

Meeting Minutes

Date: November 18, 2020

By: Jean Davids, Secretary/Treasurer

The meeting started just after 7:00 pm and was presided over by president, Heather Reinhart. We had a great turnout with 15 members and our speaker in attendance. Because of current Covid rules which have closed down the bars and restaurants once more, we decided to start doing zoom meetings until it is safe to meet in person again. We'll continue to take it month by month but for now, expect it to go into the spring of 2021 at least. We'll just have to keep an eye on it. We might try to do a combo of zoom and in person once River City Extreme opens up again.



We shared our assignment photos at the end of the meeting. We had two members share their images of Fine Art Photo of any kind. Thanks Steve and Kevin for contributing your great images.

At the end of the meeting, we also discussed whether to have a zoom meeting in lieu of our regular holiday gathering. It won't be the same, but we all agreed we would go ahead with it. We will ask for your up to 10 of your best photos of 2020. Stick to the 10 or less or I will have to cut it down to fewer myself. Then we can just share a drink and conversation for as long as members would like to do.

Our speaker for the night was Jim Fleming of Fleming Law Office and, coincidentally, husband of member and co-founder of the club Lynne Fleming who volunteered him to speak with us on legal issues related to photography. Thanks Jim (and Lynne) for an excellent presentation. Information was provided by Jim and Lynne for us to share via our meeting minutes. Thanks so much for allowing us to share this information with our members and thanks for presenting. It can be found starting on the next page of these minutes.

Our next meeting is scheduled for December 16th and will be our last meeting of this ugly 2020. The assignment is "Your Best Photos of 2020". I am asking you to limit it to 10 images or less. You can just share that one outstanding image that you captured if you like. I know it will be tough to narrow it down but start hunting now so you can track them down.

Next: Jim Fleming's shared material related to his talk.

MONTICELLO CAMERA CLUB DISCUSSION of PHOTOGRAPHY LAW

This materials is for educational purposes and was presented by attorney Jim Fleming on 11/18/20 for the Zoom meeting. <http://www.JimFlemingLaw.com> • 763-291-4011

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The general rule: In the United States is that anyone may take photographs of

whatever they want when they are in a public place or places where they have permission to take photographs. Absent a specific legal prohibition such as a statute or ordinance, you are legally entitled to take photographs.

Property owners may legally prohibit photography on their premises but have no right to prohibit others from photographing their property from other locations.

When a property owner tells you not to take photographs while on the premises, you are legally obligated to honor the request.

Exceptions: There are some exceptions to the general rule. For example, commanders of military installations can prohibit photographs of specific areas when they deem it necessary to protect national security. The U.S. Department of Energy can also prohibit photography of designated nuclear facilities although the publicly visible areas of nuclear facilities are usually not designated as such.

Members of the public have a very limited scope of privacy rights when they are in public places. Basically, anyone can be photographed without their consent except when they have secluded themselves in places where they have a reasonable expectation of privacy such as dressing rooms, restrooms, medical facilities, and inside their homes.

The following subjects can almost always be photographed lawfully from public places:

accident and fire scenes
children
celebrities
bridges and other infrastructure
residential and commercial buildings
industrial facilities and public utilities
transportation facilities (e.g., airports)
Superfund sites
criminal activities and arrests
law enforcement officers

Most confrontations are started by security guards and employees of organizations who fear photography. The most common reason given is security but often such persons have no articulated reason. Security is rarely a legitimate reason for restricting photography. Taking a photograph is not a terrorist act nor can a business legitimately assert that taking a photograph of a subject in public view infringes on its trade secrets.

On occasion, law enforcement officers may object to photography but most understand that people have the right to take photographs and do not interfere with photographers. They do have the right to keep you away from areas where you may impede their activities or endanger

safety. However, they do not have the legal right to prohibit you from taking photographs from other locations.

Law enforcement officers do not have the right to view your images absent a warrant. They may have the authority to seize a camera or cell phone when making an arrest but still must obtain a warrant to search the contents.

Likewise, they do not have authority to make you delete images. Sometimes agents acting for entities such as owners of industrial plants and shopping malls may demand that you delete your images or give them your camera. Absent a court order, private parties have no right to do so. Taking your camera or cell phone directly or by threatening to use force or call a law enforcement agency can constitute criminal offenses such as theft and coercion. It can likewise constitute a civil tort such as conversion.

Minnesota Crime scene and autopsy photographs

(Minn. Stat. §§ 13.82 (7) and § 13.10)

Photographs that are part of inactive investigations that are clearly offensive to common sensibilities are private or nonpublic data, but the existence of the photographs must be disclosed to a person requesting access to the inactive file. (They are confidential while the investigation is active.)

