

Street photography: rights, ethics and the future

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ABSTRACT

Legally, the position of photography in a public space is clear-cut: there are no legal restrictions on taking a photograph of strangers in a public space. However, negative moral beliefs about street photography are developing out of public fears relating to personal identity, misrepresentation, paedophilia and terrorism.

The ethical issues associated with street photography primarily concern invasion of privacy; invasion in the form of intrusion; portraying subjects in a false light; embarrassment; and image appropriation. All these ethical issues intensify the debate between the subject's right to privacy and a photographer's right to freedom of expression.

Also relevant to the future of street photography and its ethics are the advent of social networking and online image-sharing, and concerns about identity and representation; the Millennial generation has new notions of public and private which may shape ethical behaviour and the law on photography in public places.

1. INTRODUCTION

Photography's *raison d'être* has always been to show people the world around them and to ask questions in the form of visual enquiry. Street photography more than any other genre incorporates the core elements of photography – instantaneity and multiplicity – and has played an important role in the documentation of social history. Before continuing, the term 'street photography' needs defining: "*Street photography is a type of documentary photography that features subjects in candid situations within public places such as streets, parks, beaches, malls, political conventions and other settings.*"¹

At the time this dissertation is being written, London is hosting the Street Photography Festival (the world's first festival of this genre), and interest in street photography is at an all-time high (with exhibitions at the London Museum, and the *Street Photography Now* book selling out within days of its publication), yet – despite its popularity as a visual art form – the future of street photography could be in jeopardy. Photographer Nick Scammell commented, for the London Street Photography Festival: "*the notion of the street photographer as a threat has become more widespread among the public and officialdom.*"²

From a legal point of view – despite the initial overzealous police clamp down on public photography as a suspicious activity after the 9/11 and 7/7 terrorist attacks³ – the UK Home

¹ *Wikipedia*. Street photography: http://en.wikipedia.org/wiki/Street_photography (accessed 30/11/2011).

² Scammell, N. (2011). Don't shoot the messenger. *fLIP*, 18: 56–57.

³ In 2008, the Metropolitan Police 2008 anti-terror campaign communicated "*Thousands of people take photos every day. What if one of them seems odd?*" This campaign and the media frenzy that followed

Offices' current position is "*there is no legal restriction on photography in public places and there is no presumption of privacy for individuals*"⁴ and the law affecting photography in public because of fear of terrorism has been relaxed⁵. However, areas defined by the law as 'public' are decreasing as more and more public space is being managed privately, and this is causing confusion about what and where you can photograph. In addition, there is increasing wariness by the public of photography, driven by the underhand tactics of the paparazzi, a pervasive suspicion in recent years that connects photography with paedophilia and terrorism, and fears about being identified or misrepresentation, particularly by the middle-aged generation. All of these social and cultural factors are changing the cultural norms and ethics relating to being photographed in public.

In July 1907, the periodical *The Independent*⁶ ran a feature on the ethics and etiquette of photography, and stated: "*as regards photography in public it may be laid as a fundamental principle that one has a right to photograph anything that one has a right to look at*".

Despite the clarity and simplicity of the above statement, upheld in English law, photography in the street has never been universally accepted, and the ethical and moral issues surrounding the use of the camera in public spaces have never been resolved and continue to be debated by photographers, officialdom and the general public. To bring the debate up to date with a more recent statement, street photographer Nick Turpin⁷ held a poll of over 500 people, and more than half of the respondents agreed with the following position: "*The right of a person to privacy in a public place is equal to the right of the photographer to take a photograph in a public place.*"

This dichotomy between the photographer and the subject in public spaces is explored in this dissertation.

First (in Section 2), street photography will be introduced as a genre, and the social and cultural environment – today and historically – that the practice operates within discussed, looking at the actual (i.e. legal) and assumed rights of both the photographer and the subject, and the complex ethical and moral issues surrounding the practice.

caused a massive backlash against photographers, with accusations of terrorism and paedophilia being thrown at (typically male) photographer in city streets.

⁴ Home Office Minister Tony McNulty MP which re-asserts the current legal situation. <http://curly15.wordpress.com/2008/04/19/miliband-on-photography/>

⁵ Section 44 of the Terrorism Act 2000 was suspended in July 2010, which has limited the stop-and-search powers of police towards photographers. <http://photographernotaterrorist.org/2010/07/section-44-suspended/> (accessed 30/11/2011).

⁶ Anon. (1907). The ethics and etiquette of photography. *The Independent*, LXIII: 107–109.

Section 3 presents the notions of public and private. 'Public' space is defined, and the legal aspects and the social norms in terms of what is morally expected with regard to privacy are discussed.

Section 4 explores the ethics of street photography by looking at all the participants in its practice; that is, the photographer, the subject and, ultimately, the viewer. Key work and ideas are discussed, including the 'ethical framework' for image-makers proposed by Larry Gross, and Lisa Henderson's research on access and consent in public photography.

Section 5 considers two practitioners of street photography: Philip-Lorca diCorcia and Bruce Gilden. A well-known photographic example of the work of each of these photographers is discussed, and any actual or potential ethical concerns about their work practices are highlighted.

The final section discusses the prevailing changes catalysed by digital imaging technology and the internet, including social networks, and how these changes may radically affect the concept of privacy within as short a time-span as a decade, when the Millennial Generation become adults.

⁷ Turpin, N. (2010). *Sevensevennine*. Street photography polls: http://www.sevensevennine.com/?page_id=998 (accessed 30/8/2011).

2. STREET PHOTOGRAPHY: HISTORY AND CONTEXT

Street photography and its practitioners have been debated – and slated in certain circles – since the early days of photography. Photography, in the main, had a very good public image throughout the wet plate era (1850–60), but this positive view was quickly lost (and has never recovered) with the advent of dry plate cameras (1877) which enabled instantaneous photography and freed the photographer from his tripod and studio to roam the streets.

