

## STREET PHOTOGRAPHY – IS IT LEGAL?

- Peter Jenkins

There have been a number of well-publicised cases over the past few years where seemingly normal, perfectly law-abiding citizens (yes, photographers are citizens too, you know) have been stopped from doing what everyone had assumed was perfectly legal and publicly acceptable, that is to take photographs in a public place. Or as we call it, street photography.

### **Is street photography legal?**

Yes, of course it is. It is no more illegal for you than it was for Henri Cartier-Bresson, probably the most famous street photographer of all.

### **So why do I keep reading about photographers being prevented from taking pictures in public places?**

This is the 64,000-dollar question, isn't it? I have read of, and photographers have regaled me first hand with dozens of tales of being stopped in the street. In the case of professionals this has often gone on to include arrest and even detention. The reason this is happening, despite the Government telling us there are no laws against taking photographs in public places, is generally due to ignorance and foolishness – and I'm not referring to photographers, by any means. Before we go any further I want to stress that photographing in public places is perfectly acceptable in UK law. Let me quote from the Metropolitan Police guidelines to its officers:

**“Freedom to photograph/film:** Members of the public and the media do not need a permit to film or photograph in public places and police have no power to stop them filming or photographing incidents or police personnel.”

### **So, if this is the case, why do we hear of so many instances where a problem seems to have arisen?**

The problems occur because many individuals, including private security firms, individual police officers and members of the public, do not understand the rules laid down by law, and react in a way they think is appropriate, rather than the way that is correct.

### **Common Fallacies**

#### **“You can't take my picture – it is counter to my civil rights.”**

Or “it's against the law”, or “it's against the Data Protection Act” (yes, that has been said to me). A typical example was a traffic warden telling me I could not take her picture while she was working.

Many people think, wrongly, that you are not allowed to take a photograph in a public place. There is no law that prohibits you from taking pictures while out and about, and certainly no member of the public has the right to make you stop, nor the right to see or delete your images, nor remove film from your camera. Security guards and traffic wardens, as well as police community support officers, do not have this right either.

### **“You can’t photograph this building, it is private property.”**

There is no law in the UK that prevents a member of the public taking photographs of any building, provided that the photographer is in a public place. This is different from being inside someone’s house or on private land, where the owner or landowner can have some control and ask you not to take photographs. “You can’t take photographs in Trafalgar Square.” Well actually you can. A common misapprehension, shared notably by wardens who patrol Trafalgar Square in London, is that one is not allowed to take photographs there. Reports have it that the wardens can be quite vociferous, poorly trained and ‘jobsworth’ about their imagined duties. Without exception, all restrictions regarding filming and photography in Trafalgar Square refer to the use of film crews, tripods and other paraphernalia that might end anger the general public. In these cases you need to get permission before hand to allow suitable facilities to be provided and for you to get suitable insurance.

There have been other reported cases where agents of local authorities mistakenly thought they had the power to stop individuals taking photographs. In all cases reported so far the actual rules are similar to those relating to Trafalgar Square. If you’re an amateur with an SLR, go on and take your pictures – the regulations have nothing to do with you.

### **Common Police Errors**

#### **“I am a police officer and I can stop you taking pictures.”**

Well, actually, they can’t – unless they have a damned good reason. A police officer can ask you to stand behind an indicated line in the case of an incident. They can ask you what you’re doing if there has been a reported breach of the peace, and you can be asked to identify yourself and account for your activities, but there has to be real justification for the officer’s actions. Taking a photograph never, on its own, constitutes a breach of the peace.

Even the Terrorism Act 2000 does not prohibit people from taking photographs or digital images, even in an area where an authority under Section 44 is in place, which allows police to stop and search anyone. From the Metropolitan Police guidelines again: “Officers do have the power to view digital images contained in mobile telephones or cameras carried by a person searched under Section 44 of the Terrorism Act 2000, provided that the viewing is to determine whether the images contained in the camera or mobile telephone are of a kind which could be used in connection with terrorism.

