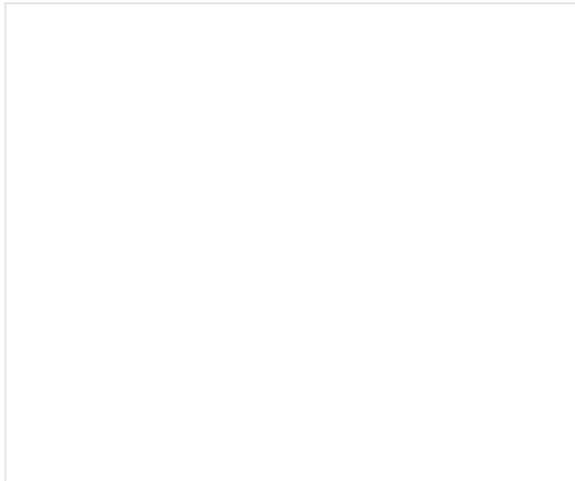


If You Ask Your Friend to Take Your Photo Using Your Camera, Who Owns the Copyright?–Shah v. NYP

January 25, 2023 · by [Eric Goldman](#) · in [Copyright, Licensing/Contracts](#)

Vivek Shah attended several Hollywood parties. While there, he preset the settings on his phone camera (including shutter speed, white balance, ISO, metering type, and exposure value) and asked friends or bystanders to use his phone to take photos of him with celebrities. He posted the photos to Facebook and his IMDB page ([this one?](#)). In 2012, the FBI arrested Shah for extortion, which sparked news coverage. The media entities republished 20 photos he uploaded to Facebook and IMDB and misattributed the photo credits. After he was released from jail, he got copyright registrations for the photos and sued (pro se) the media entities for copyright infringement, 1202 violations, and more. Here’s an example of a subject photo from his complaint (which, based on this ruling, I’m now confident he can’t sue me for; plus fair use), with some pretty obvious photography flaws:



His copyright claims raise a simple but troubling question: who owns the photos taken with his camera? We know that he doesn’t have any copyright in the photos just because he appears in them (that would be [an Innocence of Muslims redux](#)). Instead, either he owns the photos because he owned the equipment and directed its usage, or the friends/bystanders owns the photos because they pressed the button. The court says:

” Shah alleges that he gave the camera to another individual to take each photo. Because those individuals, not Shah, captured the photographs, they are the “author[s] ... who actually create[d] the work[s]” and would be entitled to copyright in those photographs. Shah has thus not alleged that he is the sole author of any of the photographs.



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Shah can't be a joint owner because he claims he wanted the copyrights for himself, which disproves the intent to make a joint work. (That's a bit of tricky logic, but it checks out).

Shah argued that the copyrights transferred to him "by operation of law" when the friend/bystander handed back the camera. The court says that's not what "by operation of law" means.

Shah pointed to his copyright registrations as evidence of his ownership, but the court says the allegations in his complaint show that he was never entitled to register the copyrights (i.e., he's not the sole or joint owner).

As a result, the court dismisses the copyright claim. The 1202 claim falls alongside it.

The court isn't blind to the potentially significant policy consequences of its conclusions. In a footnote, it says (emphasis added):

” Shah's claim raises an interesting question: who should hold copyright in a photograph when the photographer only takes the photo upon being asked? **The law, with strict requirements for joint authorship, does not reflect the current circumstances surrounding cellphone photo etiquette.** Nonetheless, Shah has not alleged authorship under current Seventh Circuit law and the Court dismisses his copyright infringement claim.

(To be clear, joint copyright ownership of photos like these could be a policy disaster, so I don't share the judge's lament on that front).

Implications

This is surely not the last word on the subject because Shah litigated pro se. For a more convincing ruling, we need to see how a well-trained copyright litigator navigates this legal issue.

Still, its implications are wide-ranging. The court is basically saying that whoever presses the camera button owns the copyright, even if the button-pusher doesn't own the equipment, the camera settings are provided to them, and they get some verbal direction from the camera owner/photo subject about when, where, and how to take the photo. Due to that conclusion, Shah does not own the copyrights to the photos on his phone and he can't register the copyrights or enforce them. This raises an obvious corollary: at most, Shah has a non-exclusive license to those photos, so what are the terms of those licenses and could Shah potentially infringe the owners' copyrights by posting them?

This case covers similar ground as the uncited [Hubay v. Mendez](#) case, which involved a group photographer documenting the group's activities at the group's request. The court held that the photographer, and not the group or other members, held the copyright, so the group's posting of the photos to social media could infringe. This case extends that principle further to one-to-one requests that friends or bystanders take photos on the spot.

According to these legal principles: if you ask someone to take a photo on your phone, and you want to own those photos so you can sue over any unwanted uses of the photos, you need the button-pusher to sign a written agreement transferring their rights to you. As I joked (?) in my [Hubay](#) blog post, "when I'm on vacation, I always carry a stack of blank written releases that I get strangers to sign before taking my photo." The court properly notes such requests would deviate from social etiquette, plus they would require a level of legal sophistication far beyond most cellphone owners.

Though the court doesn't have cross words for the media defendants, this apparently is another example where media publishers treated publicly available photographs as public domain photographs. We now know that even if they had approached Shah for consent to republish the photos, his permission may not have been sufficient—his ability to consent would depend on the uncertain scope of the implied non-exclusive licenses he has with each photographer; plus, if the photographers are strangers, their photos functionally became orphan works. However, the fact the publishers didn't ask at all could be a defect in their rights clearance process. Perhaps they have a fair

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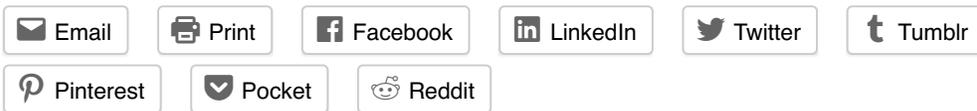
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use defense that would negate their need to request permission, but who knows?

Shah has already appealed the ruling to the Seventh Circuit. He won't get much traction there, though this could be an interesting opportunity for amici intervention.

Case Citation: Shah v. NYP Holdings, Inc., 2023 WL 266511 (N.D. Ill. Jan. 18, 2023). The [complaint](#).

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