As new technologies placed portable cameras into the hands of all and sundry as opposed to its prior use predominantly by the professional or gentleman photographer – at his studio or at home – the perceived threat of amateur photographers, indifferent to traditional notions of good Victorian manners and respect for privacy, continued to grow. In America, *The New York Times* published a feature called ‘The camera Epidemic’⁸ which attacked street photography by comparing it to a disease, and even coined a name, “*the camera lamina sicca*”. It reported: “*no one can feel sure that at any moment a camera has not been brought to bear upon them ... even when walking quietly in the public street a person is not safe.*”

Critical comments reached fever pitch following the introduction of a portable camera that the working class could afford: the Kodak Brownie in 1900. Portable and cheap cameras enabled photography to infiltrate everyday life and social occurrences, and photographers recorded images of all elements of modern life: in streets, stations, markets and seaside resorts. Eastman Kodak encouraged hobbyists to “*think of all aspects of everyday life as worthy subject matter*”.⁹

This, then, can be considered the beginnings of street photography.

Photography of the familiar and everyday soon developed into a specialist genre, aided considerably by the introduction of the Leica 35mm ‘miniature’ camera after the First World War. Although often cited as a subgenre of documentary photography, Clive Scott¹⁰ says that “*street photography has profoundly different orientations and ideologieshowever the modes can co-exist as the same time in the same image.*” Although types of practice take place in the street and involve candid moments, documentary photography is the in-depth

⁸ *The New York Times*. (1884) The camera epidemic. 20 August: <http://query.nytimes.com/mem/archive-free/pdf?res=F00D15FC385C15738DDDA90A94D0405B8484F0D3> (accessed 30/8/2011).

⁹ Westerbeck, C. and Meyerowitz, J. (1994). *Bystander: The History of Street Photography*. Little, Brown.

¹⁰ Scott, C. (2007). *Street Photography: From Atget to Cartier Bresson*. I. B Taurus.

analysis of a subject that aims to tell a story, whereas street photography is more temporal and random, and is about capturing a 'slice of life': as Scott says, "[street photography] exploits the instantaneous in a way documentary does not".¹¹

Gilles Mora's definition is aligned with his ideas of the street photographer as *badaud* (gawper) and *flâneur*.¹² "Street photographers pursue the fleeting instant, photographing their models either openly or surreptitiously as casual passerby or as systematic observers."¹³

Whichever definition is used, the basic premise of street photography is the taking of candid photographs, and, as such, is practiced with speed and often covertly to catch subjects unaware.

The strategies that photographers adopt to catch their subject unaware has prompted the analogy of photography to 'hunting', which was written about by Susan Sontag, who highlighted the terminology common to both activities, i.e. 'shooting', 'capturing' and 'stalking', and says "*The camera is sold as a predatory weapon, automated as possible, ready to spring.*"¹⁴ The ethos that the street photographer works to is that a subject in a public space is 'fair game'. On this basis, there is nothing in a street photograph that was not already on public display, and in public is in the 'public eye' for all to see (and be photographed): as Paul Frosh says, "*the public eye is not an organ that one appears 'before'; it is something that one is in*".¹⁵

So, what can the public as potential subjects expect while in public and how sensitive should photographers be to subjects' moral and ethical rights? This is the subject of the remainder of this dissertation, which will primarily be about ethics and morals as legally the situation is clear cut (despite what people may *think* is the law). First, we need to clarify what 'in public' means, by defining 'public' space and people's behaviour within such spaces, and then outlining the notion of privacy and the rights and expectations about privacy within public spaces.

¹¹ Scott, C. (2007). *Street Photography: From Atget to Cartier Bresson*. I. B Taurus, p. 35.

¹² From the French word *flâneur*, meanings a 'stroller' or 'saunterer'. Baudelaire co-opted the word to derive the meaning 'a person who walks the city in order to experience it'.

¹³ Mora, G. (1998). *Photo Speak: A guide to the Ideas, Movements and Techniques of Photography 1939 to the Present*. Abbevill Press.

¹⁴ Sontag, S. (2008). *On Photography*. Penguin.

¹⁵ Frosh, P. (2001) The public eye and the citizen-voyeur: photography as a performance of power. *Social Semiotics*, 11, No. 1.

3. 'PUBLIC' SPACE

Street photography by its nature takes place on the street, in parks and markets and other public places. So, let us first examine the word 'public'. Its first recorded use in England was in 1470 (spelt 'publyke'), as an adjective which meant 'pertaining to the common good of society';¹⁶ 'private' was used at the time to mean 'privileged'. By the end of the 17th century, the meanings of both 'public' and 'private' had changed: 'public' now meant the scrutiny of anyone, and 'private' described the sheltered part of life defined by family and friends.¹⁷ The 18th-century definitions are very close to their modern dictionary definitions, and set the basis for today's understanding of the words.

The meaning of being '*in public*' developed in early 18th-century London and Paris, where the rising bourgeoisie became less concerned with covering up their social class, and being '*in public*' became more about forming acquaintances with a diverse range of people, including strangers. "*Public thus came to mean a life passed outside of family and close friends; in the public region diverse, complex social groups were to be brought into ineluctable contact. The focus of this public life was the capital city.*"¹⁸

All of these social and cultural developments around the notions and understanding of being '*in public*' were evolving in parallel to changes in the development of cities. The 18th century was an era defined by the creation of social centres, by the building of large urban parks, wide streets and seaside piers, and promenades for pedestrian strolling. All of these '*in-public*' areas provided a stage¹⁹ for people to be seen while going about their everyday business.

Today, a 'public' place is "*a social space such as a town square that is open and accessible to all, regardless of gender, race, ethnicity, age and social-economic level*".²⁰ Most streets, including the pavement are considered to be public space, along with such areas as parks and beaches.

So, what does it mean to be *in* a public space? The act of being in public means you are, by definition, in a public space: you are not in a private space, and are therefore visible to the outside world to be looked at. There has always been an accepted social norm that being in

¹⁶ Sennett, R. (1993). *The Fall of the Public Man*. Faber and Faber, p. 18.

¹⁷ Sennett, R. (1993). *The Fall of the Public Man*. Faber and Faber, p. 16.

¹⁸ Sennett, R. (1993). *The Fall of the Public Man*. Faber and Faber, p. 17.

