

MEMORANDUM

To: Communications Officials at Penn

From: University Communications
Office of Audit, Compliance and Privacy
Office of General Counsel

Re: Guidance on Privacy: Photography and Videography at Penn (January 2014)

At Penn, photography and videography (including capturing audio) are a regular part of how we communicate to the world and our own community. Schools and Centers photograph and take videos in the classroom, at public events, and in a wide range of other venues. Photos and videos are used for various purposes, including education, news and feature stories, and promotional or commercial purposes. As questions of rights, permissions and privacy have been raised in connection with photography and videography practices at Penn, we are providing this guidance to the community.

In general, authorized University personnel (and the contractors they hire) may videotape and photograph events and people in public areas on Penn's campus. How such materials may be used or distributed however is highly context sensitive, usually requiring an understanding and evaluation of how public or private the **environment** is (for example, a locker room or dormitory versus a street corner), the **individuals** involved (for example, students versus administrators), how **identifiable** those individuals are, and **the intended use**. There are no "one size fits all" rules regarding use of photographs or video. Instead, it is important for Schools and Centers to understand and consider the following principles, applying (1) a respect for individual's privacy, (2) an understanding of Penn's legal rights in the photos and videos, and (3) best professional judgment:

I. PUBLIC SPACES, PUBLIC FIGURES, AND NEWSWORTHY USES

In general, permissions or releases are not required to take a photograph or videotape of individuals in public spaces because there is a minimal expectation of privacy in such spaces. Without a full release, however, the *use* of the materials may be limited. Examples of public spaces at Penn are sporting events at Franklin Field, Commencement, Locust Walk, and even at times non-sensitive invited events. The interior of a dorm room would generally not be considered a public space.

Newsworthy or informational *uses* of photos or videos in general do not require permissions or releases from subjects depicted.

Public figures, such as elected officials, celebrities, and prominent speakers have a more limited expectation of privacy than members of the general public, providing even greater latitude in using photographs or video recording of such individuals for news reporting or informational purposes.

Even in newsworthy photographs, care should be used in describing those depicted to avoid creating a misleading impression. For example, the caption of a photograph of a crowd at a demonstration should probably not describe those depicted as “participants” in the demonstration.

II. PERMISSION AND RELEASES

There are a number of scenarios where it is appropriate and often required to obtain permission and/or releases to take and use photographs and videography. There are many forms and methods for obtaining agreement from an individual to take and use a photograph or video. One may announce to a group verbally that photos or videos will be taken and how they will be used. One may post a sign indicating the same. One may obtain a written signature on an approved consent form. One may simply ask a subject and get his or her verbal “OK.” The best approach will usually depend on circumstances, context, practicability and risk.

- Students and FERPA. Certain photos of students are “education records” under the federal student privacy law FERPA, and cannot be shared publicly without the written consent of the student. Consent is particularly important where:
 - Photos prominently show one or a few students, and/or
 - Photo images are part of Penn’s official functions (such as Penn Card photos) and/or depict students in their educational or academic environment.
- Commercial Use. Because liability risks tend to be higher with commercial use, it is advisable to obtain written consent when photos or videos may be used to promote a product or service – and sometimes Penn. If there is potential commercial use of photos or videos of *public figures*, there is even greater exposure to liability. The issue of what constitutes “commercial use” is often not clear. The following distinctions may be helpful. Using the image of an individual to market or sell a product, such as a coffee table book, would likely qualify as a “commercial use”. Compare a departmental website showing photos of activities undertaken by people in that department, which would likely qualify as an informative, non-commercial use.
- Children and Other Special Circumstances. It is always important to use professional judgment in taking and using photographs and videos. If the image captured is of a child, it is very important to obtain a written release of a parent, particularly if the photo is of only a few children (as compared to a very large crowd), and particularly if the photo will be displayed or published broadly. Use judgment and obtain releases with other vulnerable populations. Further, obtain releases in highly sensitive contexts, such as for example events where political, identity, or health concerns are central.
- Hospitals and Health Care. Photographing people seen in the University’s hospitals and health facilities should be avoided or conducted with hospital approval, including utilizing an approved consent form.
- Sensitive Topic Large Gatherings. In most cases, attendance at large gatherings is not controversial and privacy interests are low. In such cases, permission may not be needed at all.

