Flag-draped coffins
- Tami Silicio, April 7, 2004

Photography and the Law
I am not a lawyer...

• I have read about some common legal questions in books and on web pages, and discussed them with friends and colleagues, but I am not a lawyer.

• The World Wide Web is still a relatively young arena, and many of the tough questions might still be unasked and/or untested in the courts.

• University Counsel has basically said release forms are often not worth the paper they are printed on, so basically your goal should always be to act in a manner that would NOT invite a lawsuit. Even if you win, it will cost money to defend yourself.
Taking -vs- Using

- There are two different types of questions that you might ask yourself:
  - Can I *take* this picture?
  - Can I *use* this picture?
Can I *take* this picture?

- Don’t get in the way of things.
  - Taking pictures of public places is generally fine, but setting up a bunch of equipment in the middle of the street where people are trying to walk might not be.
  - Taking pictures of cars driving on public roads should be fine, but standing in the middle of traffic is probably not (and even if it is, it doesn’t seem very wise).

- Don’t annoy people.
  - Taking pictures of people in a public place should be fine, but should be done politely and/or unobtrusively.
  - If someone asks you not to take their picture, does it really hurt you in any way to honor their request?
  - David Seymour would talk to and get to know many of his subjects before photographing them.
Can I take this picture?

- **Respect privacy.**
  - There are four privacy torts:
    - Intrusion.
    - Private Facts
    - False Light
    - Misappropriation
  - Taking pictures of people where they have some expectation of privacy or anonymity sounds like a bad idea even if you think you technically have a legal right to do so in a specific situation.

- **Don’t trespass.**
  - While you might legally be allowed to keep and/or use the photographs you take, you are committing a crime that has penalties.

- **Look for signs.**
  - Museums, theaters, etc. might have their own policies on photography. Look for signs. If in doubt, ask someone who works there who should know the answer.
Consider the picture below:
Consider the picture below:
Can I *take* this picture?

The post-9/11 world.

- It may no longer be ok to photography certain locations that used to be fine to photograph. It might still be legal, but local law enforcement is often unaware of the actual laws on this.

- Try to “look harmless”. While attempting to be covert to avoid detection might sound like a good plan, if you are noticed, it will make you far more likely to be approached.

- If an armed security person asks you to stop taking pictures, I’d suggest you just stop taking pictures rather than argue that you are on public property. (It’s what I did in Annapolis near the Naval Academy.)

- If you are asked to move to a different location by an officer of the law, again I’d suggest you simply do so. (It’s what I did while awaiting the arrival of Cadillac One.)
...and here comes the police car...
Do not lie!

Aside from the idea that it’s bad to lie, it’s also a crime in some situations.

Did you know that it is a crime to lie to a federal government official?
http://www.law.cornell.edu/uscode/usc_sec_18_00001001----000-.html

There is also the wider “obstruction of justice” charge issue.
Can I *take* this picture?

Getting a model release can be useful.

- This is treading on the next section (“Can I *use* this picture?”) but it is worth mentioning here as well.

- Even if you do not plan to use a photograph other than for your own collection, if a person is clearly recognizable, or the specific subject of your photograph, it can be a good idea to ask them to sign a simple model release.

- If you are asking a person to pose for photographs, it has also been suggested to me that asking them to sign a release is a very good idea. You might want to consider a simple “Time for Prints/JPGs” type of release.

- Again, release forms are often not worth the paper they are printed on, so basically your goal should always be to act in a manner that would *NOT* invite a lawsuit. Even if you win, it will cost money to defend yourself.
Can I *use* this picture?

The first question might be whether or not you even own the rights to the picture.

– It used to be that if you took the photograph while working for someone else, then the rights would belong to your client/employer.

– This changed in the mid-1970s with various laws, where the default said that the actual photograph was sold, but with non-exclusive rights.

– You should check the current laws in your jurisdiction, or simply get it in writing that you still own the rights.

– The words “work for hire” have a specific meaning under copyright law.
Can I *use* this picture?