Officers also have the power to seize and retain any article found during the search which the officer reasonably suspects is intended to be used in connection with terrorism. “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.” However, officers are not allowed to use the terrorism laws as an excuse to interfere with someone lawfully taking photographs. There has to be a legitimate reason to stop you and that is not simply because you are a photographer. To be stopped under Section 43 of the Terrorism Act the police officer has to have a reasonable suspicion that the photographer is a terrorist. This is not something that can be done on a whim.

### **Here's what the Metropolitan Police guidelines say: "Photography and Section 43 of the Terrorism Act 2000:**

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. "Officers have the power to view digital images contained in mobile telephones or cameras carried by a person searched under Section 43 of the Terrorism Act 2000 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."

### **"I am a police officer and I have the right to delete any images that you have taken."**

Absolutely not. Under no circumstances can an individual police officer delete images, because if an offence has occurred, those images might be needed as evidence. From the Met Police guidelines: "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."

### **Are there any exceptions?**

Yes, and no. On actual private property, the owner does have the right to say, 'no photographs'. The owners of Canary Wharf in London, for example, can legally ask you not to take photographs of the tower, but they can only do this while you are on the land owned by them. Five hundred yards away on public land, you can photograph the tower to your heart's content. Should you choose to argue with the security guards, or not put away your camera, the guards themselves can (legally) do nothing except call the police. No one is allowed to photograph magistrates' courts from within the bounds of the court, but outside that boundary you can click away. A policeman can ask you to justify your actions if you are seen to photograph a police constable or a member of the armed forces (all under Section 58A of the Terrorism Act). A simple explanation of your legitimate actions and verification of your identity will normally satisfy any enquiry from the police. There are certain restrictions on photographing prisons and any armed forces facilities, but most of these will only be an issue if you are seen to be loitering. If you're stopped while taking photographs at this type of location, be prepared to have a credible explanation for what you are doing.

### **What of privacy?**

While there is no right of privacy in a public place in the UK, it is still against the law to harass another person, and there are obviously circumstances when taking someone's photograph can be perceived as harassment. Continually taking someone's picture after having been reasonably asked not to, standing very close to someone with a wide angle lens (clearly invading personal space), acting in such a way as to cause a hazard or distress to someone else, would all be held in a dim view by a court.

### **What of data protection?**

The Data Protection Act refers to the use and storage of personal data. An unidentified image taken in public would have no bearing on or relevance to the Act. However, if you were taking many images of people, and identifying and storing them, then you might be perceived as controlling

personal data. If you are in this position you might well be covered by the Act and in that case you should certainly take proper professional legal advice. However, I know of no case where an amateur photographer has been caught by this Act and there are general exceptions when it comes to artistic material.

### **What about photographing children?**

Children have exactly the same rights as any other citizen. Society, led by certain national middle market national newspapers, seems on occasion to have an obsession with paedophilia and many photographers have found themselves accused of being a 'paedo' or similarly unlawfully harassed because they are seen photographing children in public places. Due to the emotive nature of people's thoughts regarding children, it is almost irrelevant what the law says and one would have to advise common sense. I photograph my own children at will and shall continue to do so, but I am very careful and wary when I photograph other people's offspring. I recommend that you do likewise.

### **Metropolitan Police**

Pete Jenkins has used extracts from the Metropolitan Police Service guidelines to illustrate his report. We believe it is important to publish these in full to show the context in which they are made and to help you to make up your own minds.

### **Photography advice**

The Metropolitan Police Service's approach towards photography in public places is a subject of regular debate. We encourage officers and the public to be vigilant against terrorism but recognise the importance not only of protecting the public from terrorism but also promoting the freedom of the public and the media to take and publish photographs. Guidance around the issue has been made clear to officers and PCSOs through briefings and internal communications. The following advice is available to all officers and provides a summary of the Metropolitan Police Service's guidance around photography in public places.

### **Freedom to photograph/film**

Members of the public and the media do not need a permit to film or photograph in public places and police have no power to stop them filming or photographing incidents or police personnel.

### **Terrorism Act 2000**

**Photography and Section 44 of the Terrorism Act 2000**, The Terrorism Act 2000 does not prohibit people from taking photographs or digital images in an area where an authority under Section 44 is in place. Officers have the power to view digital images contained in mobile telephones or cameras carried by a person searched under Section 44 of the Terrorism Act 2000, provided that the viewing is to determine whether the images contained in the camera or mobile telephone are of a kind which could be used in connection with terrorism. Officers also have the power to seize and retain any article found during the search which the officer reasonably suspects is intended to be used in connection with terrorism. 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.

