

## Guide "Photos from the film set"<sup>1</sup>

*This practical guide was created in response to an increasing number of requests from beneficiaries to VdFS - Verwertungsgesellschaft der Filmschaffenden regarding the use of photos taken during film shoots. It is intended to provide a general introduction to the topic and to raise awareness of various legal issues. It cannot replace advice in individual cases.*

If you want to distribute individual frames or sequences from a film, images from a still photographer or your own photos from the film set, for example for your own website, Facebook presence or otherwise, you should first make sure that you are allowed to do so and that you are not infringing the rights of third parties. This is especially true if you did not produce the images yourself. It does not matter whether the pictures are snapshots or professional images, they are always protected by copyright.

Before exploiting photos (on the website, on the blog or also on Facebook but also any further exploitation), the **following potential rights holders** must always **be considered as** a matter of principle:

1. The **photographer**, he is the author of the photograph: if you want to use the photographs of a still photographer or also of a colleague, you have to obtain the consent (permission to use the work).

If you use frames from the film, the film production usually has the rights to the shot or the frame, see point 3. Only in rare cases do the rights lie with the cameraman.

2. The **person depicted** has a right to his/her own image: depending on the situation photographed and whether the person depicted is a celebrity or not, the legitimate interests of the person depicted may be violated when the photograph is disseminated. If frames from the film work are used, this is usually not a problem (see point 3.). If persons are depicted who are not otherwise in the public eye, their consent should be obtained in case of doubt before publication. However, celebrities also have protection against violation of their privacy and intimate sphere. Therefore, caution is also required when taking pictures away from the set or during breaks. If in doubt, ask before publishing (this can be e.g. posting on Facebook or Instagram).

3. The **film production**, as a rule, holds the exploitation rights to the film work and to all services rendered for it (such as costumes, etc.). If you want to exploit individual frames (or sequences) from the film work for your own purposes, you must obtain the rights from the film production. As a rule, the production company also represents the filmmakers involved, i.e. the authors (including the director).

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<sup>1</sup> Prepared by Dr. Harald Karl on behalf of VdFS Verwertungsgesellschaft der Filmschaffenden. This guide can only provide an overview of the legal framework and cannot replace obtaining professional legal advice in individual cases. Although this guide has been prepared with the greatest possible care, the author and VdFS assume no liability for the accuracy and completeness of this guide.

and camera) and actors. The same applies when photographing the performances of other creators (such as make-up or costume).

Whether rights must be obtained from all three of the above-mentioned rights holders or only from the production, for example, depends on the individual case.

### **Is it permissible to take photos on the set?**

The mere taking of a photograph on a film set for private purposes is generally unobjectionable, insofar as and as long as this photograph is not further disseminated and, in exceptional cases, the legitimate interests of the person depicted are not affected (such as privacy) or the taking of photographs has been contractually prohibited (e.g. in the employment contract).

Only in the case of further use of an image, for example on one's own website, Facebook account or other reproduction, is care required. If the photos are your own, the rights of the persons depicted must be observed in any case.

Caution: Before any use (e.g. on Facebook or your own website) without obtaining permission from the film production, you should check any employment contract or contract for work (if you are part of the team). In this contract, you are often subject to a special confidentiality obligation, which may prohibit the production of the recording or any distribution.

### **Use of photos from the WWW**

Even when using photos (works of photographic art or simple light images) from the Internet for one's own website, show reel, etc., the rights of the photographer (producer of the light image) or the aforementioned rights holders must be observed and appropriate permission (reproduction, distribution, making available to the public, etc.) must be obtained. Only if the images are explicitly released for further use is further exploitation possibly permitted. Simply citing the source (rights holder and year of publication) is not sufficient. However, it is permissible to link to another page, provided that the photograph is not obviously published illegally on this page.

The copying or printing of photographs is generally permitted within the scope of reproduction for personal use, provided that only individual copies are made (e.g. for one's own presentation folder). However, any further exploitation (e.g. placing on the Internet) requires the consent of the copyright holder.

However, there are exceptions in the context of the right of quotation: here the image is used as evidence of one's own statement, for example in the context of a scientific discussion (e.g. a scientific discussion of a certain topic in a film-specific blog - here the end justifies the means). Provided that the source is cited, this may well be permissible.

## How are rights transferred?

The law does not provide for any particular form; the granting of permission to use the work can be oral, written or even implied (conclusive). In the event of a dispute, however, the user must prove that he or she had the necessary consent. In any case, it is advisable not to rely solely on goodwill, but to document any consent obtained. This can also be done by sending a short e-mail or SMS. If consent is obtained from the film production, this should at least be done by correspondence (e-mail is sufficient).

In any case, if you are hired for a production, it is advisable to get assurances right from the start that you can use official set photos or press photos for your own website or presentation folder, for example.