

## ***STREET PHOTOGRAPHY - WHOSE SIDE OF THE LENS ARE YOU ON?***

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‘You can’t depend on your eyes when your imagination is out of focus.’

Mark Twain<sup>1</sup>

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If imagination is that special ability of the mind to be intelligent, ingenious, and inventive then I submit that a competent and highly regarded photographer should use their imagination purposefully, passionately, and powerfully but in an appropriate and, indeed, a lawful way.

It would seem to me that a photographer should adapt their imagination to each place where they photograph.

A photographer, and most certainly a photographer out on the streets, should be aware of any risk in their pursuits from a jurisdictional point of view.

Interestingly, the imagination of the first photographer was focused on a street. In that case it was a Parisian Street. The image was taken in 1826 by Nicéphore Niépce and it reinforces forever the part that street photography plays in the art of photography.

I can only comment on street photography from an Australian point of view except where I have researched certain aspects of the genre concerning the United Kingdom and the United States of America and I choose to comment.

When I was asked by a photographer about my views on street photography, my immediate response was that it depends whose side of the lens you are on. In taking the approach of the subject (as opposed to the photographer) I felt the need for privacy. In taking the approach of the photographer I instinctively felt I had to consider the difference between right and wrong in pursuing street photography.

I asked myself the meaning of street photography<sup>2</sup>. I went looking for a definition. I couldn’t help but consider the need for legal certainty and guidance as to what is in fact right and what is in fact wrong in the pursuit of street photography.

A simple investigation revealed to me that there is a lack of certainty as to what street photography is.

I looked at the Rules for the Siena International Photo Awards 2020 and noted ‘(t)he photo must be based on the following categories and terms ... STREET LIFE’.

I then noted that Edwardstown Photography Club Inc includes street photography in the genre ‘Photo-Journalism & Social Documentary’.

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<sup>1</sup> 1935, *Mark Twain’s Notebook* by Mark Twain, edited by Albert Bigelow Paine, Quotation page 344, Harper & Bros, New York.

<sup>2</sup> When commenting on street photography, I could also be talking about filming and/or videography. To my mind a person filming could be a cinemaphotographer working on motion pictures, recording on film, or a videographer using electronic media, e.g., videotape, hard discs, streaming media and the like.



In its current competition rules SAPF has a paragraph dealing with images for submission headed 'Photojournalism & Social Documentary' with no specific mention of street photography.

So markedly different are these approaches to what I thought I was to talk about that I became concerned. I researched further and saw that what seems to be street photography may include elements of a range of genres – candid photography, documentary photography, action photography, war photography, photojournalism, portraiture, urban photography, rural photography, wildlife photography, fine art, landscape photography and possibly macro photography.

All in all, real-life images more than images emphasising beauty seem preferable in what is acceptable as street photography. The solid entrenchment of this approach can be largely attributed to a particular event. Britannica<sup>3</sup> reports the event as follows:

In 1967 photography scholar and curator John Szarkowski organised the now-celebrated exhibition "New Documents" at the Museum of Modern Art in New York City, featuring the work of Arbus, Friedlander, and Winogrand and identifying them as the new generation of photographers following in the footsteps of Frank and inspired by the "snapshot" look. Szarkowski's exhibition revealed as much about the fascinations of the people behind the camera as those in front of it and some critics found the work to be voyeuristic and exploitative. Whatever its merits and flaws, "New Documents" defined a new form of documentary photography, which marked a shift in the notion of documentation as strictly objective and also in the perception the art of photography itself: for the first time in the history of photography, the photographer was clearly revealed as an artist with a point of view and not a mere recorder of facts.

Of the contributing artists Britannica said:

Garry Winogrand, Lee Friedlander, and Diane Arbus were notable American street photographers of (the 60's and 70's) ... they each shaped a personal and distinctive style that favoured realism over beauty. The influence of Atget is apparent in Friedlander's photographs of urban life across the United States, though his images of reflections in storefront windows have a decidedly more-depressed tone than those of Atget. Winogrand's crowded and theatrical scenes of New York City streets captured the crazy chaos of the world with immediacy and energy unlike any other street photographer. Arbus unflinchingly examined the marginalized figures of society. Her dramatic straightforward images awkwardly bring to the fore figures who were often shunted to the background, avoided, or ignored in daily life.

