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# You'll Be Saww-wyyy: The Unauthorized Use of Photos

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So you decide you want to have some type of commemoration event or some event honoring a favorite author/artist/speaker/juggler etc. You'll want to create materials detailing this individuals life, their accomplishments and possibly hardships. But more than anything you'll likely want to provide a picture (or pictures) of that individual for context.

That there may be a problem using that photograph is probably the last thing on your mind. But there may be. And just to make things fun say the author/artist/speaker/juggler or what have you is of French descent? Does this create even more issues?

## Privacy Concerns

One of the first concerns that should be addressed is that of privacy. Here in the U.S. you may have laws governing privacy that come into play. The best example of this potential problem can be found in a line of accessories coming out that will have [real-life mug shots on them](#). There may be laws prohibiting the use of "personal information" (which could arguably include photographs, particularly those that have names or some type of other identifier) and its dissemination without consent.

## Defamation Claims

Depending on the situation there could be a defamation cause of action. A commonly known example of defamation is slander, where someone feels that someone else has publicly spoken something false or damaging about them. Depending on the circumstances of the photo, an individual could claim that it is the public revelation of private facts. This may especially be true for a photo that is not particularly "flattering" or compromising in some manner. An individual could also allege that a photo places them in a false light (for example, that photo you have of Uncle Joey when he got drunk, put on Aunt Mabel's dress and heels and decided to put lipstick on? If published that could possibly cause those who know him to question some things. Especially when the photo is taken out of context).

## Copyright Infringement

Very few people realize that photos actually fall under copyright. So the rights to use, alter, or reproduce that photo may belong to someone else. And if that is the case, your unauthorized use could surmount to infringement of their copyright rights.

## International Law

As if that wasn't enough, international privacy/copyright law may apply as well. With regard to copyright, there are international treaties, one being the Berne Convention, that govern when international copyright laws may come into play, even for use here in the U.S. Sometimes things like the duration of a copyright will differ than that in the U.S. and oftentimes what falls under copyright may be stricter than here. The privacy laws of European Countries are often times much stronger than those here. Europe has been addressing privacy concerns far longer and have a particularly different appreciation for one's private life. Consequently, there are some countries that will require someone wanting to use a photograph to track down the individual depicted in the photograph, or its remaining family, and specifically ask for permission. You'll see similar requirements for letters as well.

## Takeaway

The moral of this story is not to never again use photos in your life. It's to understand that some of the things we do to market on a daily basis, and don't even give a second thought, can have very serious implications. With our example we would

need to research the person in the photo we wanted to use to determine citizenship. You would even want to look into where the picture was taken as that can often play a role in determining what laws apply.

Serious thought should also be made as what the photo being used depicts. What may be funny to us may not be funny to the person depicted. Is the photo you're seeking to use likely to make them mad? Or possibly result in suit? And who was the photo taken by? If by someone such as the Associated Press you'll need their consent before using it. Lastly, are there any particular privacy laws in your jurisdiction that govern the use of photos? Before plastering someones face on your materials do a little due diligence on the front end. In some instances, you may find that it may be more appropriate to represent them in some other way than using that photo.