photography, still and motion documentaries, long-form pieces and background stories. Journalism further includes but is not limited to: photography, filming, and recording for use in any medium of dissemination, whether it be print, visual, broadcast, cable, satellite, online, or other means of reproduction and transmission. However, this list is intended to be non-exclusive and those applying the definition of “news” should err on the side of inclusion and, therefore, consider an activity exempt from the permit requirement when at all possible.

Explicitly stating that “journalism” is not a commercial activity (and doesn’t need a permit)

Redefining an “actor” for purposes of the definition of “commercial filmmaking” to ensure that journalists or others in documentary films are not considered actors and therefore, their use in a production is unlikely to trigger the need for a permit

Deleting from the list of criteria uses when a permit is or may be required anything that takes into account the content of the production (while leaving in criteria which judge whether there is an impact on the land)
Legal Issue # 4

Photography and Sports/Entertainment
Actions that have been taken by leagues and events are intended to strengthen their hold on content.

Professional leagues build on their legally approved monopolies; high schools and youth leagues emulate them.

See them in entertainment as well.
# Photography and Sports/Entertainment

<table>
<thead>
<tr>
<th>Restriction</th>
<th>NFL</th>
<th>NBA</th>
<th>MLB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall audio or video allowed involving team personnel</td>
<td>90 seconds</td>
<td>120 seconds</td>
<td>120 seconds</td>
</tr>
<tr>
<td>Length of time this can be archived</td>
<td>24 hours</td>
<td>72 hours</td>
<td>72 hours</td>
</tr>
<tr>
<td>Is there a requirement to link back to the team or league site</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Must you take steps to avoid an appearance of sponsorship?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Is there a limit on the number of photos?</td>
<td>Reasonable, no archiving restrictions</td>
<td>10 in game, reasonable afterward, no archiving restrictions</td>
<td>7 in game, reasonable afterward, no archiving restrictions</td>
</tr>
<tr>
<td>Is resale of photos allowed?</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
Photography and Sports/Entertainment

Taylor Swift Example

Original Credentials:
Photos only during 1\textsuperscript{st} and 2\textsuperscript{nd} songs; no flash
Photos only for news/information/editorial; no other purposes
No redistribution of photos for any purpose
If violating the agreement, security can take your camera and delete photos

Revised:
Photos only during 1\textsuperscript{st} and 2\textsuperscript{nd} songs; no flash
Photos only for news/information/editorial; no commercial purposes
No redistribution of photos for any commercial purpose
If violating the agreement, security may ask you to delete photos
Photography and Sports/Entertainment

What you can do

Refuse to sign without discussion/negotiation

Alert others in the industry (especially ASNE/APME/APPM) when this occurs – we have a working group on this issue for “fast response”

Write about it:


http://www.washingtoncitypaper.com/blogs/artsdesk/general/2015/07/02/why-were-not-photographing-the-foo-fighters/
Legal Issue # 5

Access to Law Enforcement Photos and Videos
Access to Law Enforcement Photos and Videos

**Mugshots**

**Federal:**

US Marshall’s Service denies based on personal privacy exemptions

6th Circuit has ruled twice that USMS must release creating a “loophole” that allows you to get these through FOIA

**State:**

Different states treat differently for purposes of public records

Some states claim copyright in the mugshot to prevent use after release
Access to Law Enforcement Photos and Videos

Body Cameras

Playing out on state level around the country:

Interesting research projects

https://www.rcfp.org/reporters-committee-launches-interactive-online-map-police-body-camera-laws-and-policies

http://dcogc.github.io/bwc/
Access to Law Enforcement Photos and Videos

Body Cameras

Generally:

11 states have passed some form of legislation addressing police body cam footage
14 states have not proposed any police body cam legislation at the state level
25 states have introduced legislation addressing police body cam footage, which wasn’t passed

With regard to Public Records Laws:

5 states have issued blanket prohibitions on FOIA Access
Some states have proposals that explicitly seek to include body camera footage within the purview of state open record laws -- majority would actually treat under existing FOIA
Most states that have addressed FOIA question have suggested that police body camera footage is explicitly excluded in instances where privacy concerns enter the picture
relates to law enforcement investigations
dispalyes death or serious injury, nudity, minors, personal information, identity of a sex crime or domestic violence victim, confidential informants
Questions?

Thank you.

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