You have the right to take photos in a public place and of any accident scene as long as you are not interfering with the police or any rescue efforts.

Celebrities and public figures

Celebrity, public figure or not, doesn't matter. Whether or not they LIKE it or not is irrelevant. If they are outside in public, it is legal. If they are inside on private property and you shoot a photo through a window, illegal.

Copyright: Copyright is a property right. Under the Federal Copyright Act of 1976, photographs are protected by copyright from the moment of creation.

According to the U.S. Copyright Office, the owner of the “work” is generally the photographer or, in certain situations, the employer of the photographer. Even if a person hires a photographer to take pictures of a wedding, for example, the photographer will own the copyright in the photographs unless the copyright in the photographs is transferred, in writing and signed by the copyright owner, to another person. The subject of the photograph generally has nothing to do with the ownership of the copyright in the photograph. If the photographer is no longer living, the rights in the photograph are determined by the photographer’s will or passed as personal property by the applicable laws of intestate succession.”

Scanning 4×6 proofs and uploading them onto social media sites (Facebook, Instagram, etc.)

:: Uploading digital images that have been purchased from their photographer and editing them in a photo editing program

:: Taking screen shots of images online and printing them

:: Using a camera phone to take an image of a print and uploading it to Facebook, Instagram, etc.

These are all examples of copyright infringement and are illegal.

In simple terms, copyright for photographers means owning property. With ownership, you get certain exclusive rights to that property. For photographic copyrights, the ownership rights include:

- (1) to reproduce the photograph;
- (2) to prepare derivative works based upon the photograph;
- (3) to distribute copies of the photograph to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) to display the photograph publicly;

Found in the U.S. Copyright Act at 17 U.S.C. 106
(<http://www.copyright.gov/title17/92chap1.html#106>)

Creative Commons is a type of licensing. Licensing means that you grant others some of the rights that you have to the photograph. For example, you may allow someone to reproduce your photo in the December issue of a magazine. You still own the copyright to the photograph, but you allow someone else to use a piece of it. Creative Commons provides different licensing packages without pay. The packages allow some flexibility with your licensing, such as whether you allow commercial use of your photo and whether you require certain attribution, such as your name or website, with the use.

In general, when the shutter is released, the photographer who pressed the button owns the copyright. **An exception is when the image falls into the “work-made-for-hire”(also known as “work for hire”) category.** A work-made-for-hire relationship is created in two situations: (1) the photographer is an employee hired to take photographs for the employer—an example would be a photojournalist who is an employee of a newspaper but not a wedding or portrait photographer who is hired for one event; or (2) the photographer is hired to provide photographs for collective works or compilations and signs a written agreement that specifically states that the work is to be considered a work made for hire. Therefore, freelance photographers are subjected to work-for-hire status only when they agree to it contractually.

If you don't register your copyright, you still own the copyright to your photos.

However, when a photo is not registered with the US Copyright Office prior to an infringement (or within three months of the first publication of the photo), a copyright owner may recover only “actual damages” for the infringement (pursuant to 17 U.S.C. 504 (b)), instead of statutory damages. Courts usually calculate actual damages based on your normal license fees and/or standard licensing fees plus profits derived from the infringement, if not too speculative.

You'll often see a copyright “notice”—the familiar © or the word “copyright” with a date and name of the copyright owner—posted on creative works. A proper notice has three parts: the first part is the © (the letter “c” in a circle), the word “Copyright,” or its abbreviation, “Copr.” Some people use a “c” within parentheses like this: (c), but it has not been designated to be part of the official copyright notice. The second part notes the year when the work was first published. The third required part of a copyright notice is the name of the copyright owner. The final form looks like this: © 2011 Carolyn E. Wright. Including a copyright notice is no longer required for copyright protection, but it is a good idea to use it.

When you use the copyright notice it may stop someone from stealing your photographs, either because it serves as a reminder that the work is protected or because the notice interferes with the use of the work when it is part of the photo. Also, it helps to post a copyright notice on your photos because the infringer then cannot say the use was innocent. Further, you may be eligible for DMCA damages if your copyright notice is removed to hide an infringement (see above). You may use the copyright notice without registering your work with the U.S. Copyright Office.

Drone use.

