

What do photographers need to know about the law?

1, Introduction.

Four preliminary points:

- These notes summarise the law in England and Wales. The law in Scotland and Northern Ireland (and all other countries) is different.
For an American take on this, see The Photography is Not a Crime web-site <https://newsmaven.io/pinacnews/>
- These notes summarise the law, not photographic ethics. They are two very different things. It may be legal to photograph someone or something, but unethical to do so. On the other hand, it may be that it would be ethical to photograph someone or something, but the law prohibits it. It is important to appreciate that there is a difference between law and ethics.
- The law can be complex. There are frequently exceptions to laws. These notes cannot cover all situations. If in doubt get advice.
- In England and Wales, unlike many other European countries, there is no penal code and no civil code. The law is contained in Acts of Parliament (laws passed by Parliament), Statutory Instruments (also laws passed by Parliament), Bye-Laws (often local laws, passed for the benefit of public or quasi-public authorities – such as Transport for London) and case law (decisions of the higher courts which can interpret existing law or (rarely) make new law). English and Welsh law has to be interpreted having regard to the European Convention of Human Rights (Brexit would not affect that.)

2, Taking photographs

There are two different kinds of law which may be directly relevant to photography.

- Criminal law. This is the law which The State uses to enforce societal norms by punishing offenders – e.g. murder, rape, causing grievous bodily harm, robbery etc are criminal offences. Breach of the criminal law is a criminal offence. Offenders may be arrested and prosecuted by the police/Crown Prosecution Service. If tried and convicted (or they plead guilty), offenders may be imprisoned, fined or have other penalties imposed.
- Civil law. Civil law covers relations between private individuals and/or between companies and/or The State. There are many, many examples – e.g. contract, duty of care/negligence, trespass, copyright, consumer law, landlord and tenant law etc. Civil liability may give rise to the award of damages (i.e. compensation) to another person, a declaration (as to the legal relationship between parties) or an injunction (a court order that someone must do or not do something.)

There may be an overlap between criminal and civil law. (e.g. Driver A drives dangerously and injures pedestrian B. The police may prosecute A for dangerous driving. A criminal court may sentence A to imprisonment or a fine and will probably ban A from driving for a period. B may want compensation for his/her injuries and financial loss. S/he may sue A in a civil court to obtain damages. They will probably be paid by A's insurer.)

There is no “civil party” in English and Welsh criminal proceedings.

Despite the possible overlap, it is important to consider criminal and civil law separately.

3, Criminal Law

When/where can you be arrested for photographing?

In England and Wales, it is legal to do anything, unless there is a specific prohibition. So, the bottom line is that it is legal to photograph unless there is a law which makes it a criminal offence to do so.

See Met (London) Police Guidance

<https://www.met.police.uk/advice/advice-and-information/ph/photography-advice/>

See ACPO Guidance

https://www.theiac.org.uk/resourcesnew/filming-in-public/ACPO_Guidance_PhotosPublicPlaces.pdf

<https://www.npcc.police.uk/Publication/NPCC%20FOI/Information%20Management/221%2015%20Guidance%20for%20Photographers.pdf>

The following are some examples of situations where photography may amount to a criminal offence:

- Prohibited places. Under the Official Secrets Act 1911, it is a criminal offence to take photographs of prohibited places if they could be useful to an enemy or are taken for a purpose prejudicial to the interests of the State. “Prohibited places” include defence establishments, Crown factories, dockyards, ships or aircraft, munitions stores, places belonging to the Civil Aviation Authority, telecommunications offices, or other designated prohibited places. Generally, there are notices or signs stating that somewhere is a prohibited place. (Official Secrets Act 1911)
- Courts. Taking, attempting to take, or publishing any photograph or sketch taken in a court room, court building, or the precincts of a court building, or of anyone entering or leaving the court building or precincts is a criminal offence. (Criminal Justice Act 1925 s41.)
- Indecent images of children. Making, possessing or distributing indecent images of children is a criminal offence. For this purpose, a child may be anyone under 18. There are complex definitions of what is indecent. There are some defences. (Protection of Children Act 1978 s1, Criminal Justice Act 1980 s160 and Coroners and Justice Act 2009 ss62 to 66).
- Extreme pornography. Making, possessing or distributing extreme pornography is a criminal offence. An “extreme” image is one which threatens a person’s life, results in or is likely to result in serious injury to a person’s anus, breasts or genitals, involves sexual interference with a corpse or sexual activity with an animal. (Criminal Justice and Immigration Act 2008 s.63).

