



**Restrictions on the Right to Take Photographs** - It is often said that there is "no law against taking a photograph", but in fact there are many legal restrictions on the right to take a photograph, so it would be more correct to say that one is free to take photographs except when the law provides otherwise.

This is intended to provide a short guide to the main legal restrictions on the right to take photographs and the right to publish photographs that have been taken. It is not an all-encompassing discussion of the law, and any photographer faced with unusual circumstances or specific difficulties should take legal advice.

**Private Property** - Owners of property do not normally have the right to prevent someone from taking photographs of their property from a public place such as a public highway, (though see below for issues of national security). There is also no general restriction on taking photographs while on private property, provided the photographer has permission to be on the property. However, the owner has the right to impose whatever conditions he wishes on entry to his property, including a restriction on photography. Photography is prohibited by the conditions of entry to many museums and stately homes, for example, and by most concert venues.

A person who enters onto private property without permission commits a trespass, as does anyone who "interferes" with the property. Interference could be something as minor as climbing on the landowner's wall to take a photograph over the wall or resting a camera on a fence. If a person has permission to enter property on the condition that he does not take photographs, but he ignores the condition, he becomes a trespasser as soon as he takes a photo. Even where property is open to entry by the public in general, as in the case of most business premises, the owner or occupier has the right to demand that a photographer cease taking photographs and the right to demand that he leave the premises.

In England and Wales, any unauthorised entry on to privately owned land, or buildings or structures attached to land, is a trespass, regardless of whether any damage is done to the property. This is not a criminal offence in most circumstances, but the landowner can sue for damages for trespass even if no physical damage has been caused.

There is a perception that, in Scotland, there is no law of trespass. This is incorrect, but damages can only be claimed if actual damage has been caused. In all three jurisdictions, a landowner can seek an injunction (interdict in Scotland) to prevent an individual from continuing to trespass. In theory, a court could also make an order preventing the publication of photographs taken while trespassing, but the UK courts have been reluctant to do this.

Property owners have limited rights of self-help against a trespasser. An occupier can use reasonable force to prevent a trespasser entering his property and also to remove a trespasser who refuses to leave. A violent attack would be unreasonable, as would threatening someone with a gun or other weapon. The same rules apply to security guards, bouncers and the like; they are acting as agents of the owner or occupier of property and they too can only use reasonable force. Neither the property owner nor his employees have any right to confiscate or damage a photographer's camera or other equipment, or to demand film or the deletion of memory cards. In practical terms, though, a photographer who is trespassing would be best advised to leave when asked; just because a landowner isn't allowed to use violence doesn't necessarily mean that he won't.

Legislation has given the public certain rights to access private property. In England and Wales, the Countryside and Rights of Way Act 2000 created access rights to certain areas of open country and coastline. Maps are available that show the areas where access is allowed. There are various restrictions on the use of access land and they include any activity organised or undertaken for any commercial purpose. Thus, photography would be permitted, but commercial photography would, in theory, not be. In Scotland, the Land Reform (Scotland) Act 2003 provides much wider rights. There is a right of access to all land, inland waterways and foreshores for certain activities. Photography, whether for recreation or profit, comes within the permitted activities. Access rights do not extend to buildings or structures or the land immediately surrounding them; photographers will not, for example, have the right of access to the garden of a suburban house. Also excluded is land that has been developed for a

particular recreational purpose, such as sports fields and golf courses.

It is a criminal offence, punishable by a fine, to trespass on some property, notably railways, aerodromes, military bases and places where explosives are manufactured and/or stored. A photographer who enters onto these kinds of premises without permission is liable to be arrested.

**Restrictions on Photography in Certain Public Places** - There is a prohibition on taking photographs in Trafalgar Square and Parliament Square in London. The prohibition only applies to photographs taken in connection with any business, profession or employment, so that tourist photographs, for example, would be allowed. It is possible to take photographs in the Squares for business purposes, provided written permission is obtained from the Greater London Authority. A hefty fee is payable.

The same prohibition (on commercial photography) applies in the Royal Parks. Again, permission can be obtained and a fee is charged.

**Harassment and Invasion of Privacy** - It is illegal to harass another person and taking photographs could amount to harassment. This isn't to say that someone could claim they were being harassed just because they were being photographed when they didn't want to be. Harassment is essentially behaviour that causes another person alarm or distress and it refers to a course of conduct, not a single incident. (A "course of conduct" means at least two occasions.) If a photographer stalks a subject in order to get a photograph of them, or repeatedly thrusts a camera in someone's face, this might be harassment.