¹⁹ The concept that being in public was all about showing off one's self was developed by the sociologist Erving Goffman, who uses the metaphor of 'theatrical performance' and proposed that people change their roles and performances in different situations. See: Goffman, E. (1971). *Relations in Public*. Harper.

public means that other members of the public can and will look at you. The notion of being 'in public' and the idea of making a disgrace of yourself have been closely allied since the early days of being 'out in public', and people adapt their behaviour accordingly.

In the mid-19th century, within the bourgeois hubs of London and Paris, a behaviour pattern developed that "*strangers had no right to speak to each other, that each man possessed an invisible shield; a right to be left alone. People were conscious and aware of how they looked, their body language and how unconscious behaviour would disclose involuntary information on their character.*"²¹

The protocols of public behaviour became more about passivity and observation and voyeurism – all of which have formed the social norms associated with street photography and have, to some extent, defined the strategy of the typical street photographer who goes about their actions covertly, silently and quickly.

According to Goffman,²² "*when people become aware of each other they adapt their behaviour; often to try and give a good impression*". Goffman calls this "impression management", and he states that it occurs whenever people present themselves in public. "*The control of people's behaviour according to what is appropriate in public space is collectively achieved by the interactional control of situations where people meet in public places*".²³ On maintaining normal appearances in public, Henderson,²⁴ discussing Goffman's work, states that "*people monitor their behaviour at all times, with or without a camera present*".

Returning to the 1907 article from *The Independent*,²⁵ mentioned earlier: "*When one appears in public it is always with the expectation and often the purpose of being seen, and nowadays he must also anticipate being photographed.*" So, even a century ago, being photographed in public was considered no different to being seen in public.

Privacy is 'the right to be left alone', and, historically, it is linked to the concept of private property. The concept of 'privacy' is, however, relatively new, and, indeed, the idea of privacy in the UK as a human right is evolving as our legal system adapts to Continental

²⁰ http://en.wikipedia.org/wiki/Public_space

²¹ Goffman, E. (1971). *Relations in Public*. Harper, p. 25

²² Goffman, E. (1971). *Relations in Public*. Harper, p. 27

²³ Goffman, E. (1963). *Behavior in Public Places: Notes on the Social Organization of Gatherings*. Glencoe: The Free Press.

²⁴ Henderson, L. (1988). Access and consent in public photography. In: Gross, L. (ed.), *Image Ethics: The Moral Rights of Subjects in Photographs, Film and Television*. Oxford University Press.

²⁵ Anon. (1907). The ethics and etiquette of photography. *The Independent*, LXIII: 107–109.

notions of privacy driven by our adoption of the Human Rights Act in 1998.²⁶ Privacy is fundamentally about “the right to be let alone”:²⁷ the capacity to control information about yourself, being free from intrusion and the ability to control what is revealed about you in public. Before World War 1, there were many places in which privacy laws were enforced, and street photography was illegal in certain areas such as parks, reflecting the inhibitions of the Victorian era and the social norms of the time.

Today, although it is not against the law to take photographs in public spaces, it is illegal to use those images commercially without signed consent, and the laws around model releases and commercial usage have somewhat clouded the legality of non-commercial street photography (e.g. for the purpose of art). Celebrities have muddied the legal waters further by using the Human Rights Act to bring cases against newspapers and magazines that have published photographs that they consider to be ‘private’ and thus breaching the Act: Daily Mail editor-in-chief Paul Dacre has accused the courts of “*inexorably and insidiously imposing a privacy law on the press*”.²⁸ In addition, the widespread restrictions on photography on private property and the changes in the morality of photographing children that have occurred in recent years have led people to believe that photographing strangers is illegal.

The confusion over the legal standing of street photography, including by officials (notably security guards) who should know better, can be witnessed in the recent short film by the Street Photography Festival *Stand your Ground*²⁹ that documented six street photographers around the City of London, each and every one of whom was challenged for taking photographs in public places, sometimes with the involvement of the police, despite nothing illegal occurring. Adding to this confusion is the privatisation of what have traditionally been public spaces, such as parks, shopping areas and business districts: London’s Olympic park is the first major park to be developed in London since the Victorian era, and it will also be the first entirely private park. This increasing privatisation of traditionally public spaces (allied to private surveillance) is a whole topic in itself, and is outside of the scope of this dissertation; however, it is worth raising a final point by Anna Minton, who in a recent debate

²⁶ The Lord Chancellor Lord Falconer has stated that since the Human Rights Act has been passed by Parliament, people’s private lives should be protected in accordance with its principles,. This is despite the fact that Parliament has not passed any specific legislation on the right to privacy. See: BBC News. *Mail editor accuses Mosley judge*: <http://news.bbc.co.uk/1/hi/uk/7718961.stm> (accessed 30/8/2011).

²⁷ Prosser, W. (1960). Privacy. *California Law Review*, 48: 383–423.

²⁸ BBC News. *Mail editor accuses Mosley judge*: <http://news.bbc.co.uk/1/hi/uk/7718961.stm> (accessed 30/8/2011).

²⁹ Stand Your Ground. <http://www.youtube.com/watch?v=FJH9F7Hcluo>

on street photography, said “*the rights of Photographers are at the forefront of much wider issues most visible to people about democratic rights within these spaces*”.³⁰

4. ETHICS

This section will discuss the ethics of street photography, considering all the participants; that is, the photographer, the subject and the viewer.

First, we need to define ‘ethics’. According to the dictionary,³¹ ethics is:

“*a system of moral principles; the ethics of a culture*”

and

“*that branch of philosophy dealing with the values relating to human conduct, with respect to the rightness and wrongness of certain actions and to the goodness and badness of the motives and ends of such actions.*”

It should be noted that any discussion about ethics and photography will be complex. Jones *et al.*³² state: “*Ethics is not primarily concerned with getting people to do what they believe to be right, but rather with helping them to decide what is right*”. Immediately, this statement adds confusion, as it implies there is a *right* answer, but ethics are based on morals, and everyone has different moral beliefs – all of us have a moral outlook about what is right and what is wrong that guides our behaviour.