In considering the genre today I said that street photography should simply visually document people in public and public property. When undertaking work in this genre the street photographer should consider what is right and what is wrong in undertaking street photography and focus on understanding the rights of the photographer while respecting those of the subject (or the owner of the subject).

I have said that street photography may include elements of many genres. It may also take many forms. It may be the capturing of an image during a chance encounter in a public place with a person or persons unknown to the photographer. It may be the photographing of a subject which results in an image having possibly immense monetary value. It may cause distress to a person or persons being photographed. It may offend. The pursuit of street photography can demonstrate poor form on the part of the photographer i.e., a lack of manners and a lack of understanding of etiquette.

Must street photography really be contentious? What is the legal position?

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<sup>3</sup> <http://www.britannica.com/topic/New-Documents> accessed Sunday 15 March 2020.



## I. THE GENERAL LEGAL POSITION IN AUSTRALIA

No one law in Australia makes it unlawful for a photographer to make use of an image which the subject did not authorise to be taken.

To best understand that proposition I want to take you back to pre-World War II, 1937 in fact. In that year the High Court of Australia decided what is commonly referred to as the *Victoria Park Racing Case*<sup>4</sup>. That case remains authoritative today. The then Chief Justice Latham CJ recited certain key facts in his judgment as follows<sup>5</sup>:

The plaintiff company carries on the business of racing upon a racecourse known as Victoria Park. The defendant Taylor is the owner of land near the racecourse. He has placed an elevated platform on his land from which it is possible to see what takes place on the racecourse and to read the information which appears on notice boards on the course as to the starters, scratchings, &c., and the winners of the races. The defendant Angles stands on the platform and through a telephone comments upon and describes the races in a particularly vivid manner and announces the names of the winning horses. The defendant ... carries on the business of broadcasting from station 2UW. This station broadcasts the commentaries and descriptions given by Angles. The plaintiff wants to have the broadcasting stopped...

Amongst other things the Chief Justice wrote in his findings<sup>6</sup>:

In my opinion, the law cannot by an injunction in effect erect fences which the plaintiff is not prepared to provide. The defendant does no wrong to the plaintiff by looking at what takes place on the plaintiff's land. Further, he does no wrong to the plaintiff by describing to other persons, to as wide an audience as he can obtain, what takes place on the plaintiff's ground.

The court has not been referred to any principles of law which prevents any man from describing anything which he sees anywhere if he does not make defamatory statements, infringe the law as to offensive language, &c., break a contract, or wrongfully reveal confidential information. The defendants did not infringe the law in any of these respects.

The decision was most interesting. Essentially the topic was twofold. First, the Court was asked 'what is property'? Secondly, the Court was asked if 'new forms of property' should be recognised? The decisions were reasoned by three of the five Justices namely the Chief Justice and Dixon and McTiernan JJ such that the binding authority of the case is that there is no property in a spectacle and no right to privacy. Rich and Evatt JJ dissented. Those two High Court Justices felt that it was time for the common law to entrench a new remedy which would have had the effect of defending the privacy of the person from serious and unwanted intrusion.

In referring to that case I am referring to common law; law created by decisions of judges which act as precedents for later decisions.

That case was decided by the highest court in our country. It was dealing with issues of tort.

Tort is the law relating to wrongdoing. Tort allows for compensation to be paid by the wrongdoer.

For all intents and purposes street photography has been authorised by reason of that decision - there being no right to privacy.

The decision in *Victoria Park* was reaffirmed 64 years later by the High Court in *ABC v Lenah Game Meats*<sup>7</sup> where

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<sup>4</sup> *Victoria Park Racing v Taylor* (1937) 58 CLR 479.

<sup>5</sup> *Ibid* at 492.

