

Legal Issues in Nude Photography

By Erich E. Schuttauf, J.D.

Editor's Note: Erich Schuttauf is the Executive Director of AANR and a licensed Florida attorney. He received his Juris Doctor from Duke University School of Law and his BA from Purdue University. Erich is the author of two books, The Recruiting Manager's Guide and The Performance Management Guide, published by CCH Press.

Five years ago after our son Timothy was born, a friend gave us a gift certificate for a free sitting and portrait at a major photo studio chain. When we brought him in--at just three months old mind you---we requested that most famous of all poses: the classic naked baby on a bearskin rug. "Sorry," the clerk told us. "Those are strictly against our company's 'pornography' policy and may be against the law, too... "

The company held firm to its policy and we settled for a picture of Tim in his white christening suit. Given that just about every home in America had a "bearskin" picture years ago, this is definitely a sign that times have changed. There are other signs also. Every so often the AANR office gets a call or e-mail from a member who encounters a problem with nude photography. For example, the member may have been questioned about photos dropped off at a developing lab. In fact, recently police queried some AANR parents after a film technician reported seeing their *clothed* child pictured in the presence of other nude people at a club event.

Sometimes the issue is publication. A person may be irate to find that his/her image went from the club bulletin board---perfectly okay with them---to *The Bulletin* (not okay). The availability of scanners, e-mail, Web sites, and online newsgroups make circulating images as simple as a few keystrokes, creating further questions and concerns.

What's a photographer, even the casual one taking pictures of a dream vacation, to do? On one hand, some argue that it would be easier just to discontinue all nude photographs. That would simplify things. But a picture is worth a thousand words, and images are an important part of explaining who we are and what we do. Just compare a brochure with all text, to one with a few well-chosen photographs. Moreover, for some of us there wouldn't be too many vacations in the family album if we couldn't include memories from excursions to our favorite AANR parks and conventions.

Before you click the shutter here are some guidelines that may assist you:

1. Obey club policy. Be sure to clarify with club management exactly what its policy is on photography and strictly follow rules. In many cases, clubs prohibit all cameras. Be forewarned: the very presence of *any* photographic equipment—including what's built into the new cell phones and PDAs—may get you ejected from the grounds or even lead the club to seek damages against you. Some clubs allow cameras, but limit use to your own friends and family in restricted areas. No one wants other guests to be uncomfortable, so every club prohibits photography of persons who haven't given permission.

2. Always get permission from those whom you photograph. It's best to limit these to

close friends and family. Pictures should always be tasteful and in context.

3. Obtain a written release. If your photo will be used in any medium like a club newsletter or *The Bulletin*, be sure to get a signed release form. Parents should sign one for youth, and youth pictures should be limited to officially approved club or regional events taken by an approved club/photographer familiar with the law. AANR members can access photo releases in the Download Zone section of the Member Benefits area at aanr.com.

4. Use only photo developers whom you fully trust. There have been instances of developers making copies of nudes for their own “scrapbooks.” There is also a concern about the photos being turned into “the authorities.” Then, regardless of the law, you may find yourself in a system that is unnerving, and possibly expensive, before you get out of it. There are photo developers listed in *The Bulletin*, which may be a start, but you should still contact them for their express policies. Digital cameras are another strong option. The March 2003 issue of *Popular Photography* magazine put it well, however, when the author wrote, “This eliminates concerns about developers, but it *doesn’t* change legal standards.”

5. When photographing children you must use an abundance of caution. Unless an officially approved club or regional photographer well versed in applicable laws, limit subjects to only your own children or grandchildren. Then, such pictures will generally be okay if there’s side nudity, bare backsides, or if the photos are in a context that provides a natural level of discretion. For example, in a picture of your young ones building sand castles, the sand and castles will provide some “cover.” Observing these guidelines will generally yield a better picture for your family album too, since images of people doing things are more interesting. If genitals appear in pictures, they should *never* be so prominent that they could be construed as the “central focus” of such pictures.

6. Be mindful of the difference in online situations. People who give consent to photographs in club newsletters may still very much object to being on your club’s Web site. One solution is to shoot Web-bound pictures from a distance so that faces are not recognizable, or as many clubs have done, show more rear nudity which adds a degree of anonymity.

7. Keep your membership up-to-date! Without your membership dues we can’t continue to work on your behalf in the courts, legislatures, and administrative agencies that would infringe on you. Please help us to keep helping you and other nudists in North America.

Your dues at work... As the cover of *The Bulletin* announces every month, AANR's mission is to promote, enhance, and protect nude recreation. In fulfillment of that mission, and because a picture is often the best way to express the essence of what we are about, the Association and its regions work hard to shape the legal landscape concerning tasteful nude photography and publishing. A few examples:

- In 1958, our predecessor, the American Sunbathing Association (ASA), argued the case of *Sunshine Press v. Summerfield* all the way to the U.S. Supreme Court. The Court held that the magazine *Sunshine and Health*, with its tasteful depictions of nude people was not obscene. Within weeks, the U.S. Postal Service agreed to extend second class mailing privileges to the publication.

- More recently, several states have tried to pass laws allowing individual counties and even the tiniest communities to set their own standards for what's considered "obscene." AANR and the Midwest Sunbathing Association teamed up with the American Library Association to stop one such bill in Illinois (HB 600). Five years ago a letter writing campaign and personal testimony from folks in AANR and AANR East helped stop Pennsylvania HB 739, which would have done the same thing.
- AANR's Legal Counsel Jawn Bauer returned to the state of Nebraska for two consecutive years in 1998 and 1999 to persuade lawmakers not to pass LB 1349. We dubbed this the "three tykes and you're out" bill. Introduced by Senator Kermit Brashear, the measure would have automatically branded any publication a work of child pornography if, regardless of context, it contained three or more depictions of the "full nudity of a child." In 2001 AANR and AANR East monitored a similar New Hampshire bill (HB 437) to be sure it didn't pass. Ironically, if either the Nebraska or New Hampshire bill were enacted, they would have arguably made criminals out of both President George Bush (who once included a few bare bottomed family photos during a White House correspondent's dinner speech and slideshow) and former Vice President Al Gore (whose book *The Spirit of Family* contains several very tasteful, but nude photos of families).
- In the late 1980s, then-AANR Legal Counsel Bob Page followed the case of *Massachusetts v. Oakes* to the U.S. Supreme Court. Bob authored a friend of the court brief explaining why blanket "no nude photography" rules without any look to whether they contained obscene elements posed a problem for nudists. Justice William Brennan actually cited Bob's work!
- Our more recent members may not be aware that during the famous hearings conducted by Attorney General Edwin Meese's commission on obscenity, the American Sunbathing Association (AANR's predecessor) had representatives on hand to present testimony from a nudist perspective. Their testimony became part of the official record.