- For the remainder of these slides I will essentially assume that you are not trying to sell your photographs, or make money from their use.
  - If you plan to do either of these, you likely need to do things such as get model or even property releases.
  - There are exceptions, such as selling images to news organizations for “editorial” use.
  - While the publisher is often the one who would be liable for damages, I suggest you learn more about the laws involved, and consult a lawyer if you do plan to sell your work.
  - I will discuss this very briefly towards the end of the slides set.
Can I use this picture?

When you are the publisher, there is still a potentially gray area – what if you use your photographs on a web site, and your web site has some form of explicit advertising (eg: Google’s AdSense) or implicit advertising (eg: Yahoo! Geocities can place ads on user pages).

– I would suggest avoiding explicit advertisements on pages where you post your photographs in general, unless you have the appropriate model and/or property releases.

– Since you are not in control of the specific advertisements with AdSense or the Geocities ads, you stand an additional risk of portraying someone or something in a false light.
This was in the New York Times:

Lebanese returned to Beirut’s southern suburbs on Monday. Hezbollah’s leader appeared on television to declare a strategic and historic victory.
Can I *use* this picture?

If you do use a photograph you have taken, be very careful that you are not portraying the subject in a false light.

- **Dictionary.com** defines *libel* as:
  “A false publication, as in writing, print, signs, or pictures, that damages a person's reputation.”

- Use accurate captions. When possible, take notes soon after taking the photograph to avoid incorrect recollections.

- Be aware of context. If you place images near text or other images, associations might be made even without explicit connections.

- Adapt the “Golden Rule” to photography - use pictures of others as you would have pictures of yourself used.
Consider the following caption:

Students enjoying a warm day on the Campus Mall.

Did you ask if they were students?

Did you ask if they were enjoying the day?
Consider the following FALSE caption:

Students cutting class on a warm May 5th.

Do NOT do something like this!!!
Can someone else use my photo?

• First, let’s address the broad issue of “Is my photograph copyrighted? I didn’t put a © on it anywhere…”
  – Copyright.gov states, “The Berne Convention Implementation Act of 1988 reduced formalities, most notably making the addition of the previously mandatory copyright notice optional.”

• There are many issues to consider if you want to collect payment for the use of one of your photographs:
  – Does the use fall under “fair use” rules?
  – What rights do you want to sell, and for what length of time?
  – If someone uses your photograph without permission, what legal recourses exist?

• There are many books out there that address these issues. If these issue interest you, I’d suggest you buy a current one and read it ☺
What about “artistic” photographs?

While this is a topic all onto itself, and not one which really fits into this course, it is worth mentioning some things in brief if only to avoid certain problems:

– Obscenity laws vary from place to place, so if you do tread into this area in your own endeavors, do so lightly. Public nudity statutes also vary with location.

– Inform your model of exactly what you plan to do with the photographs, get a model release with a space for the model’s age (again, you might want to consider a “Time for Prints/JPGs” type of release), and get a copy of a photo ID showing an age of at least 18 years on the date of the photo shoot.

– Again, consider the golden rule of photography, and that release forms are often not worth the paper they are printed on, so basically your goal should always be to act in a manner that would NOT invite a lawsuit. Even if you win, it will cost money to defend yourself.
A changing landscape…

The law is always changing and being reinterpreted so it is good to keep an eye on the news.

In June of 2011, the state of Tennessee revised a law in a way that now makes it a crime to "transmit or display an image" online that is likely to "frighten, intimidate or cause emotional distress" to someone who sees it. Violations can get you fines or even jail time.
Traffic Cameras

A growing topic of interest is the use of cameras in the enforcement of traffic laws such as red-light cameras and speed cameras.

What are the issues?

– Technical such as calibration?
– Technical such as the right to confront an accuser?
– Conflict of interest?
– 100% automated systems and lack of judgment calls?
– Privacy?
Some resources:

Book: *The Big Picture* by Jacob - 2000
http://www.tamisilicio.net/
http://www.something-fishy.org/doctors/doc_article013.php
http://www.rcfp.org/photoguide/states/maryland.html
http://seattletimes.nwsource.com/html/localnews/2001909527_coffin22m.html
http://www.copyright.gov/circs/circ22.html
http://www.washingtontimes.com/news/2011/apr/20/business-owner-costs-reasonable-doubt-on-accuracy-