

BAPLA[®] Fact Sheet

The Photography of Buildings / Landscapes

Property Release Agreements are useful to avoid the following problems that can arise out of taking photographs of property:

1. Infringement of copyright

Most buildings and interiors (and designs for gardens) are the subject of copyright protection. The copyright will usually belong to the Architect or Designer rather than the owner. You will seldom be obtaining permission from the Architect so the Property Release is unlikely to help you if there is a claim for copyright infringement by an Architect.

However, this is not a serious worry because in this country, by virtue of Section 62 of the Copyright, Designs and Patents Act 1998; it is not an infringement of copyright to take a photograph, draw or film a building (including the interior) or a sculpture, model for building or work of artistic craftsmanship permanently sited in a public place or in premises open to the public. There is an argument that an Architect could still make a claim for copyright infringement if such use infringed the original plans for the building but this seems unlikely.

The position is slightly different in the United States. Many US buildings and architectural works have copyright, particularly architectural works created after 1 March 1989. There is an exception but it is not as wide as the UK exception set out above; it is permitted to photograph of buildings or properties in a public place but permission is needed to photograph and reproduce images of a building protected by copyright and not visible from a public place (which would obviously include interiors).

The position is also different in France, where an Architect (of whatever nationality) is entitled to fees when buildings in France designed by that architect are photographed. The French collecting society ADAGP (web site is www.adagp.fr) can provide authorisations for some architects. Unfortunately it only represents less than one hundred architects in France and otherwise you would need to get the authorisation direct from the architect (this is for example the case for the Géode in Paris and for the Pyramide du Louvre.)

Note that photographs of the contents of a building (including furniture, works of art etc.) may themselves have separate copyright which, again, is unlikely to belong to the owner of the building. Photographing such items may itself be an infringement of copyright. There is an exemption in relation to items which are only incidentally appear in the finished work; however very often the placement of an item is not incidental and permission for its use should be obtained from the copyright owner.

2. Contract

In order to obtain access to most private properties (or indeed Museums etc or galleries) you need to enter into a contract with the owner; one of the terms of this contract is often that you cannot make commercial use of any photographs taken. The law of copyright relating to architects must not be confused with contract law. If you do take photographs in a private property and use them without consent, you still own the copyright in the photograph and cannot be sued for infringement of copyright in the building if it comes within the exemption outlined above. However, you could be sued for breach of contract and would have to pay any foreseeable damages which flow from that. The main usefulness of a property release in this country is to avoid any such claims in contract.

3. Trade mark

Some owners try to protect a building's appearance by using trademark law. If a distinctive looking building is used to signify a business or service then you cannot use an image of that building in a manner that will confuse consumers. For example the Sears building in Chicago functions as a trade mark and you would need permission if you intended to use it in an advertisement although use of the building's image for informational purposes such as in a magazine article would not require permission. Permission is probably not needed to use the image where a trade mark building is depicted on a postcard or poster.

4. Privacy

Many celebrities are now trying to take claims for infringement of their right to a private life and there have been several recent successes including Princess Caroline and Naomi Campbell. If you are given permission to enter a building and take a photograph of a person or their home, they can hardly complain later that the use of their image was a breach of their right to a private life.

If, however you sneak in and take photos, it might be considered that you are misusing confidential information in circumstances where the person had a reasonable expectation of privacy and use of those photographs would then be banned. This is a developing area of law and one of the reasons why it is now advisable to obtain property releases. As celebrities' image rights are more developed in the US, many US clients will in any case demand a property release before using any photographs and it is always advisable to get one if possible since it saves argument later about the use of the work.

The BAPLA Property Release Form deals with some of the above issues and contains explanatory notes.

For further reading

PACA members have compiled a list of properties and objects in the USA that may cause problems if shown photographically. Some of the properties and objects are alleged to be covered by trademark, others by contract (i.e. the terms by which a photographer was granted access to the property). www.pacaoffice.org/specialrelease.shtml

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Notes to the Sample Property release form - see over

- The agreement must be for valuable consideration otherwise it would not be binding. This could be dealt with either by giving the person £1, paying a fee for the use of property or given them copies of the photos if that is what is agreed.
- No rights are granted to approve the manner in which the images are used or any text. However you may in some circumstances wish to limit the agreement by stating exactly what the uses are for. To use them for other reasons would not be an infringement of copyright but might be a breach of contract or of privacy or even of moral rights.
- **Indemnity and Release** The owner is asked to indemnify you from all claims. Many owners will not sign this, particularly as they are warranting that they own the rights in all the underlying contents etc. and you may want a more limited warranty.

