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# Senior Spotlights: How to eliminate risk of copyright infringement

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## Intended Audience; Confidentiality

- This information is prepared by Max Kautsch, NPA Hotline attorney, for the benefit of members
- Anyone not authorized to be on this call should leave immediately
- Legal advice shared during this presentation should be kept confidential by NPA members

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## Nature of Legal Advice

- A lawyer's job is to minimize risk for their client, and the NPA's job is to minimize risk for its members.
- Members must decide for themselves whether or not the risks outlined herein outweigh the operational costs of eliminating those risks for Senior Spotlights produced in 2024.
- Conversely, the advice for eliminating risk in future years is relatively easy to implement.

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## Senior Spotlights

- It is my understanding that for decades, members have been sending questionnaire forms to local high schools to distribute to seniors.
- It is my understanding that schools then collect the information sought on the form, which can include a photo of the student taken by a local photography studio (i.e., the time-honored “senior picture”).
- The schools then give that information, including the senior picture, to the members for use in members’ “Senior Spotlight” edition/tab.



## Senior Spotlights

- It is my understanding that many photographers have no problem with students using their senior pictures however the students choose, and more than a few don't worry about written releases.

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## Copyright law

- However, under federal copyright law, each photographer has a copyright interest in pictures they take.

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## Copyright law

- Original works of “authorship fixed in any tangible medium of expression” are subject to copyright protection under federal law.
  - “Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression...including...graphic works.” [17 U.S. Code § 102\(a\)\(5\)](#).

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## Copyright law

- Anyone violating another's copyright interest by publishing a photo without permission is subject to statutory penalties of up to \$30,000 per unlawful use under federal law.
  - The “copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000....” [17 U.S. Code § 504\(c\)\(1\)](#).



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## Copyright law

- Thus, anyone with a copyright interest in a work, such as a photographer taking a senior picture, has sole control over the use of that image, and can bring a lawsuit for statutory damages for any unlawful use.
  - Same principle protects members' photos from copyright infringement.

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## Copyright law

- Publishing Senior Spotlights under the assumption that photographers have given their implicit permission to use the senior pictures is a recipe for litigation if there's even one contrarian.

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## Missive by photographer

- On April 8, a professional photographer operating in Bloomfield [authored a post on his website](#) claiming that a member was “using our copyrighted photographs for advertising purposes, specifically selling \$50 ads to parents, grandparents, and businesses for social media and publication.”
  - Also sent an email to Dennis on Thursday, April 11 raising the same issues

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## Missive by photographer

- Photographer goes on to insinuate that such use violates copyright laws, although I can't really tell if he's more upset about copyright or attribution/credit.

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## Missive by photographer

- In any event, for photographers to place the onus wholly on newspapers fails to grasp the photography industry's role in this mess.
- Reasonable copyright holders don't wait for a reasonably foreseeable risk (i.e., Senior Spotlights that have been going on for decades) to recur and then cry foul.

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## Missive by photographer

- Regardless, he has now expressed his opinion publicly that members may be using unlicensed photographs in connection with Senior Spotlight editions/tabs.

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## Solutions: Short Term

- To eliminate risk entirely for 2024, members should not run the Senior Spotlight tabs unless they license every photo to be published by negotiating a written release with the photographer.



## Solutions: Short Term

- Commercially reasonable photographers will have that paperwork, but here is an example of all that's necessary (Word version available):



# PHOTOGRAPHY COPYRIGHT RELEASE

Date: \_\_\_\_\_

I, \_\_\_\_\_, am the owner and copyright holder of  
the photo(s) / image(s) described as:

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[Photo(s) / Image(s) Description]

I hereby grant \_\_\_\_\_ (Newspaper) the right of  
possession of the above-described image(s) / photo(s) shot by me and have my  
permission for the limited use relating to graduation/senior sig pages, sections and  
ads, online and in the print edition of the publication. Any other use will require  
additional permission.

If you should have any questions regarding the authenticity of this document or the  
terms herewith, please contact me.

Sincerely,

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

Print Name \_\_\_\_\_

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## Solutions: Short Term

- If the photographer drives a hard bargain, members should emphasize the goodwill that comes from the Spotlight series and offer to credit the photographers to try to get them to charge as low a license fee as possible.

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## Solutions: Long Term

- But as members will surely agree, working to get such licenses independently from photo studios is overly burdensome and puts the studios in a position to exploit the members.

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## Solutions: Long Term

- So, for future years, to preserve the viability of Senior Spotlights but not put such a heavy burden on members, the status quo needs to change slightly, but fundamentally, to avoid the liability that comes along with the tradition of unlicensed photos being collected by schools and passed on to the members.

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## Solutions: Long Term

- For next year's graduation, the questionnaires should ask students interested in having their photos in the paper to include a release along with the photo to prove that the photographer has authorized the photo be used for purposes that include publication in Senior Spotlight editions/tabs.
- That will place the onus on the student and the photographer to resolve the licensing issue before the schools, let alone members, ever get ahold of the pictures.

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## Solutions: Long Term

- Members could even editorialize about the issue around the time the questionnaires go out to explain why this subtle change is necessary.

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## Final Thoughts

- Members can't run unlicensed photos and comply with copyright laws at the same time, and working to get such licenses independently from photo studios is overly burdensome and puts the studios in a position to exploit the papers.
- As a result, the tradition of Senior Spotlights is in jeopardy.
- If the state's photography industry and its clients are interested in continuing the Senior Spotlight tradition, that industry must take the lead in properly licensing their work from the outset of the photographer/client relationship.