<sup>6</sup> *Ibid* at 494.

<sup>7</sup> (2001) HCA 63.



the High Court in 2001 held that Australian law should still not recognise a tort of invasion of privacy. The High Court did, however, leave open the possibility of the development of a common law tort of invasion of privacy.

It should be emphasised that *ABC v Lenah Game Meats* is the only other case decided by the High Court of Australia concerning the right of privacy.

It is noteworthy that both of those High Court decisions relate to cases presented by corporations and not natural persons.

A tort of invasion of privacy has been acknowledged by two lower courts namely the District Court of Queensland<sup>8</sup> and the County Court of Victoria<sup>9</sup>. In each case the matter settled before appeals by the respective defendants were held.

We are left in the position that no Australian appellate court has yet confirmed that the tort of invasion of privacy exists.

In her address: *An Australian Perspective on Privacy Law Developments* at the Media Law Resource Centre Conference in London on 30 September 2009 the Honourable Justice Ruth McColl AO of the Supreme Court of NSW said at (at paragraph 17):

Given all of that, in another matter in a lower court and in a profound fashion at about the same as the judgment was delivered in *Lenah* the Justice Dowd said: '(a) person, in our society, does not have a right not to be photographed. That is underlined by the fact that much of the evidence in this trial will be street surveillance photography ...'.<sup>10</sup>

Unlike the United States of America, we have no federal Bill of Rights at a national level in Australia setting out requirements as to photography.

In her address Justice McColl added<sup>11</sup>:

In considering the future of privacy law in Australia it is important to bear in mind that the international community accords privacy the status of a human right through such key documents as *The Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights* ("ICCPR", [1980] ATS 2). Australia is a signatory to the ICCPR which entered into force for Australia on 13 November 1980.

Victoria has its *Charter of Human Rights and Responsibilities Act* 2006. It sets out freedoms, rights, and protections. S13 states:

- A person has the right-
- (a) not to have that person's privacy, family, home, or correspondence unlawfully or arbitrarily interfered with; and
  - (b) not to have that person's reputation unlawfully attacked.

This Charter does not actually create rights but only provides a test against which an act of parliament can be assessed to determine conformation to the Charter.

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<sup>8</sup> *Grosse v Purvis* [2003] QDC 151 (16 June 2003).

<sup>9</sup> *Doe v ABC* [2007] VCC 281 (2007).

<sup>10</sup> *R v Sotheren* (2001) NSWSC 204.

<sup>11</sup> At paragraph 83.



Thus, the position for the street photographer in Australia should be clear. What, if anything stands in your way? The answer from a prevention point of view is, at best, regulation. For instance, in 2012 the New South Wales government implemented the policy of requiring permission for photography to be undertaken at Sydney regional railway stations.

However, as to consent generally it is not necessary for a photographer to obtain express consent of the subject or the owner of the subject of the photograph in Australia.

Andrew Nemeth in his excellent publication 'Australian Street Photography Legal Issues'<sup>12</sup> says:

Aside from commercial use or Voyeurism issues, consent for photography is *not* required in this country. It is purely a question of etiquette and taste. As pointed out in the August 2005 Federal Attorney-General's Discussion Paper '*Unauthorised Photographs on the Internet and Ancillary Privacy Issues*',

[...] for any society to function in a relatively free and open manner there could not realistically be a requirement for all photographs to be taken with consent. If there were such restrictions, candid shots would never be taken, and the media would be severely constrained in the images they show us. Freedom of expression and artistic expression would undoubtedly be adversely affected ... while there may be legitimate circumstances where recording images should be restricted, it would not be practical or desirable to obtain consent from every person all the time, for example, for use in television news file footage.

## II. SPECIAL LEGAL CONSIDERATION

### A. Children

In November 2005 the approach referred to by Mr Nemeth was supported by the NSW Commissioner for Children. Thus, children present no special case. However, given the delicate nature of dealing with children, issues of etiquette and good taste are of paramount importance when photographing them.

The Arts Law Centre of Australia has produced numerous Information Sheets to assist the arts community.

