

If pictures of other people are taken for reporting and documentation and, a declaration of consent by the person or the legal guardian is usually mandatory in advance.

## IMAGE RIGHTS IN CLUBS AND FOR COMPETITIONS

This is a general recommendation for action that has been drawn up to the best of our knowledge.

## PUBLICATION WITHOUT CONSENT VERSUS DATA PROTECTION

The Art Copyright Act states:

- \_1\_ **People of Contemporary History** - i.e. political, social, economic and cultural life - such as athletes may be photographed without consent.
- \_2\_ **When people are used as "accessories"** can be seen in the photo – i.e. are not the reason why the photo was taken – and the message of the picture would not change in the slightest, if these people were not there, then they do not have to be asked for permission.
- \_3\_ In addition, people on **public events** can also be depicted without a declaration of consent.

Since 2018, the new **General Data Protection Regulation (GDPR)** has been in force, which prohibits the collection, storage, processing or transfer of personal data. Personal data includes, among other things, all data that enables the assignment and identification of individuals – in other words, including photos.

However, the collection, storage, modification or transmission of personal data or their use is permissible if this is necessary for the fulfilment of the purpose of the **association**. The organization, documentation and reporting of and about competitions, (winner) ceremony and, for example, team line-ups in the form of team photos **serves the purpose of the association**.

## PICTURES OF COMPETITIONS | MATCH DAYS

**Match days** are public events at which the people present may be photographed and the pictures may be published without a declaration of consent, because the organization, documentation and reporting of and about the match day serves the purpose of the association. Accordingly, the production and publication of pictures of large groups of **people as well as active athletes** for reporting on the match day at public match days (Federal Court of Justice, judgment of 28.9.2004 -VI ZR 303/03).

## AWARD CEREMONIES AND TEAM PHOTOS

If images are to be published in which the focus is on people, it is advisable to obtain a declaration of consent in case of doubt. A declaration of consent does not necessarily have to be in writing but can also be oral or implied. An implied declaration of consent is given if a person's actions indicate that he or she agrees to the taking and publication of the images. If an athlete smiles at the camera at an award ceremony or during a team photo, then the consent has been implicitly given.

## DECLARATION OF CONSENT FOR MINORS

For the making and publication of pictures in which children can be seen, the consent of the guardians must be obtained. It could be argued that the mere permission of the legal representatives for the minor to participate in a sporting event of a club also gave their implied consent to publication. However, this is controversial in the literature, so that the consent of the respective legal guardians should be obtained before publishing an illustration. Ideally, this should be done in writing, but at least via the call for applications, which makes it clear that registration and participation also mean consent to publication.

In addition, the child's declaration of consent must also be obtained if he or she has the necessary insight that he or she understands the meaning and scope of the publication of the pictures – this is to be assumed from the age of 14, although implied consent can also be assumed here.

## RIGHT TO ONE'S OWN PHOTO

Each person has the right to their own image and may decide for themselves whether they want to be photographed and whether the pictures may be published. Exceptions to this are the three situations mentioned above (see publication without consent). Nevertheless, as an association, we will comply with the request of a person who does not want to be photographed and/or does not want the pictures to be published as soon as possible.

## PROTECT INTIMATE AND PRIVACY

In addition, the intimate and private life of the people depicted must be protected.

**IN ORDER TO PROTECT CHILDREN IN PARTICULAR, PHOTOS IN WHICH CHILDREN CAN BE SEEN SHOULD BE AVOIDED AS FAR AS POSSIBLE.**