**Photography and Section 43 of the Terrorism Act 2000** 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. Officers have the power to view digital images contained in mobile telephones or cameras carried by a person searched under Section 43 of the Terrorism Act 2000 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 of the Terrorism Act 2000**, Section 58A of the Terrorism Act 2000 covers the offence of eliciting, publishing or communicating 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.

Any officer making an arrest for an offence under Section 58A must be able to demonstrate a reasonable suspicion that the information was, by its very nature, designed to provide practical assistance to a person committing or preparing an act of terrorism. It would ordinarily be unlawful to use Section 58A to arrest people photographing police officers in the course of normal policing activities, including protests, because there would not normally be grounds for suspecting that the photographs were being taken to provide assistance to a terrorist. An arrest would only be lawful if an arresting officer had a reasonable suspicion that the photographs were being taken in order to provide practical assistance to a person committing or preparing an act of terrorism.

There is nothing preventing officers asking questions of an individual who appears to be taking photographs of someone who is or has been a member of Her Majesty's Forces (HMF), Intelligence Services or a constable, so long as this is being done for a lawful purpose and is not being done in a way that prevents, dissuades or inhibits the individual from doing something which is not unlawful.

## **Members of the press**

### **Guidelines for MPS staff on dealing with media reporters, press photographers and television crews:**

Members of the media can, like any other person, be stopped and searched under Section 44 of the Terrorism Act 2000. They may also be stopped and searched under Section 43 of the Terrorism Act 2000 if an officer reasonably suspects that they are a terrorist. However, where it is clear that the person being searched is a journalist, officers should exercise caution before viewing images as images acquired or created for the purposes of journalism may constitute journalistic material and should not be viewed without a court order.

Contact with photographers, reporters and television crews is a regular occurrence for many officers and staff. The media influences our reputation so it's crucial to maintain good working relations with

its members, even in difficult circumstances.

Following these guidelines means both media and police can fulfil their duties without hindering each other.

- **Creating vantage points:** When areas are cordoned off following an incident, creating a vantage point, if possible, where members of the media at the scene can see police activity can help them do their job without interfering with a police operation. However, the media may still report from areas accessible to the public.

- **Identifying the media:** Genuine members of the media carry identification, for instance the UK Press Card, which they will present on request.

- **Access to incident scenes:** The Senior Investigating Officer is in charge of granting members of the media access to incident scenes. In the early stages of investigation, evidence gathering and forensic retrieval take priority over media access, but, where appropriate, access should be allowed as soon as is practicable.

- **Film Unit:** The aim of the Metropolitan Police Service Film Unit is to be a central point of contact, to co-ordinate, facilitate and bring consistency to those people filming in London with MPS support. We work together with Film London and stake holders of the Film London Partnership to make London accessible, whilst minimising inconvenience to Londoners and increasing the economic benefits of filming.

#### **Terrorism Act update:**

In late June the European Court of Human Rights confirmed its ruling that the random stop and search powers in the 2000 Terrorism Act were illegal. The UK Government says it is considering the judgement, as part of a review of counter-terrorism measures.

#### **Biography:**

**Pete Jenkins is a photojournalist with more than 30 years' experience in national newspapers, magazines, books, public relations and new media, from black and white dunk tanks to tethered digital shooting. Formerly a sports specialist working in London, Pete is now based in Nottingham, East Midlands. His clients include the UK photographic press (amateur and professional), East Midlands businesses, trades unions, magazines, newspapers and anyone else who requires his specialist skills.**

**When not photographing, Pete is usually editing, but finds time to give seminars on a range of photo-related subjects, including stock photography and copyright. Pete Jenkins is a campaigner for photographer/creator rights and wants to see moral rights underwriting copyright in the UK and internationally.**

**"Photographic imaging has taken a beating since 1985 and we need to stem the tide of attrition of**

rates, and the low respect, which so many now have for creators. Re-establishing copyright as a basic human right will help us achieve this," he says.