It is outside of the scope of this dissertation to discuss ethics and its theoretical concepts in detail, but the discussion will refer to two basic approaches to ethics: the ‘consequentialist’ approach, which deals with the rights and wrongs of an action determined by its consequences, and the ‘deontological’ approach, also referred to as the Kantian theory, which concerns the motives of the person who performs an action, be it right or wrong, rather than the consequences of the action.

Larry Gross³³ proposed an ethical framework for image-makers, which states:

³⁰ London *Street Photography Festival* (2011) ... Panel discussion: Why does *street photography* make us paranoid? ... A panel of photographers, activists and law enforcers will *debate* and discuss the ... *Anna Minton*, Author of 'Ground Control'
http://www.youtube.com/watch?v=FtQE35F_8Ds

³¹ www.dictionary.com (accessed 30/8/2011).

³² Jones, W.T., Sontag, F., Beckner, M. and Fogelin, R. (1969). *Approaches to Ethics*. McGraw-Hill, p 8.

³³ Gross, L. (1988). *Image Ethics; The Moral Rights of Subjects in Photographs, Film and Television*. Oxford University Press. pp 6.

1. The image-maker's commitment to him- or herself to produce images which reflect their intention to the best of their ability.
2. The image-maker's responsibility to adhere to the standards of their profession.
3. The image-maker's obligation to their subjects.
4. The image maker's responsibility to their audience.

These guidelines are aimed at the 'professional' creation and use of images, and cover journalists, artists and scholars alike, and only two points are of primary concern to the ethics of street photography: point 3, on the photographer and their obligations to their subjects, and point 4, on their responsibility to their audience (the viewer).

Although there are no organisations with a code of ethics for street photographers, there are professional bodies for photojournalists that have drawn up codes of conduct for their members. It is useful to quote from a typical code of conduct aimed at photojournalists, and the US National Press Photographers Association (NPPA) code of ethics states:

Our primary goal is the faithful and comprehensive depiction of the subject at hand. As visual journalists, we have the responsibility to document society and to preserve its history through images. Photographic images can reveal great truths, expose wrongdoing and neglect, inspire hope and understanding and connect people around the globe through the language of visual understanding. Photographs can also cause great harm if they are callously intrusive or are manipulated." See appendix 1 for full code of ethics.

The photographer, the subject and the viewer

Living in the developed world where cameras are a ubiquitous part of everyday life, we are not of the mindset whereby having your photograph taken is interpreted as 'stealing your soul' – as is still the case in a few remote areas of the globe. However, the verb in the phrase 'to *take* a photograph' is noteworthy, as Sontag has stated:

There is something predatory in the act of taking a picture – to photograph people is to violate them, by seeing them as they never see themselves, by having knowledge of them they can never have, it turns people into objects that can symbolically be possessed.³⁴

³⁴ Sontag, S. (2008). *On Photography*. Penguin, p. 34

As touched upon earlier in the analogy to hunting, Sontag accuses photographers being 'predatory', and this is particularly noticeable in street photography, with its need for the photographer to be covert and unseen to obtain candid shots.

However, a counter to Sontag's implication of violence in the act of 'taking' a photograph is that in street photography the subjects are usually not aware of their image being captured.

Looking at the fundamentals underlying the ethics of street photography, the photographer is typically an artist whose goal is to capture an image that ultimately becomes an artwork and/or a record of social history. Street photographers work to an ethos of the right to the freedom of expression and enquiry to capture the world around them in images.

From a deontological approach, the photographer is operating ethically, as their motives are substantiated and are morally not causing harm. However, questions arise when the photographer may be motivated by financial gain or voyeurism when invading and capturing moments that the subject considers private. From a consequentialist viewpoint, the action of taking the photograph can only be judged as ethical or not by the consequences of the action: so, if, for instance, the taking of the photograph actually leads to the publication of an image that misrepresents or demeans the subject in any way, the photographer could be considered to be acting unethically.

Practitioners of street photography do, in the main, work in line with the NPPA code of ethics, aiming to achieve a "*faithful and comprehensive depiction of the subject at hand*" – as street photographers intend to capture life as it is. However, what goes into the frame, and the angle and combination of different elements in the final image, are all decisions made by the photographer, and these decisions are theirs to make, whatever the impact on the image, be it slight, major or naive. What's more, although life on the street is there for all to see in each passing moment, many moments would have gone unobserved and unnoticed if they were not captured in a photograph – as street photographer Joel Meyerowitz³⁵ said:

Street photography is made up out of life but it's invisible, all present, but invisible only the camera makes it visible.

Although daily happenings are going on all around us for the eye to see if it chooses to, it is the photographer by deciding *what to take* and *what to include* and *juxtapose* within the frame that makes the subject and its context visible in a photograph. The photographer constructs images, consciously and subconsciously: "*image makers show us their view of*

³⁵ Meyerowitz, J.(2008). interview on youtube.
<http://www.youtube.com/watch?v=5Qjym5uliDw>

the world whether they mean to or not".³⁶ The photograph then becomes an object with all the associated meanings and possible interpretations that will be made by the viewer. Photographs are not true depictions of reality: they are ideologically loaded representations. This is an important point to make on the ethics of images as the decision of a photographer to print and distribute an image which they view as ethical and causing no harm by its content may be interpreted very differently by a viewer, based on their social, cultural and innate individual visual interpretation strategies.