### B. Trademarks

Concerning the issue of photographing signs, designs or expressions which are trademarked because they are a form of intellectual property, I ask the following question. Can a trademark owner succeed in an action to prevent a street photographer using an image which includes a Trademark? The answer is 'No' depending on the context.

If the image is used commercially then there may well be an action if the relevant brand is compromised or taken advantage of. It is interesting that from what I understand the USA is moving very assertively in this regard to better protect the TM owners. That is not surprising coming from the leading capitalist nation.

### C. Copyright

Copyright is an issue of substance warranting its own presentation. That is for another day.

I will simply say that the position is in stark contrast to the law relating to privacy. The law of copyright is entrenched in legislation enacted in this case by federal parliament. Privacy law I have discussed is common law made by the judiciary.

Copyright only protects the things set out in the Commonwealth legislation namely the *Copyright Act 1968*.

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<sup>12</sup> Andrew Nemeth, 'NSW Photo Rights Australian Street Photography Legal Issues' (Web Page, 23 June 2023). <http://www.4020.net/words/photorights.php>



Copyright is a right giving the owner exclusivity in dealing with matters relating to the asset in question. Copyright is created when the asset is created. It need not be registered.

It is sufficient to say that the street photographer should be aware that photographing the whole or a substantial part of a literary, musical, dramatic, or artistic work may infringe copyright IF copyright subsists to protect the subject matter. If an image reveals subject matter protected by copyright and it is incidental to the main subject of a photograph, then there is no breach of copyright.

There are severe legal implications for breaching copyright including sharing unauthorised content on social media.

The unauthorised use of copyrighted material can result in court awarded penalties or the pursuit of other remedies by the aggrieved party. To summarise:

- A court can award damages and costs;
- The party in breach may have to account for profits;
- Copyrighted material may have to be delivered up and possibly destroyed;
- and
- Injunctions may prevent further breach.

#### D. *Restriction and restricting*

It seems to me that restriction of photography has been without success. Council restrictions against supposedly 'unauthorised' photography at Sydney beaches were lifted in 2005 because they were unlawful.

Put simply, if you can be seen then you can be photographed whether you like it or not.

I point out that you can lawfully block the photographer, with hands up, covering up. However, it is generally possible for the street photographer and, indeed any photographer, to take photographs in public places without seeking permission of the subject or the owner of the subject if the subject is a building or buildings, a landmark or landmarks and any other key site or key sites.

#### E. *Police*

My paper would not be complete without the mention of policing.

Perhaps I should start with the UK position. Section 76 of the *Counter-Terrorism Act* UK came into force about 13 years ago. That section allows for the arrest of any person found 'eliciting, publishing or communicating information' relating to members of the armed forces, intelligence services and police officers, which is 'likely to be useful to a person committing or preparing an act of terrorism'. Substantial fines apply and a prison term of up to 10 years can be imposed if a link to terrorism is proven. Clearly the implications were enormous. Photographers both professional and amateur street photographers reported that following the enactment they were frequently stopped and searched with their details then kept on file by the police even when no arrest was appropriate. The situation was particularly odd given that some Royals are members of the armed forces in the UK. Nevertheless, the Metropolitan Police apparently insisted that the enactment was only intended to protect counter-terrorism officers and any prosecution would have to be in the public interest. It said<sup>13</sup>:

'For the offence to be committed, the information would have to raise a reasonable suspicion that it was intended to be used to provide practical assistance to terrorists.'

Taking photographs of police officers would not, except in very exceptional circumstances, be caught by this offence.

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<sup>13</sup> [http://news.bbc.co.uk/2/hi/uk\\_news/7888301.stm](http://news.bbc.co.uk/2/hi/uk_news/7888301.stm) Page last updated at 10:16 GMT Monday 16 February 2009, accessed Friday 24 January 2020.