- Sexual assault complainants. People who complain that they have been the victims of certain sexual offences are entitled to lifetime anonymity. Publishing a photograph of such a person may be a criminal offence. (Sexual Offences (Amendment) 1992 s.1)
- Byelaws. A byelaw is a local Act which may make certain things in particular places a criminal offence. For example, Transport for London byelaws prohibit the use of flash or tripods in underground stations. TfL also has restrictions relating to professional filming. Breach of bye-laws is generally less serious than other criminal offences. It is not possible to be arrested for breach of a bye-law (a paper summons would require someone to attend court) and an offence is likely only to result in a fine.

This is not (and cannot be an exhaustive list).

Other criminal offences which may be relevant when photographing

- An assault. Any act whereby a person intentionally or recklessly causes another to apprehend immediate unlawful personal violence or actual physical violence..
- Obstruction of the highway. Blocking a road or pavement and refusing to move on.
- Criminal damage. Intentionally or recklessly damaging property.

In most circumstances, if the police have a reasonable suspicion that a criminal offence has been committed, they may arrest the suspected person. It is also likely that they will be able to seize any camera, memory card or film, as evidence, which may, or may not be returned after court proceedings. The police have no right to destroy anything (camera, film, memory card) without either the agreement of the owner or a court order.

The following situations are unlikely to be criminal offences

- Photography on private premises. This is not generally a criminal offence, but land owners may be able to prevent photography – see Civil Law below.
- The Terrorism Act The Terrorism Act 2000 does not (with one exception) make it a criminal offence to take photographs. Under section 43, police officers have the power to stop and search a person who they reasonably suspect to be a terrorist. The purpose of the stop and search is to discover whether that person has in their possession anything which may constitute evidence that they are a terrorist. Under that section, officers have the power to view digital images contained in mobile telephones or cameras carried by a person searched under s.43 to discover whether the images constitute evidence that the person is involved in terrorism. Officers also have the power to seize and retain any article found during the search which the officer reasonably suspects may constitute evidence that the person is a terrorist. This includes any mobile telephone or camera containing such evidence. Officers do not have the power to delete digital images or destroy film at any point during a search. Deletion or destruction may only take place following seizure if there is a lawful power (such as a court order) that permits such deletion or destruction. Section 58A makes it a criminal offence to elicit, publish or communicate information about members of the armed forces, intelligence services or police where the information is, by its very nature, designed to provide practical assistance to a person committing or preparing an act of terrorism.

Three points to note;

- a. It is not as a general rule a criminal offence to photograph police officers;
 - b. Section 43 only applies to police officers – not to security guards; and
 - c. Section 44 has been repealed.
- Children. It is not a criminal offence to photograph children. However, children should not generally be photographed in public without their parents' permission and even then, care should be exercised. The Independent Press Standards Organisation, the independent regulator of most of the UK's newspapers and magazines, *Editors' Code of Practice*, states:

6. *Children

- i) All pupils should be free to complete their time at school without unnecessary intrusion.
- ii) They must not be approached or photographed at school without permission of the school authorities.
- iii) Children under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents.
- iv) Children under 16 must not be paid for material involving their welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.
- v) Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life.

7. *Children in sex cases

The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.