Invasion of privacy

The major area of contention between the photographer and the subject and one that encroaches into ethical territories is 'invasion of privacy'. Legally, it is defined as:

Invasion of privacy n. *The intrusion into the personal life of another, without just cause, which can give the person whose privacy has been invaded a right to bring a lawsuit for damages against the person or entity that intruded. However, public personages are not protected in most situations, since they have placed themselves already within the public eye, and their activities (even personal and sometimes intimate) are considered newsworthy, i.e. of legitimate public interest.*³⁷

From the legal definition above, the key phrase relevant to this discussion and the ethos of street photography is: "*public personages are not protected in most situations, since they have placed themselves already within the public eye*". Gross expands on the complex area of 'invasion' by quoting William Prosser,³⁸ who proposed that "*The law of privacy comprises four distinct kinds of invasion ... and each represents an interference with the right of the plaintiff 'to be left alone'*": these are 'intrusion', 'embarrassment', 'false light' and 'appropriation'. As outlined earlier, being 'in public' means *public* not *private*, and subjects do not have any right to privacy within public spaces. However, things are not strictly black and white with regard to privacy rights, and Gross states:

the fact that it may be legal to photograph someone in a public place, since that accounts to nothing more than making a record, not differing essentially from a full written

³⁶ Gross, L. (1988). *Image Ethics; The Moral Rights of Subjects in Photographs, Film and Television*. Oxford University Press, p. 8.

³⁷ <http://legal-dictionary.thefreedictionary.com/invasion+of+privacy>

³⁸ Prosser, W. (1960). Privacy. *California Law Review*, 48: 383–423.

*description, of a public sights which any one present would be free to see does this not necessarily make it ethically neutral.*³⁹

Although the street photographer does not enter the subject's space legally, it can be argued that they do so symbolically, as the act of photographing often involves extensive 'looking', and, as Sontag says, "*the act of photographing is more than passive observing*". Also 'staring' in Western cultures is not acceptable behaviour, and, as Goffman points out, "*the cultural issue is the individual's right not to be stared at or examined*": so, looking via photography could constitute a invasion of privacy on the grounds of 'intrusion'.

We now turn to the other three situations of 'invasion' identified by Prosser:⁴⁰ those of portraying subjects in a 'false light', whereby images may distort the truth and create false impressions, 'embarrassment', where a photograph should not humiliate or demean; and 'appropriation'; the right of individuals to profit from their own image. All of these types of 'invasion' are moral claims that intensify the debate between the public's right to 'privacy' and the photographer's right to 'freedom of expression'. The issues around the subject's rights, or the lack of such rights, be those legal or moral, neither convicts nor acquits the photographer for their actions within this ethical blind spot – as Lisa Henderson⁴¹ says:

While photographers recognise that a subject's uncertainty about the use of a picture is often the source of interactional tension, they are for the most part, sufficiently confident about the harmlessness of their photographing (to subjects) or its importance to themselves to 'public information'

A photographer has a responsibility to bring endless image possibilities of the world around them to us, the viewing audience.

Consent to take versus consent to use

The question of consent plays a key role in any discussion on image ethics. Moreover, does permission to take a photograph lead automatically to permission to distribute that photograph?

Street photographers adopt strategies while working on the street to avoid drawing attention to themselves, ranging from concealment of their cameras through to Goffman's behavioural

³⁹ Gross, L. (1988). *Image Ethics; The Moral Rights of Subjects in Photographs, Film and Television*. Oxford University Press, p. 7.

⁴⁰ Prosser, W. (1960). Privacy. *California Law Review*, 48: 383–423.

stratagem of maintaining a 'normal appearance' – all of which reduce the threat and/or curiosity of the public to enable photographers to operate without drawing attention to themselves. In research by Henderson on 'access and consent', street photographers were reported to often let the subject see the camera at some point and to wait for a sign of approval, which may be a smile or simply the lack of objections. This is interpreted by the photographers as consent to take, but the subject may not fully understand the possible ramifications of being photographed and the associated rights of the photographer owning the copyright of that image. As Gerber states: "*Unintended or undesired consequences may follow from any given course of action, so one should not assume that just because a person chooses one course, he or she consents to everything that follows from that course.*"⁴²

5. STREET PHOTOGRAPHY: CASE STUDIES

This section discuss ethical issues in street photography through the consideration of two case studies: photographs taken by the street photographers Philip-Lorca diCorcia and Bruce Gilden.

Case study 1: diCorcia

diCorcia is a contemporary photographer who is known for his street photography and has developed a style through the use of lighting which allows his candid shots to take on a 'staged' feel. During the period 1999–2001 he produced a series of works entitled 'Heads' in Times Square, New York. The resulting set of images were a series of dramatic portraits, described by *The New York Times*⁴³ as "*crisp stark portraits picked out of murky blackness – just heads, no longer cityscapes*".

To make the series of 13 images, diCorcia photographed 3000 unaware subjects over a period of two years. He followed the same format, and photographed all the subjects at shoulder level in a predetermined zone, with the same camera and lighting. As with all of diCorcia's work, the lighting was the key element, and he lit the subjects with a strobe flash light attached to scaffolding above the pavement. The strobe had the effect of singling the

⁴¹ Henderson, L. (1988). Access and consent in public photography. In: Gross, L. (ed.), *Image Ethics: The Moral Rights of Subjects in Photographs, Film and Television*. Oxford University Press.

⁴² Gerber, D. (1996). *The careers of People Exhibited in Freak Shows: The Problems of Volition and Valorisation*. New York University Press, pp 38.

⁴³ Kimmelman, M. (2001) New York Times Art in Review; Philip-Lorca diCorcia – 'Heads'
<http://www.nytimes.com/2001/09/14/arts/art-in-review-philip-lorca-dicorcia-heads.html>

subject out and highlighting and isolating them from the other people and the environment around them. This elimination of the street as the background removes any compositional elements and leaves the viewer to focus solely on the individual and their expression. Unaware of the camera, they are absorbed in their thoughts and gaze absently.

By eliminating the city from the visual field captured in his photographs, one could argue that the images visually represent and reflect the way people are absorbed by themselves and their thoughts in a modern day city. This indifference and thoughtfulness is what diCorcia wanted to capture, and he has done so very successfully.

Georg Simmel⁴⁴ first wrote about people in the city and their disposition in his 1903 essay *The Metropolis and Mental Life*, and spoke about the profound impact that living in a modern day city had on its inhabitants: “*There is perhaps no psychic phenomenon which is so unconditionally reserved to the city as the blasé outlook.*” The blasé expression which each of diCorcia’s ‘heads’ shares is a result, Simmel argues, of “*the essentially intellectualistic character of the mental life of the metropolis*”.