Late last year, the FAA mandated that drone owners register their UAV's with the FAA and pay a small fee or face some hefty fines.

https://www.faa.gov/uas/getting_started/register_drone/

If you're flying for fun, there are much less strict requirements. But if you plan on making money with your unmanned aerial vehicle (UAV), you'll need to pass an FAA test and receive Part 107 certification. Once you're certified you'll be able to use your drone to capture aerial images and video to sell as stock imagery, work on film productions, grab aerial imagery at weddings or for real estate

The basic FAA rules are:

- Fly at or below 400 feet
- Keep your drone within sight
- Don't fly in restricted airspace
- Don't fly near other aircraft, especially near airports
- Don't fly over groups of people
- Don't fly over stadiums or sports events
- Don't fly near emergency response efforts such as fires
- Don't fly under the influence

The FAA plans to implement a knowledge test for recreational pilots in 2020. We don't know how intense the test will be, but would expect it to be in line with the written portion of a driver's license exam.

The legal use of aerial drones for photography

If the operator is standing on public property and so long as the drone doesn't land or enter a private building they are within existing laws.

Although Washington's Supreme Court examined the issue of how far up this "envelope extended," ultimately, the Court found that the public domain began above the minimum safe altitudes of flight prescribed by the Civil Aeronautics Authority. See *Ackerman v. Port of Seattle*, 55 Wn.2d 400, 410-411, 348 P.2d 664 (1960).

Accordingly, at least for the purposes of trespass, trespass would lie for anyone to enter into the airspace over a property below the "minimum safe altitudes of flight."

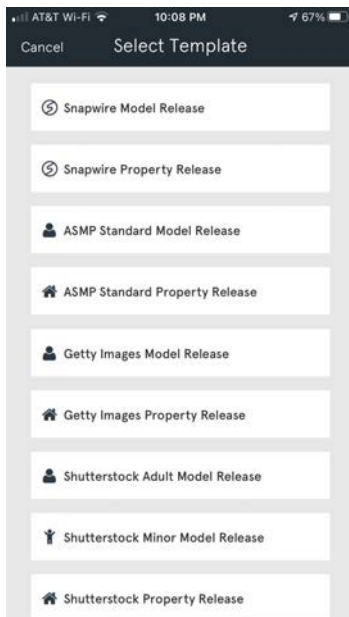
So, what happens when Mr. Neighbor admits that he took photographs of the airspace above Ms. Landowner's land by a drone aircraft? These drone flights would constitute a trespass as the drone violated the airspace owned by Ms. Landowner.

14 CFR § 91.119 - Minimum safe altitudes: General. | CFR ...www.law.cornell.edu › ... ›
Subjgrp 4. General Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft. (c) Over other than congested areas.

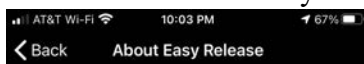
Additional Notes from member questions/comments:

Anthony Hall mentioned that he uses a couple phone apps. He couldn't share what they were at the time of the meeting but I connected with him and here is the information he shared.

This one is called "Releases by Snapwire".



This one is called "Easy Release".



Thank you for your purchase of Easy Release!

You can find contextual help on most screens by touching the (i) info button.

All application settings are accessed from the "gears" icon at bottom-right of the release list.

The release list on this screen can be grouped by Shoot name, Status, Date or Name.

When sorted by Shoot or Date you can multi-send the release PDF files by touching the boxed-arrow icon.

Touch the + icon at top-right to create a new release.

Touch settings to set photographers info, branding, custom release text templates, languages, auto-BCC, page size, turn-iCloud on/off, contact us for support or feedback, and more.

Q: If you see a cool house or object in someone's yard can you take a photo of it?

A: Yes as long as you are standing on public land and not trespassing on theirs.

Q: Can you use a drone to get a different perspective on the house?

A: Yes as long as you take the drone off straight overhead in public air space otherwise if you incringe on the person's property it is a trespass.

Q: If you see an old barn can you take photos as long as you are on public lands?

A: Yes but if you want to get closer details that require you to step on their property you must get permission and may consider getting a property release.

Q: For family shots taken in public, do you need to get permission, like with kids involved?

A: Not if they are in public. The exception is if you are going to profit from these images. Then you should get permission/photo release or get a contract done.

Note: Creative Commons concept allows people to use your images as long as they are for educational purposes. Also referred to as "Fair Use" law. You can complain about them using your image and ask at a minimum that they give you photo credit for its use.

Types of photo releases:

- Model release form. If an adult is the subject, use this form.
- Child/minor photo release form. A parent or guardian must complete this form if you want to publish a photo that includes a minor.
- Property photo release form.

Anthony mentioned that some street photographers do short video clips showing the person has given permission to use his person. He said one person he knows uses a go pro to do this as separate from his photo camera.

Thanks to everyone for attending. It was a great meeting!!