

# Problems Surrounding the Publication of Sports Photographs

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Sport historians who seek to include photographs in their publications tend to work on very limited budgets and search for suitable images at the most reasonable prices. Often ignored in this effort are the legal questions involved in publishing sports photographs. This paper examines some of these questions and suggests ways for scholars to minimize infringing the rights of photographers, subjects, and other interested parties.

The Copyright Act of 1976 brought unpublished materials, including photographs, under copyright protection for the first time. Unfortunately for scholars, the meaning of the law is still being worked out, and most archives, as a result, cannot guide their patrons through the law's subtleties. Instead, they ask prospective authors to sign a waiver absolving the institution of any liability resulting from copyright infringement.

In the midst of this muddle, it is clear that the law supports the view that photography is a creative act by the photographer and that the primary product of this creativity is the original negative. Thus, in most cases, the photographer holds copyright even if others have obtained prints. Authors should be wary of purchasing prints from dealers or collectors or even from archival institutions without making a firm attempt to uncover any copyright claims that must be satisfied.

Persons depicted in sports photographs may also assert a right to compensation. Unsolicited photographs of public figures can be used for news or informational purposes without restriction, but they cannot be used for business or profit without the subject's permission. Whether a book published by a scholar can be defined as a commercial product is a question that has not yet been answered.

More certain, however, is the proprietary control that Major League Baseball, the NFL, the NBA, the NHL, the NCAA, and the Olympics have asserted over the use of the logos connected with their sports. These organizations, in fact, are getting more aggressive in this area and may one day seek compensation from publishers. Players' associations have also claimed an interest in the use of names and statistics.

A growing number of living sports personalities as well as the estates of deceased athletes are now represented for commercial purposes by licensing companies. The most prominent of these, Curtis Management Group, markets its clients in advertising, promotional, and merchandising programs. Curtis has said that it imposes a fee based on a realistic, enforceable, policy. Books, even scholarly works published by university presses, fall into a grey area, perhaps subject to their contracts and perhaps not.

In conclusion, scholars should insist that publishers use their considerable resources to provide proper legal advice and protection for their authors.