The series was first exhibited in 2001, and limited-edition prints of each photo were created for sale to the public along with a published book. It was not until March 2005 that one of the subjects, Erno Nussenzweig an Orthodox Jew, became aware of his photograph. Nussenzweig sued diCorcia, arguing that the artist had violated his privacy and religious rights had been violated by the taking and publishing of the photograph of him and also that the use of his picture violated his ultra-orthodox Klausenberg sect’s prohibition on ‘graven images’. He also pursued diCorcia for the use of his image for commerce, claiming that the exhibition was marketing and that the published book was advertising. The case went to three appeals, all of which sided with diCorcia.

⁴⁴ Simmel. G, (1903). *The Metropolis and Mental Life*. Blackwell.



Head No. 13, 2000

The judge dismissed the first lawsuit, finding that the photograph taken of Nussenzweig on a street is art, not commerce. The second appeal was also dismissed on the grounds that the law recognised that art can be sold, at least in limited editions, and still retain its artistic character. Both of these rights of artists are protected by the First Amendment⁴⁵ in the USA.

So, the photographer's right to artistic expression was given legal precedence over the subject's ethical privacy rights on the grounds that the possibility that such a photograph might be taken is simply the price every person in the United States must be prepared to pay for a society in which information and opinion freely flow. In an interview with *Street Reverb Magazine* for the Tate,⁴⁶ diCorsia's commented:

⁴⁵ The First Amendment to the United States Constitution is part of the Bill of Rights. The amendment prohibits the making of any law 'respecting an establishment of religion', impeding the free exercise of religion, abridging the freedom of speech, infringing on the freedom of the press, interfering with the right to peaceably assemble or prohibiting the petitioning for a governmental redress of grievances.
http://en.wikipedia.org/wiki/First_Amendment_to_the_United_States_Constitution

⁴⁶ <http://streetreverbmagazine.com/2010/10/27/video-philip-lorca-dicorsia-discusses-heads-series/>

I'm not sure I'd like it to happen to me, but I maintain my right to do it. There really is no expectation of privacy in a public place any more in this world and London, New York saturated with surveillance cameras and in a way it's what you do with those images. I don't believe I defamed those people, I don't believe I was even sneaky about it, I did not conceal my camera

With regard to ethics, a deontological (Kantian) approach might suggest that the diCorcia's actions were immoral, as the basic rule of ethics is that you should treat people as an end in themselves, respecting their autonomy, rather than treating them as a means to an end. It could be argued that diCorcia was not concerned with the individuals' feelings about how their images were to be used. For diCorcia, his right to free expression as an artist and photographer is the issue.

A consequentialist might point out that any harm done in these cases is minimal and has to be weighed against the benefit of creating art: however, it could also be argued that Nussenzweig was very distressed by the photograph, and that he had lost control of his own image. And, as stated by Sennett: "if a man's feeling are damaged, if he is made to feel abject or ashamed, this is a violation of his natural rights".

If we consider the NPPA code of ethics, it could be argued that diCorcia has contravened point 2: "Be complete and provide context when photographing or recording subject", in that the heads series provides no context to the street at all. Eliminating the background, which would have been full of distractions in one of Americans busiest squares with a crowd of people around the subject, gives the photographs a feeling of stillness and space, all of which would not have been the case in reality. This is not strictly street photography in terms of capturing life on the street as it is, and this series blurs the distinctions between staged and candid photography: however, the subjects are, none the less, everyday people going about their daily lives, and diCorcia has managed to capture them in a unique way.

Case study 2: Bruce Gilden

Bruce Gilden is known as a contemporary street photographer with an overtly confrontational style who takes the opposite strategy to the invisible photographer. Gilden is famous for getting extremely close to people and taking photographs with flash, and infamous for his quote "*I have no ethics.*"

Gilden roams the city streets (most often his home city of New York) and looks for people whom he calls 'characters'. His style and tactics are completely at odds with most street

photographers, and he literally photographs within inches of people's faces. His confrontational style is seen as controversial, with many claiming that Gilden scares people with his 'in-your-face' style: street photographer Nick Turpin⁴⁷ describes Gilden's approach as "*physically jabbing at passersby with a camera and flash and results in pictures of scared people*". However, in interviews with Gilden, you hear him talk about the people on the streets he photographs as 'his friends'.

Gilden's focus on highly individualistic characters was first seen in his Coney Island project, which he worked on between 1970 and 1980. An example from the series (see below) shows an aged, overweight woman in the foreground who is bathing in her ill-fitting underwear, and as a subject she stands out as being noticeably different from the other people around her. From the angle taken and from the expression on her face, she has no idea she is in the photograph, and her relaxed expression would suggest she thinks Gilden is photographing the beach scene beyond her. Gilden has created an image he wants you to see, and perhaps is juxtaposing the older lady dressed in her underwear against the youthful activities going on in the background. The image could be interpreted by many as unethical since the image is not at all flattering to the subject. But who is the judge of this? Only the subject can truly object and accuse Gilden of showing them in an unfavourable light, and the image suggests she is either completely unaware that a photograph has been taken or that she does not care.

⁴⁷ Turpin, N. (his blog) <http://www.sevensevennine.com/>



Gilden is operating ethically from a deontological approach, as his motives are substantiated. In an interview for *Source Magazine*,⁴⁸ Gilden comments about his choice of subjects: *“The people that I photograph I enjoy. I am stimulated by them. I like people that have something different and special and I think that’s what makes life special.”*

However, from a consequentialist view, Gilden’s images can be seen as demeaning the subject, and it is hard not to see his approach as invasive and threatening as (in most instances) he enters the subject’s personal space, and they certainly know they have had their photograph taken. Additionally, his use of a wide-angle lens, choice of camera angle and use of flash often creates an unflattering aesthetic for the subject. Yet it is his choice of aesthetics that makes his photographs unique. Gilden’s choice of subjects does not lend itself to beautiful photographs (in the literal sense), with his typical subjects of old men, flabby middle-aged women, and freaks. However, the photographs say something, they have a message. Some viewers might not like the message, but the message is part of photography. Or is this message Gilden’s own, in that he creates these images: Westerbeck and Meyerowitz comment that the archetypal street photographer *“is unconcerned with the*

