

The Legal Side of Farm Photography

By Cari Rincker, Esq.

October 19, 2016

With smartphones in the hands of almost every person and social media apps designed to encourage users to share what they're seeing, taking pictures on a regular basis has become the norm. For farmers and agriculture entrepreneurs, picturesque views of farms and ranches create appealing pictures popular on social media. However, taking pictures of these views, especially if they are not your own, can create some legal issues for those interested in farm photography.

Can You Take a Picture of That?

The first issue that arises when deciding whether or not to take a picture of that farmhouse or that horse on the other side of the fence is whether or not you are even allowed to take the picture. The main thought that photographers should keep in mind is "Is the place I am about to take a photograph private?" Is it a farmhouse that can be seen from the public road or is it the inside of a barn seen through a small crack on the side of the barn?

There is a reasonable expectation of privacy in the latter but not the former. The outside of a farmhouse is something that can be seen by anyone who passes by and taking a picture of that farmhouse is unlikely to be a problem.

However, trying to take a picture through a crack in the side of the barn wall is going to be problematic. While the outside of a barn can be seen by anyone, what is inside is only meant to be seen by people with permission. There is a *reasonable expectation of privacy* in the barn. The owner of the barn can reasonably expect that what is in the barn is free from public viewing. He ensures that by having the barn on his private property and keeping the door closed. Looking through that tiny crack is a violation of the barn owner's reasonable expectation of privacy.

The other side of the coin in considering whether or not the place where the picture is being taken is private is whether you can take a picture of someone or something out in public. For example, can a photographer at a farmer's market set in the town square take pictures of the stalls? The answer is yes. The town square is a public place. People and items located in the town square or any public place are expected to be seen.

The exception to being able to take pictures in public places is private places that are opened to the public, such as a farm where people can pick fruit. That farm is privately owned, but the farmer has opened it up to the public. Since it is open to the public, the photographer can take pictures. However, if the farmer chooses to stop the photographer from taking those pictures, the farmer would be within his right even though he opened his doors to the public.

Who Owns the Picture?

The next issue that comes up when anyone, regardless of what or who the picture is of, is who owns the picture. A person that takes a picture is the owner of the picture. Any use of that picture cannot occur without his or her permission. So a person who takes a picture of a horse is the owner of that picture.

How Can the Picture Be Used?

Once ownership is established, the next question arises about how the picture can be used. The major issues that need to be considered when deciding how to use a picture are: (1) what is depicted in the picture and (2) the purpose for which the picture will be used.

The object of the photograph will have an impact on how the photograph is used. Going back to the earlier example of the farmhouse that was photographed from a public road, generally, a photograph of that type of property can be used without getting permission from the owner of the farmhouse. This is because that farmhouse on its own is unlikely to be recognized as belonging to anyone specifically. On the other hand, if that farmhouse is unique in some manner, for example, if it is painted in the colors of the rainbow, and it may be recognized by others, permission may be required to use the picture of the farmhouse depending on the purpose for which the picture is used.

Similarly, if the photograph is of a person, depending on the purpose, permission may be required of the person depicted in the photograph.

The purpose for using pictures can be broken up into two categories: (1) editorial, and (2) commercial. An *editorial purpose* is one where the photographer does not use the picture for his own purpose. An example would be using a picture of a farmer in a newspaper story about the farmer. This newsworthiness exception allows pictures to be used without permission of the photographed person for the purpose of something other than personal gain.

Use of photographs depicting people or property in a commercial purpose will require permission of the person in the picture or of the owner of the item photographed. A *commercial purpose* is using the picture for a personal gain, such as using it to promote their business through advertising or selling it to someone else.

How Do You Get Permission to Use the Picture?

The law varies from state to state on how permission has to be given by the person photographed for use of photographs in a commercial purpose. In some states verbal consent is acceptable, but other states require that the permission be in writing. An easy and quick way for photographers to get consent is through a model release.

A *model release* is a signed license from the person in the photograph that the photographer can use the picture in any way he chooses so long as it is not offensive. This release will allow the

photographer to be able to use the picture, in whole or in part, and make changes to it for any purpose he needs, whether it be editorial for a news article or for advertising purposes. The release lasts in perpetuity.

If the picture depicts an item or an animal that is owned by someone else, the photographer would need a ***property release*** in order to use the picture for a commercial purpose. Similar to the model release, the property release allows the photograph to be used for commercial purposes in any format that the photographer chooses unless it is offensive.

Things to Keep in Mind

All of these legal requirements can be a lot to take in, but photographers that use their common sense when it comes to deciding which pictures to take, when to take them, and how to use them will be able to continue their farm photography without much trouble. A good tip to keep in mind is to just ask permission before taking pictures. If you choose to have a model or property release signed, be sure to explain to the model or property owner what you are having them fill out and why.

For more information contact:

Cari Rincker, Esq.
Principal Attorney, Rincker Law, PLLC
Licensed in IL, NY, NJ, CT & DC

New York Office
535 Fifth Avenue, 4th Floor
New York, NY 10017
Office (212) 427-2049
Fax (212) 202-6077

Illinois Office
301 N. Neil Street, Suite 400
Champaign, IL 61820
Office (217) 531-2179