On the Australian position I would suggest that an approach to a street photographer here by a police officer would very likely be in response to a complaint concerning photography. That being the case, and in any event, a respectful exchange with the police is warranted. Police in Australia have broad powers of arrest e.g. if there are reasonable grounds for the police to believe that an offence has been committed and obviously if the police have a warrant for arrest of the person in question or if the police believe that person is about to commit an offence. Most likely the crime, if any, could be interfering with or hindering a police officer in the execution of their duty. Locally, Section 6 of the *Summary Offences Act, 1953 (SA)* applies.

Police cannot interfere with a street photographer's rights to take photographs nor can the police insist on the deletion by a street photographer of their images without a court order.

If a police officer does a tell a street photographer to stop photographing then the photographer has the right to ignore the police officer unless the photographer is interfering with the execution of the police officer's duty.

#### F. *Private property*

Access to private property by a street photographer requires approval from the property owner.

### III. OTHERWISE WHEN (IF AT ALL) WILL THE LAW INTERVENE?

The law does not fail to provide how an image can be prevented from being used in an unauthorised way.

#### A. *Australian Consumer Law and fair trading*

There are Commonwealth and State laws that apply to the street photographer. Sections 18 and 19 of the Australian Consumer law and similar sections of the Fair-Trading legislation in the states prohibit deceptive and misleading behaviour or conduct. If a photograph is used in a manner to deceive or mislead the public, then that is unlawful.

Very well-known Olympic Gold medal champion Kieren Perkins successfully litigated against industry giant Telstra for the use of his non-authorized image in an advertisement<sup>14</sup>. Mr Perkins was seen wearing a swimming cap adorned with a Telstra logo and a statement accompanied that image. The statement indicated the promotion by Mr Perkins of Telstra. This was in preference to the services of archrival Optus. Mr Perkins had not made any statements about his preference. Because he was a celebrity who engaged in professional endorsements, the Court found the conduct by Telstra was deceptive and misleading.

#### B. *Passing Off*

Reputations are capable of protection. A misrepresentation which brings about damage to reputation is actionable. No street photographer should represent in his or her image some affiliation between unrelated parties.

#### C. *Defamation*

Defamation is injury to reputation. A photograph of a person which in the view of the public, exposes that person to hatred or contempt or ridicule or that causes that person to be shunned or avoided is defamatory.

A caption or title and/or the image itself may be defamatory. This is a real lesson to exhibitors. The naming of a photograph or the captioning of it must be within the law.

It is appropriate to refer to the *Ettinghausen*<sup>15</sup> case.

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<sup>14</sup> (1996) 36 IPR 46.

<sup>15</sup> (1991)23 NSWLR 443





In that case the plaintiff, was Andrew Ettinghausen, a Rugby League football player for the Australian Kangaroos. The defendant was a publisher which published an article about some of the Kangaroos in a magazine 'HQ'.

The front cover of the 'HQ' in question included the words, 'PLUS ... and some naked Kangaroos.' The table of contents included '94 Hunks Gratuitous nudity, bad language, and some fine pectorals C ... On tour with the Kangaroos (the footballers, not the marsupials).'

In the relevant publication there was an article and a photograph of some of the Kangaroos showering. The photograph in question was poor quality with lighting from above and behind but Mr Ettinghausen's penis was visible. He did not authorise the publication of the photograph.

The trial Judge considered that the imputations were as follows:

- (a) The plaintiff deliberately permitted a photograph to be taken of him with his genitals exposed for the purposes of reproduction in a publication with a widespread readership.
- (b) The plaintiff is a person whose genitals have been exposed to the readers of the defendant's magazine 'HQ', a publication with a widespread readership.

The ratio decidendi or principle of the case is as follows. For an implication to be defamatory under ridicule, the imputation must be capable of subjecting the plaintiff to "more than a trivial degree of ridicule".

Hunt J. applied the USA case *Burton v Crowell Pub Co*<sup>16</sup> and held:

... I am satisfied that imputation (b) is capable of defaming the plaintiff. Upon the assumption that the ordinary reasonable reader did not conclude that the plaintiff deliberately permitted the photograph to be taken of him with his genitals exposed for reproduction in a publication with a widespread readership which is the only basis upon which this imputation will fall to be considered – the publication of this imputation is in my view capable of subjecting the entirely blameless plaintiff to a more than trivial degree of ridicule.