⁴⁸ Redmond, C. (1997). Bruce Gilden in Conversation with Christine Redmond. Source online article <http://www.source.ie/issues/issues0120/issue10/is10artbrugil.html>

real lives of his subjects. He cares only about the symbolic life he gives them. Street photography cannot help being exploitative in this way. It is an act of appropriation".⁴⁹

Some photographers would disagree with Gilden's approach. Brassai, for example, denounces photographers "who try to trap their subjects off guard in the erroneous belief that something special will be revealed within them".⁵⁰ Henri Cartier-Bresson is quoted as saying "Avoid making a commotion, just as you wouldn't stir up the water before fishing. Don't use a flash out of respect for the natural lighting, even when there isn't any. If these rules aren't followed, the photographer becomes unbearably obtrusive."⁵¹ However, Cartier-Bresson's approach was to stay unnoticed as long as possible, and to photograph ordinary people in normal or extraordinary but significant situations, as compared with Gilden's opposite approach of photographing extraordinary people in ordinary situations.

The internet and privacy within photography

Digital photography and the pervasiveness of image-producing devices together with the internet and its social networks and photo-sharing sites have transformed the way we use images, and these changes are challenging the traditional concepts of what is public and private in photography.

As highlighted earlier, most often the issues surrounding being photographed in public do not concern the actual "taking" of photographs, as most people are unaware of the act, but rather their subsequent publication (i.e. being made public). Until the advent of the internet, the likelihood of street photographs being distributed far and wide and to was tiny: perhaps displayed in an exhibition as a limited-edition print or, at most, published in a photographic art book. The environment for showing and distributing photographs to an audience began to change about a decade ago, when the image-sharing site Flickr was launched in 2002, and a whole host of other site and platforms for image sharing and distribution followed in its wake.

Flickr has traditionally been the home of image sharing by photo enthusiasts and some professionals who publish their portfolios online. Flickr has countless interest groups for street photography practitioners, and a simple keyword search in August 2011 for 'street' produced over 16 million image results. On this date there were 6 billion images on Flickr, which are all available globally in the public domain for anyone to view. However, this

⁴⁹ Westerbeck, C. and Meyerowitz, J. (1994). *Bystander; The History of Street Photography*. Little, Brown.

⁵⁰ Sontag, S. (2008) *On Photography*. Penguin.

⁵¹ Cartier-Bresson, H. (1997). *American Photo*, Sep/Oct: 76.

number of images pales into insignificance when compared with Facebook (with 750 million active users in August 2011), which held over 60 billion photographic images in 2010; this number is estimated to rise to 100 billion by the end of summer 2011.⁵² So, what does this all mean to photography and street photography in particular?

On the one hand, with today's cheap and widespread access to digital cameras and mobile image-making devices (e.g. phones), everyone is now a potential photographer, which has allowed photographers to tap into the zeitgeist for street-generated and candid images. However, the ease of immediate distribution and instant publishing via the internet, plus the subsequent distribution and digital indexing of images by search engines has, on the other hand, increased fears about privacy and control of personal image and identity.

Are these fears of and objections to being photographed and the distribution of these images online held by everyone? Is the internet changing our perception of what 'private' and 'public' mean? It's too early to give definitive answers, but there are signs that the concepts of 'private' and 'public' are evolving: for example, a report by the Pew Research Center⁵³ states that *"an awkward trial-and-error period is unfolding and will continue over the next decade, as people adjust to new realities about how social networks perform and as new boundaries are set about the personal information that is appropriate to share."* In the same report, social networking analyst Stowe Boyd says, *"Publicity will replace privacy. Privacy will appear quaint, like wearing gloves and veils in church."*

Other research⁵⁴ by the Pew Research Center also found that new definitions of "private" and "public" information are taking shape in today's networked society, and the report concluded: *"The generation known as Millennials born into the internet years may change the kinds of personal information they share as they age, but the aging process will not fundamentally change the incentives to share."* It seems that privacy fears may be generation issue, with younger people who have grown up with digital images and the internet less concerned with the traditional boundaries between public and private.

With new photograph-sharing and blogging websites achieving mainstream popularity within weeks of being launched (Google+ had 10 million users a mere two weeks after its launch in

⁵² Facebook statistics
<http://mashable.com/2011/02/14/facebook-photo-infographic/>

⁵³ Pew Research Center Report: (2010) Future of the Internet, Identity, Social Networking Millennials will make online sharing in networks a lifelong habit by Janna Anderson, Lee Rainie Jul 9 2010, "Future of the Internet" study. <http://pewinternet.org/Reports/2010/Future-of-Millennials/Overview.aspx>

⁵⁴ Pew Research Center Report: (2010) Future of the Internet, Identity, Social Networking Millennials will make online sharing in networks a lifelong habit by Janna Anderson, Lee Rainie Jul 9 2010, "Future of the Internet" study. <http://pewinternet.org/Reports/2010/Future-of-Millennials/Overview.aspx>

June 2011⁵⁵), the concept of photograph sharing and associated privacy online is set to change further. A recent example of a new photo-sharing website is www.tubecrush.net and which is a platform for surreptitiously taking photographs of 'good-looking' men on the Underground network in London (there is a companion website for the subways of New York: www.subwaycrush.net). The premise is simple: “‘See, Snap, Share’. See a crush, discretely snap him with your phone” and post the image online.”⁵⁶ The company states on its website: “We believe that our blog is an artistic expression of our appreciation of the human body, and as such, we believe we are legally entitled to publish these photos. Please see here for more information on the laws regarding taking photos of people.” They also offer to remove images on request, but say that, so far, they have received very few requests for removal.