In England, Wales and Northern Ireland, harassment is a criminal offence, for which the penalty is up to 6 months in prison, or a fine, or both. A victim of harassment can also ask for an injunction to prevent further harassment and bring a claim for damages. Breaching an injunction is also a criminal offence.

In Scotland, harassment itself is not a criminal offence, but the victim can ask the court for a "non-harassment order" against the person who is harassing him. Breach of the order is a criminal offence. In addition, a person who harasses another might be charged with breach of the peace, which is a crime in Scotland. Breach of the peace, unlike harassment, requires only a single incident.

The law surrounding invasion of privacy has developed rapidly in recent years. Article 8 of the

European Convention on Human Rights gives everyone the right to respect for his private and family life, his home and his correspondence. The Convention rights are taken into account by the UK courts in determining any cases that come before them. As this area of the law is changing and developing, it is hard to be certain about what will and what will not amount to an infringement of Article 8.

The use of long lens to take a photo of someone in a private place, such as their home, without their consent, is an invasion of privacy even though the photo is taken from a public place.

For images of people in public places, the key seems to be whether the place is one where a person would have a reasonable expectation of privacy and the courts have greatly extended the areas where this might be the case. A court has held that the right of privacy of a child might be infringed by the taking and publishing of a photograph of him with his parents in a public street. Privacy actions in the UK have been concerned with publication rather than simply the taking of a photograph, but a recent decision of the ECHR suggest that simply taking a photograph may, in some circumstances, infringe the right. Photographers are therefore advised to be careful when taking photographs intended for some kind of publication, even when the subject is in a public place. Photographs taken of people at public events are probably still permissible, at least for the present. The general advice is to get consent, and preferably written consent, wherever possible. Failure to obtain a signed model release will certainly impair the commercial use of an image, because many photo libraries, stock agencies and the like will not accept an image of a recognisable person without a release.

Photographs of people may also be subject to the Data Protection Act, which controls the "processing" of "personal data", that is, data relating to an individual and from which the individual can be identified. There has not yet been a court case that has determined whether or not an image of a person, without any other identifying information, would be caught by the Act, so photographers should be aware of the possibility. The Act also contains an exception for processing undertaken with a view to publication of any journalistic, literary or artistic material, if certain criteria are met.

**Photographs of Children** - The law relating to harassment, invasion of privacy and data protection applies in the same way to children as to adults, but

a child does not have the legal capacity to consent and a parent or guardian must consent on his behalf.

It is a criminal offence to take an indecent photograph of a child under the age of 18 or to make a photograph that appears to be such (e.g. by pasting an image of a child's head on an image of a nude adult body).

The Editors' Code provides that journalists must not interview or photograph a child under 16 on subjects involving the welfare of the child, or other children, without the consent of the parent of the child.

A child under 16 cannot be used as a paid model unless a licence is obtained from the local authority.

It is not illegal as such to photograph children in a public place, however in some circumstances it will almost certainly draw the attention of the police and may result in the photographer being investigated. In Scotland it may be treated as a breach of the peace. It is advisable to get at least verbal consent from the parents wherever possible.

Many organisations and local authorities involved in children's sporting and other activities have, as part of their child protection policies, strict rules about photography at events. It is worth inquiring about the policy before attempting to take photographs at such events, even if you are the parent of a child taking part.

**Obstruction and Public Order** - It is a criminal offence to obstruct free passage on the highway and this includes footways and cycle paths as well as roads. Whether a photographer will be treated as causing an obstruction depends on the reasonableness of his behaviour. Setting up a tripod in a busy street is obviously likely to cause an obstruction. The police will usually initially ask the photographer to move along rather than arrest him, unless his behaviour is persistent.

Another obstruction offence is that of obstructing a police officer in the execution of his duty. This basically means doing anything that makes it more difficult for the police to carry out their duties effectively. Getting in the way of the police while trying to photograph an incident, for example, would be obstructing them.

Photographers who are shooting incidents such as riots and illegal demonstrations should take care that the police don't confuse them with the participants. The best advice is to stay calm, don't

argue and move further from the scene if requested to do so by the police. Refusal might lead to an arrest for obstruction.

**National Security** - In recent years, sensitivity over issues of security and prevention of terrorism has been very high. This has led to photographers being confronted by police when taking photographs of subjects that previously would not have been thought of as particularly sensitive.

Two areas of the law might come into play to restrict the right to take photographs of certain places. The first is the Official Secrets Act 1911. This makes it an offence to take a photograph of a "prohibited place" where this might be useful to an enemy. The term "prohibited place" encompasses a great variety of places.