However, if the event is about a topic that may raise privacy issues (for example relating to substance abuse, mental health, identity issues) it is recommended to post a sign or otherwise announce that photos or video will be taken and provide participants an area where they may be without being photographed or video recorded.

III. TEACHING, CLASSROOMS, AND STUDENTS

Class recordings may raise concerns about freedom of expression, academic freedom, copyright and privacy and FERPA. All recordings of classes must be in compliance with School and University policies. Contact Penn's Privacy Office for assistance with specific class taping plans. If it is permissible to tape such lectures, the following guidance applies:

Class Recordings with Limited (Class) Availability. In cases where the videos are made accessible only to the students and instructors in the class and academic administrators, students should be informed of the video recording in advance.

Public Posting of Class Recordings. If photos or videos will be posted publicly, or otherwise made available beyond the individuals in the class and academic administrators, Schools must inform students of that fact and should make available areas of the classroom where students who do not wish to appear will not be photographed or video recorded. Pursuant to FERPA (federal law protecting student privacy), in this situation Schools may not condition enrollment in the class on the student's agreement that photos or video recordings of them may be publicly distributed.

Students in other Environments. As described above, even outside of the classroom, if a student or students are identifiable in a photograph or video, FERPA may apply and require that permission be obtained before the photo or video is shared publicly.

IV. EMPLOYMENT USES, FACULTY AND STAFF

Communications officials often take photographs of faculty and staff in their work settings. While there is greater latitude to photograph Penn personnel than students in many contexts, it is still important to be respectful of privacy concerns. Inform faculty and staff that photos or videos are being taken and ensure there are no significant, unaddressed privacy concerns. Further, get permission before using images of identifiable employees for explicit marketing or expressly commercial purposes. In the case of photos or videography of faculty in the classroom, as described in Section III, ensure this is being conducted in accordance with School and University policies.

V. SOCIAL MEDIA

In keeping with the [Guidelines on the Use of Social Media at Penn](#), it is important to recognize that when conducting Penn business – online and off – one must comply with Penn policies. Because of the powerful ability of social media to broadcast information worldwide, make sure to protect all confidential personal information – only posting what you have permission to post by law, policy, or explicitly by the person(s) in the photo.

VI. COPYRIGHT AND DIGITAL PHOTO MANAGEMENT SYSTEMS

In addition to privacy issues relating to the individuals depicted in photos and videos, communications professionals need to be mindful of potential copyright issues related to the images. Typically, Penn owns the copyright in photos and videos taken by Penn employees as part of their employment duties. Absent a written agreement, however, Penn may not own the copyright to images taken by independent photographers who have been hired to shoot events or campus scenes. Payment to the photographer is not sufficient in itself to convey all rights to Penn. Without a written contract, Penn's use rights may be limited to those purposes Penn can prove were specifically communicated at the time the photographer was hired. For this reason, it is important to have a written agreement with the contractor that states what ownership or use rights Penn will have with respect to the photos or videos produced by the contractor and what rights, if any, the contractor will retain.

Because digital photos and videos may readily be used repeatedly and for different purposes, it is important at the time the material is acquired to understand and document Penn's right in the photos and videos themselves and the nature and scope of releases or permissions from those depicted. It is a best practice to have a digital photo management system that records at a minimum: (1) basic information about the photo (2) any restrictions on publication and (3) any consents or permissions obtained.

Thank you for your attention to this guidance. Should you encounter a photo or video situation where application of the above principles is unclear, please contact University Communications at ucomms-web@lists.upenn.edu or Penn's Privacy Office at privacy@upenn.edu for assistance.