The Millennial Generation has different morals to previous generations relating to what they consider private with image sharing, and document their daily lives through online images. The changes and more relaxed moral attitude towards image sharing wrought by recent digital and networking technologies could affect the legal position of privacy: “When our reasonable expectations diminish, as they have, by necessity our legal protection diminishes.”⁵⁷

Despite image sharing being pervasive within and accepted by the younger generation, it is without question leading to increased vulnerability, and with increased vulnerability comes the requirement for increased responsibility. The major online players such as Facebook that have control high percentages of the content on the internet, and indeed its users, currently have free rein on privacy policies, which they often change with no notice. There is at present no global legal system to regulate the policies of these multi-jurisdiction companies and organisations – which should be of grave concern to all of us.

⁵⁵ CNN Money. Google+ grows to 10 million users:
http://money.cnn.com/2011/07/14/technology/google_q2_earnings/index.htm (accessed 30/8/2011).

⁵⁶ <http://tubecrush.net/about/>

⁵⁷ Dr O' Hara. (2010). *How online life distorts privacy for all*. BBC Interview
<http://news.bbc.co.uk/1/hi/technology/8446649.stm>

6. CONCLUSION

The essence of this discussion has been the dichotomy between rights of the photographer and their subject: “*The right of a person to privacy in a public place is equal to the right of the photographer to take a photograph in a public place.*”⁵⁸

Legally, the position of photography in a public space is clear-cut: there are no legal restrictions on taking a photograph in that public space of a public act. However, negative moral beliefs about street photography are developing out of public fears relating to personal identity, misrepresentation, paedophilia and terrorism. Much of the negativity and paranoia is being stoked by the media, the same media whose demand and aggression for public images created the paparazzi, with their blatant invasion of privacy creating further negativity towards street photographers. In addition, public areas are decreasing as more and more parks and shopping areas are becoming privately owned, and this is changing the landscape of private versus public and adding further confusion of what is legally a public space. All of these changes has led to the widespread – but erroneous – presumption by the general public that it is illegal to photograph strangers in public.

The environment that street photographers operate within is thus becoming increasingly challenging, and subjects are likely to become more wary of photographers, to avoid the camera, and to question and confront photographers (particularly with regard to what the photographer intends to do with what they consider to be *their* – not the photographer’s – image).

This conflict on the rights on photography between the public and photographers concerns ethics and specifically the invasion of privacy. One of the most notable examples of conflict between a photographer and their subject was the case brought in the United States against diCorcia, where the subject of the photograph, Nussenzweig, claimed to have lost control of his image. The case was dismissed on the grounds of the rights of an artist under the First Amendment, and although diCorcia said he would not like to be placed in a similar situation to Nussenzweig, it was his right to freedom of expression as an artist that was at issue, not the subject’s right to privacy.

Invasion in the form of intrusion, portraying subjects in a false light, embarrassment and image appropriation all have associated ethical issues that intensify the debate between the right to privacy and a photographer’s right to freedom of expression.

⁵⁸ Turpin, N. (2010). *Sevensennine*. Street photography polls: http://www.sevensennine.com/?page_id=998 (accessed 30/8/2011).

It is not necessarily the taking of the photographs that is the issue (as most often the subject is unaware) but the subsequent distribution of images (especially online) that is at the forefront of public concerns. Paradoxically, at the same time as the concerns have come to the fore, the notions of public and private are changing through the pervasiveness of digital technology and social networks within younger generations, who have a more blasé approach towards what they consider private, with widespread sharing of photographic images compared with previous generations: these attitudes may begin to influence the legal positions of what is public and private. Although image sharing is accepted by the younger generations, it has inevitably led to increased vulnerability with regard to issues relating to image use, and with increased vulnerability comes the requirement for increased responsibility by creators and users of images.

Given the above considerations, perhaps it is time for the creation of organisation to represent street photographers and for a code of practice to be drawn up for the ethical practice in street photography. However, in the meantime, the ethical decisions will remain with the photographers and our faith in their objectivity as image-makers.

7. FINAL CONSIDERATIONS

While there is a heightened awareness of and debate on street photography, surveillance seems to have slipped in the back door: the most prolific of street photographers is Google Street View (the German photographer Michael Wolf has even created a series of images based on photographs he takes of scenes on Google Street View⁵⁹).

Social networking sites and digital-imaging technologies are changing photographic practice. Formerly, vernacular photography recorded memories of 'special' personal and public events, but it has evolved to create image diaries – live-streaming daily life and performances acted out with deliberation in front of the lens.

⁵⁹ Laurent, O. (2011). World Press Photo: is Google Street View photojournalism? *British Journal of Photography*: <http://www.bjp-online.com/british-journal-of-photography/news/2025845/world-press-photo-google-street-view-photojournalism> (accessed 30/8/2011).

APPENDIX 1

NPPA Code of Ethics

The National Press Photographers Association, a professional society that promotes the highest standards in visual journalism, acknowledges concern for every person's need both to be fully informed about public events and to be recognized as part of the world in which we live.

Visual journalists operate as trustees of the public. Our primary role is to report visually on the significant events and varied viewpoints in our common world. Our primary goal is the faithful and comprehensive depiction of the subject at hand. As visual journalists, we have the responsibility to document society and to preserve its history through images.

Photographic and video images can reveal great truths, expose wrongdoing and neglect, inspire hope and understanding and connect people around the globe through the language of visual understanding. Photographs can also cause great harm if they are callously intrusive or are manipulated.

This code is intended to promote the highest quality in all forms of visual journalism and to strengthen public confidence in the profession. It is also meant to serve as an educational tool both for those who practice and for those who appreciate photojournalism. To that end, The National Press Photographers Association sets forth the following.

NPPA Code of Ethics

1. Be accurate and comprehensive in the representation of subjects.
2. Resist being manipulated by staged photo opportunities.
3. Be complete and provide context when photographing or recording subjects. Avoid stereotyping individuals and groups. Recognize and work to avoid presenting one's own biases in the work.
4. Treat all subjects with respect and dignity. Give special consideration to vulnerable subjects and compassion to victims of crime or tragedy. Intrude on private moments of grief only when the public has an overriding and justifiable need to see.
5. While photographing subjects do not intentionally contribute to, alter, or seek to alter or influence events.
6. Editing should maintain the integrity of the photographic images' content and context. Do not manipulate images or add or alter sound in any way that can mislead viewers or misrepresent subjects.

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