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Property release form

This is a sample of a wide property release. It should be read in conjunction with the BAPLA fact sheet on photography of buildings / landscapes. It is for members use only.

Owner(s) / authoriser Name	(“Owner / I / me”)	
Address		
		Town
Postcode		Country
Telephone		Email
Photographer Name	(“Photographer”)	
Email		Telephone
Property Release Number		
Property address		
		Town
Postcode		Country
Date(s) of entry for photography		

5. For valuable consideration of £ _____ the receipt of which I acknowledge, I irrevocably grant the Photographer and the Photographer's assigns, licensees and successors, the right to enter onto the Property [on the dates set out above] to take photographic images of the Property, and its contents or any part of it or them (“the Images”), and copy, publish, display and use the Images in all forms of media including composite or modified representations throughout the world for the full term of copyright. For the following purposes:

6. I confirm that the Images may be used without inspection or further consent or approval by me of the finished product or of the use to which it may be applied and without my inspecting any text that is used in connection with the Images.
7. I warrant that I am over 18 and the owner of the Property and its contents and/or have the full right and authority to solely enter into this agreement and I agree to indemnify the Photographer and its assigns, licensees and successors from any loss, liability, costs, damages or claims of any nature, including but not limited to claims in relation to breach of contract, breach of privacy or moral rights or infringement of copyright arising from use of the Property or representations of it and the contents in the Images except those directly caused by the deliberate misconduct of the Photographer or its agents.

Signed	Owner	Date
Signed	Photographer	Date

PROPERTY RELEASE

Specify Property Covered By Release: _____

Property Address: _____

Contact Phone: _____

Contact E-Mail: _____

Attach visual reference here,
aligned to top right-hand
corner if larger than box.

For example,
Polaroid, driver's license,
print, photocopy, etc.

OWNER'S PERMISSION AND RIGHTS GRANTED:

As owner or authorized representative of the Property and by signing this release, I give the Photographer/Filmmaker and Assigns my permission to create and use the images depicting the Property in any Media, for any purpose (excluding defamation and/or pornography) which may include, among others, advertising, promotion, marketing and packaging for any product or service. I agree that the images may be combined with other images, text and graphics and cropped, altered or modified. I agree that all rights to the images belong to the Photographer/Filmmaker and/or Assigns.

Unless prior written permission is obtained, Photographer/Filmmaker and Assigns agree that the Property's owner, tenant and/or location (with the exception of reference to general region, country or state) will not appear in the image caption or in any other information presented with the image for licensing purposes and all trademarks, names, and logos will be removed from the image prior to promotion, marketing and licensing.

I agree that I have received Consideration of _____ for the rights granted in this release. I acknowledge and agree that I have no further right to additional Consideration or accounting, and that I will make no further claim for any reason to Photographer/Filmmaker and/or Assigns. I acknowledge and agree that this release is binding upon my heirs if applicable assigns or any person claiming an interest in the Property. I agree that this release is irrevocable, worldwide and perpetual, and will be governed by the laws of England, excluding the law of conflicts.

I represent and warrant that I am at least 18 years of age. I have the full legal capacity and right to execute this release and grant the rights herein granted with respect to the Property, and to bind all persons claiming an interest in the Property.

For Individuals:

Owner Signature _____ Date _____

Owner Printed Name _____

For Corporate Ownership:

Name of Corporation _____

Employee Signature _____ Date _____

Employee Printed Name _____

Title/Position _____

Owner [] Authorized Representative []

DEFINITIONS:

"PROPERTY" means the place and or property that is the subject of the Shoot.

"MEDIA" means all media including digital, electronic, print, television, film and other media now known or to be invented.

"PHOTOGRAPHER/FILMMAKER" means photographer, illustrator, filmmaker or cinematographer, or any other person or entity photographing or recording the property.

"ASSIGNS" means a person or any company to whom Photographer/Filmmaker has assigned or licensed rights under this release as well as the licensees of any such person or company.

"IMAGES" means all photographs, film or recording taken of the Property as part of the Shoot.

"CONSIDERATION" means something of value I have received in exchange for the rights granted by me in this release.

"SHOOT" means the photographic or film session described in this form.

_____ The following to be completed by Photographer/Filmmaker _____

Photographer/Filmmaker's Name: _____ Shoot Date: _____

Photographer/Filmmaker's Signature: _____

Shoot Description [and Shoot Reference if Applicable]: _____