In any press report of a case involving a sexual offence against a child -

- i) The child must not be identified.
- ii) The adult may be identified.
- iii) The word "incest" must not be used where a child victim might be identified.
- iv) Care must be taken that nothing in the report implies the relationship between the accused and the child

<https://www.ipso.co.uk/editors-code-of-practice/#Children>

The Code of Practice is not law, but it should be followed.

- Up-skirting. Not currently a criminal offence, but there have been attempts to introduce legislation to make it a criminal offence.

General advice

Be polite but firm and confident.

Be ready to show some form of identification.

If someone objects to photography, perhaps suggest that *they* call the police.

Explain to the police what you are doing and why.

Don't forget ethical considerations.

4, Civil Law

Even if it is not a criminal offence, when can someone else stop you from photographing?

There is no civil (i.e. non-criminal) law which prevents a photographer taking photographs in a *public* place.

There are two possible restrictions relating to taking photographs in *privately* owned places:

- Photography forbidden. An owner may forbid the taking of photographs on privately owned property – either (i) as published rules or conditions of admission (e.g. a theatre prohibits photography during a performance); or (ii) the owner or his/her authorised representative may object and insist that the photographer leave the property. If permission to be on property is revoked, the photographer becomes a trespasser and the owner/representative may use reasonable force to eject “the trespasser”.

There is in general no right to seize the photographer’s camera. The camera remains the photographer’s property.

This kind of situation may give rise to civil court proceedings – e.g. to claim damages (compensation).

It is safe to start by assuming that, in the absence of any sign or other information to the contrary (e.g. conditions of entry on the back of a ticket), photography is permitted in a privately-owned place to which the public are allowed access, but be ready to accept instructions to stop photographing if told the contrary. The worst that can happen is that someone asks you to stop photographing and/or leave.

Practical consideration. Is it best to ask for permission in advance?

- Human Rights. Article 8 of the European Convention of Human Rights provides (1) Everyone has the right to respect for his private and family life, his home and his correspondence.” Breach of this provision, which is enacted into English and Welsh law by the Human Rights Act 1998, may give rise to a right to damages/compensation.

https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf

See e.g. *Cliff Richard v BBC*

<https://www.judiciary.uk/judgments/sir-cliff-richard-obe-v-bbc/>

<https://www.theguardian.com/music/2018/jul/18/cliff-richard-wins-damages-from-bbc-over-police-raid-footage>

<https://www.bbc.co.uk/news/uk-44963548>

and

Ali v Channel Five (Can’t Pay, We’ll Take It Away case)

<https://www.judiciary.uk/wp-content/uploads/2018/02/ali-v-channel5-judgment.pdf>

<https://www.theguardian.com/media/2018/feb/22/couple-filmed-evicted-channel-5-tv-show-win-damages-high-court>

5, Ownership of images

The starting point is that a photographer owns the photographs which s/he takes.

Unless there is agreement to the contrary, the subject of a photograph has no right to the image.

That means that generally (and assuming there is no breach of the civil law provisions set out above) the photographer is free to do whatever s/he wants with the image.

That is known as copyright (literally the right to copy).

However, the position may be varied by agreement/contract.

So, for example, terms of employment for a photographer may provide that the employee assigns (transfers) the copyright to the employer or someone else. In that situation the other person (employer, assignee) has the right to do whatever s/he wants with the images.

6, Defamation

A statement is defamatory if its publication causes or is likely to cause serious harm to the reputation of another; “libel” if in a permanent form (e.g. written, in the media or on the internet); “slander” if spoken.

It is rare for a photographic image by itself to be defamatory, but a caption to an image may be defamatory.

A defamatory statement may give rise to a substantial claim for damages (compensation) and legal costs.

7, Third party liability

The law can be complex.

There are, potentially, many risks in any work (including photography) which could give rise to a civil liability to pay compensation.

The best practical advice is to ensure that you have public liability insurance.

8, And finally ...

... if in doubt, get advice.

9, Sources

McNae’s Essential Law for Journalists

Frances Quinn Law for Journalists

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