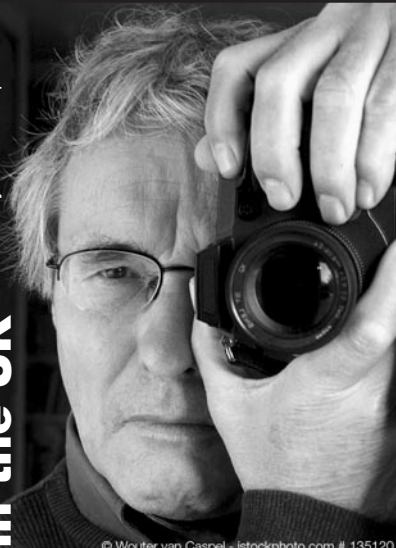


Photographers' Rights in the UK

by Linda Macpherson



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Restrictions on the Right to Take Photographs

Some years ago, it was said in a judgment that there is "no law against taking a photograph". This implies a general freedom to take photographs that, sadly for photographers, does not really exist. There are, in fact, many legal restrictions on the right to take a photograph, and 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.

Some of the restrictions here are absolute prohibitions, while others are dependent on circumstances.

Private Property

Owners of property do not normally have the right to prevent someone from taking photographs of their property from a public place. 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.

The law of trespass in Scotland is different from that in the rest of the UK. 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. In Scotland, there has been a general and not strictly accurate perception that there is no law of trespass. The confusion will be cleared up to some extent from autumn 2004 when new laws come into force giving rights of access to all land, inland waterways and foreshores for certain activities. Photography, whether for recreation or profit, fits within the definition of 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 from access is land that has been developed for a particular recreational purpose, such as sports fields and golf courses.

In most circumstances, trespass is not a criminal offence. In England and Wales, a person can be sued for damages by the landowner purely for trespassing. In Scotland, damages can only be claimed if the trespasser caused some physical damage. A landowner can also 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 generally been reluctant to do so.

Property owners have only very limited rights of self-help against a trespasser. An occupier can use reasonable force to prevent a trespasser entering his property and reasonable force to remove a trespasser who is on his land and who refuses to leave. But the law is very strict about what constitutes reasonable force and almost any violent attack would be unreasonable, as would, say, 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. 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.

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 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.

Once again, the law is not the same throughout the UK. 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 bring a legal action for an injunction against the person who is harassing him, and a claim for damages. Breaching the 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.

Invasion of privacy is a difficult thing to determine in

UK law. The UK has never recognised a general right of privacy, but the European Convention on Human Rights gives everyone the right to respect for his private and family life, his home and his correspondence. It is not always easy for a photographer to know whether taking or publishing a photograph might amount to an invasion of privacy.

Taking photographs of a person in a public place would not normally be regarded as an invasion of privacy. The key seems to be whether the place is one where a person would have a reasonable expectation of privacy. Using a telephoto lens to take a photo of someone in a private place, such as their home, without their consent, is probably an invasion of privacy even though the photo is taken from a public place.

The lack of any coherent law of privacy in the UK means that photographers are not only free to take photographs of people in public places, but they can use those photos as they wish, including for commercial gain. In some countries, individuals have rights over the commercial use of their images, hence the importance of obtaining a model release for the use of an image that contains a recognisable person. UK law does not, at present, recognise this right. But failure to obtain a model release will seriously impair the commercial use of an image, because most photo libraries, stock agencies and the like have an international customer base and will not accept an image of a recognisable person without a release. There is also a fair possibility that photographs of people may be subject to the Data Protection Act, which controls the "processing" of "personal data", that is, data relating to an individual from which the individual can be identified. The definitions of these terms are complex, but taking a photograph of a recognisable person would appear to fit within them. The Act contains an exception for processing undertaken with a view to publication of any journalistic or artistic material, and much photography will probably be protected by this exception, but obtaining a model release puts the issue beyond doubt.

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 when he stops to take a photograph will depend on the reasonableness of his behaviour. Standing on a thoroughfare to take a photograph, provided this doesn't impede the movement of traffic or people to any degree, would not usually be treated as obstruction. Setting up a tripod in a busy street, however, possibly would be, depending on the inconvenience caused. Although the police have powers to arrest a person causing an

obstruction on the highway, they are far more likely to ask a photographer to move along in the first instance, only arresting him if he refuses to do so, or if he persistently causes an obstruction in the area.

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.

Taking photographs is unlikely to amount to a breach of the peace, or to conduct likely to cause a breach of the peace, but photographers who are shooting incidents such as riots and illegal demonstrations should take care that the police don't confuse them with the participants. Photojournalists can carry union press cards, but freelancers might have a more difficult time persuading police that they are not involved. 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 understandably 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, such as power stations, refineries, bridges, dams and ports.

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, including:

- All defence establishments.
- Factories, dockyards, mines, ships and aircraft belonging to the Crown.
- Any place where munitions are stored.
- Any place belonging to the Crown that has been declared a prohibited place for the time being by order of a Secretary of State.
- Any railway, road or waterway and any place used for gas, water or electricity works which has been declared a prohibited place for the time being by order of a Secretary of State.
- Any place belonging to the Civil Aviation Authority.
- Any telecommunications office owned by a public telecommunications operator.

Note that the prohibition only applies to photographs that might be useful to an enemy. In addition, the photograph must have been taken for a "purpose prejudicial to the safety or interests of the State". Photographers taking photos of these places for innocent purposes may become subject to investigation into both the nature of the photographs and the purposes for which they were taken.

Prevention of terrorism legislation might also come into play when taking photographs of potentially sensitive areas. The Terrorism Act 2000 gives the police wide powers to stop, search and detain anyone they reasonably suspect of an offence under the Act. The Act 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. In the present climate, the police appear to be taking a fairly broad view of "information likely to be useful". 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, making it difficult for photographers to judge whether or not they are breaking the law 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. Photographers should thus seek permission before taking photographs of a tribunal proceeding.

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. These restrictions include:

- Photographs of a defendant in a criminal case during the course of the proceedings if this would create the risk of seriously prejudicing the course of justice.

- Photographs of witnesses in criminal cases, where this would put the witness at risk of harm and where the court has made an order preventing publication.
- Photographs of a victim of a sexual offence, where the publication is likely to lead the public to identify the subject as the victim of the offence. This restriction lasts for the victim's lifetime and not just for the duration of any court proceedings.
- Young people, defined as people under the age of 18, are subject to special protection under various statutes. In general, it is an offence to publish any image of a young person or any image that would identify a young person 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 subsists in original literary, dramatic, musical or artistic works, sound recordings, films or broadcasts and the typographical arrangement of published editions. Qualifying works are protected automatically and there is no system of copyright registration in the UK. Copyright in most works lasts for the life of the creator of the work plus 70 years after his death, though some kinds of work have shorter periods of protection.

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 would 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. Thus, a portrait of a person which happens to have a painting on the wall behind the subject would not infringe copyright, nor would 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.

A photograph of a trademark may infringe the rights of the owner of the mark, but generally only where the photo might give the impression that it was produced by or belongs to the trademark owner. Many trademarks and logos are also protected by copyright as artistic works.

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.

Disclaimer

While care has been taken to ensure that the information contained in this guide is accurate as at 31 August 2004, 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 any 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 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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