

## **‘Fair use’ rule applies to ‘news’ photographs**



### **Concealed weapons permit list should be open**

By JEAN MANEKE  
MPA Legal Consultant



*(Jean Maneke, MPA's Legal Hotline attorney, can be reached at (816) 753-9000; [jmaneke@manekelaw.com](mailto:jmaneke@manekelaw.com).)*

Maybe by the time you read this column there will be some resolution on the concealed weapons law in the state. Both sides are taking strong positions regarding this issue, and lost in the rhetoric is the biggest issue for us – the fact that the names of persons receiving permits to carry concealed weapons is a closed record.

Proponents of secrecy claim that if the names of those receiving permits is made public, those persons will become targets of violence. That opinion doesn't seem logical. Wouldn't you want criminals to know you were carrying a weapon? Why would that make you a target? It would seem it would make you less of a target.

What it does appear to do is prevent the public from ensuring that its law enforcement officers are properly doing their job in certifying who should receive these permits. No one will be able to verify that convicted criminals are not on the list. No one can peruse the list to ensure that persons who have mental conditions have not been issued a permit. Politicians who assert that they oppose the bill will be able to take that position knowing that no one will be able to check and see if they, in fact, are packing heat.

As always, the benefit of public disclosure of information is that there is a level of confidence that those who are charged with enforcing the law and implementing its procedures are doing their job in a professional and accurate manner. When this law was passed by the Missouri Legislature during the last session, it was clear that the sponsors were going to push this through with little discussion or negotiation as to its terms, in particular this term regarding closure of the records. We can only hope that when the next legislative session rolls around, that legislators who have supported openness in government in the past will agree to look further at this issue and make the changes needed to make this record open to the public.

On another note, the hotline frequently gets calls relating to copyright issues related to photographs. Perhaps a quick primer on copyright law as it relates to photos is in order. If a photographer employed full-time by the newspaper takes a picture, the newspaper owns the photo. If you purchase a photo from a free-lancer (like the kid you hire to shoot high school football and basketball games), then the newspaper owns that photo, also.

You should clarify with the free-lance photographer whether you are buying "one-time rights" or ownership of the photo. If you want ownership, you should obtain the negative or the digital image. (Digital images are more complicated, of course, because there can more easily be multiple copies of the same image.) If you are about to run photos of a wedding supplied by the bride, or head-shots of a student taken by a professional photographer in connection with a news story about the wedding or about an achievement by the student, copyright is not an issue. Copyright law gives you a "fair use" exception to use a copyrighted photo in connection with a news story. But you must be careful that you don't use these same photos in other manners. You cannot use a bride's shot to create an advertisement for a local bridal shop without permission of the photographer.

Similarly, there is a copyright problem with ads when the high school seniors' photos grace the advertisements of local merchants. Those photos are being used for commercial purposes, and — while I would certainly attempt to argue that the whole perspective of the special insert was to give news about the seniors — it is much harder to do this argument when the photos are contained in the ads. It is much better to put the photos of the kids by their write-ups and then sell the advertising in the section as a separate piece, not containing those photos. Certainly EVERY photo that you receive in an ad being submitted for publication needs clearance as to whether the advertiser has permission for the photo to be used in the ad.

I believe there is a legal issue in connection with the companies that are approaching newspapers to sell their photographs online using the company's web pages as their selling agent. The concept of their business is good – they relieve the local newspaper from having to deal with calls from the public seeking copies of photos that ran in the local newspaper. There is little, if any, case law that relates to claims of commercial appropriation (the making of money off the selling of a person's image) in connection with a newspaper selling a news photo. Most of these operations are small and primarily limited to families buying photos of Johnny that ran in the local paper.

But there is a concern if the newspaper had, for example, a photo of a celebrity that was posted on such a website and if sales of that photo generated substantial revenue for the paper. (Which is, of course, the dream result of such a business transaction.) It wasn't long ago that Joe Montana sued a California paper that ran his photo in a special section. He claimed it was trading on his fame. The argument that would give rise to a copyright lawsuit on the sale of a photo online at one of these sites would be similar. There hasn't been a lawsuit yet and there is no case law on this issue, but the concept concerns me and copyright lawyers with whom I've discussed this issue.

At a minimum, I would recommend that newspapers carefully screen the photos being made available to ensure that no photos are included of people who are celebrities or otherwise making commercial use of their faces.