In practice, however, anti-terrorism legislation is likely to be a much bigger problem for photographers than the Official Secrets Act.

Section 44 of the Terrorism Act 2000 gives the police wide powers to stop and search anyone for "articles of a kind which could be used in connection with terrorism" regardless of whether they have reason to suspect that the presence of such articles. They also have the power to seize any such article, if found. Section 44 powers, which can also be exercised by PCSOs in the presence of a constable, only apply in areas where an "authorisation" has been given. Photographers should be aware that some authorisations cover wide areas and have been continually renewed for a long time.

The Act also makes it an offence to take or possess a photograph containing information likely to be useful to a person committing or preparing an act of terrorism (s.58) And since February 2009, it is an offence to elicit or attempt to elicit information about anyone who is or who has been a member of the armed force, the police or the intelligence services, where this is of a kind likely to be useful to a person committing or preparing an act of terrorism (s.58A).

Some police officers appear to take a fairly broad view of "information likely to be useful", but courts have been rather more restrictive in their interpretation of s.58.

It is in a photographer's best interests to cooperate with the police if they approach him when he is taking photos in an area that might be regarded as sensitive. While it might be irritating to be

subjected to questions and/or have a camera bag or vehicle searched, failure to cooperate might result in detention for several hours at a police station.

**Court Proceedings** - It is a criminal offence to take a photograph in a law court, and an additional offence to publish any photo taken in a court. The penalty is a fine of up to a maximum of £1,000. This restriction extends beyond the courtroom itself to anywhere in the building and to "the precincts of the court", i.e. the surrounding area. The extent of "the precincts of the court" is not defined anywhere and the authorities often turn a blind eye to photography outside the court building.

Tribunals of Inquiry are not covered by the prohibition on taking photographs in court, and it is up to the individual tribunal to decide whether it will allow photographs of the proceedings.

Be aware that, even when it is legal to take photographs it might not be legal to publish them. There are restrictions on the publication of photographs of people involved in legal proceedings, even when these are taken away from the court, if they would prejudice the course of justice, endanger a witness or identify the victim of a sexual offence. It is an offence to publish any image of a young person under 18 who is involved in any legal proceedings, whether as a party or as a witness. The court can, by order, lift these restrictions.

**Wildlife** - Many wild animals, including insects, and birds are protected by the Wildlife and Countryside Act 1981. There is no restriction on taking photographs of any animal or bird, but the Act makes it an offence to "disturb" some species when they are at or near their nesting places or places of shelter. This includes disturbing them by taking photographs of them. To photograph protected species at or near their nests or places of shelter, a photographer must have a licence from the relevant authority: English Nature, Scottish Natural Heritage or the Countryside Council for Wales.

A full list of protected birds can be found at <http://www.naturenet.net/law/sched1.html> and a full list of protected animals at <http://www.naturenet.net/law/sched5.html>

**Copyright and Trademarks** - It will sometimes be an infringement of copyright to take a photograph of a work that is protected by copyright.

Copyright is infringed by making a copy of all or a substantial part of a copyright work, without

the consent of the copyright owner. It would therefore be an infringement of copyright to take a photograph of a copyright protected art work, or a photograph of a photograph. It isn't an infringement of copyright to take a photo of, for example, a particular landscape or building even if the same view has been photographed many times before. Each photo would be regarded as an independently created work. But it might be infringement of copyright to deliberately set out to recreate another photographer's photo.

Copyright is not infringed by the incidental inclusion of a copyright work in a photograph. For example, copyright would not be infringed by a photograph of a street scene in which there was advertising material on display, but this was not the main subject of the photo.

It is not an infringement of copyright to take photographs of buildings, sculptures and works of artistic craftsmanship that are permanently situated in a public place or in premises that are open to the public.

**Bank Notes** - Taking photographs of UK bank notes is an offence unless permission has been given in writing by the "relevant authority". The relevant authority for English notes is the Bank of England, and for Scottish and Irish notes the relevant authority is the bank that issued the notes.

Linda Macpherson 30<sup>th</sup> March 2009

**Disclaimer** - While care has been taken to ensure that the information contained in this guide is accurate as of 30<sup>th</sup> March 2009, it does not provide a comprehensive in-depth discussion of the relevant law. The information it contains is of a general nature and is not intended to be legal advice. The guide is provided without warranty as to the accuracy of the information it contains, and users are urged to consult a solicitor in respect of any specific legal problems they might encounter. The author, publisher and distributor of this guide will not be held responsible for any loss suffered by any person that is directly or indirectly attributable to reliance on the information contained in this guide.

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