Accordingly, the imputation is capable of defaming the plaintiff.

The award by the jury was \$350,000 (a record for the time). Interestingly, on appeal in *Australian Consolidated Press Ltd v Ettinghausen*<sup>17</sup> Justice Michael Kirby, then President of the NSW Court of Appeal, observed: 'The result of legislative inaction is that no tort of privacy invasion exists. Thus, whilst the value of privacy protection may generally inform common law developments, it would not be proper to award Mr Ettinghausen compensation for the invasion of his privacy, as such'.

#### IV. PRIVACY – RECENT DEVELOPMENTS

What is the current position regarding the right or otherwise to privacy and are there relevant developments?

The *Privacy Act 1988 (Cth)* deals with personal information but still it grants no general rights. This means that a person's consent is not required for their photograph to be taken. However, a photograph may contain 'personal information' in breach of the *Privacy Act*. The Office of the Australian Information Commissioner and Privacy Commissioner believes so. It is the national regulator for privacy and freedom of information. It is meant to uphold people's right to access government-held information and have our personal information protected. That Office has three broad functions conferred upon it. One of those is the privacy function and how a person's personal information is handled. Its 'Photos and videos'<sup>18</sup> publication is worthwhile reading.

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<sup>16</sup> 82F.2d 154 (2dCir.1936) February 10, 1936.

<sup>17</sup> Unreported Court of Appeal (NSW), 13 October 1993, at 15.

<sup>18</sup> <https://www.oaic.gov.au/privacy/your-privacy-rights/social-media-and-online-privacy/photos-and-videos> accessed Saturday 24 June 2023.





Meanwhile there remains no statutory definition of privacy in Australia.

The Australian Law Reform Commission ('ALRC') was given the task of further considering this. It subsequently released its Discussion Paper 72.<sup>19</sup> It brought no legislative response. In 2013 the then Attorney-General Mark Dreyfus QC MP sought to have the ALRC draft a statutory cause of action for serious invasion of privacy and consider remedies. A Report<sup>20</sup> relating to this, our digital age, followed but the government did not formally respond to the Report for some time.

It was not until earlier this year; the Commonwealth government released its report of the Attorney-General's Department review on the *Privacy Act* 1988. It would seem reform is imminent with significant and broad ranging changes likely. Much of that reform is likely to relate to privacy in this digital age. It remains to be seen how much may relate to street photography.

Turning to the courts, we know that in *ABC v Lenah Game Meats Pty Ltd*<sup>21</sup> our High Court did not exclude the possibility that a tort of invasion of privacy may be established in the future.

More recently, in 2008, the Supreme Court of Victoria's Court of Appeal held 'damages should be available for breach of confidence occasioning distress, either as equitable compensation, or under Lord Cairns' Act'.<sup>22</sup> The Court was referring to an equitable doctrine concerning breaches of confidence. That is not the same as a tort relating to invasion of privacy, but it does relate to privacy.

While the *Privacy Act* will not apply to the street photographer who secured the relevant photograph it could apply to another entity. An exhibitor or promoter of an exhibition could take matters too far with a comment or caption concerning an exhibit.

#### V. CONSENT (OR OTHERWISE)

There is no doubt that a written contract between the street photographer and each subject, making certain the terms under which the photographer photographs each subject, should clarify all that is necessary including the right to commercialise any relevant image. However, the creation of such a document is unrealistic in most circumstances.

Nevertheless, it seems that some photographic competition organisers seek protection from the risk of displaying any photograph in respect of which there was no appropriate consent granted.

One way of doing this is to have the photographer confirm, at the time of entering the competition, that appropriate consent was granted.

I highlight the following example. The rules for the LensCulture Street Photography Awards 2020 included a sub-rule<sup>23</sup>:

4.3 You confirm that each person depicted in the photograph has granted permission to be portrayed as shown – and has the right to grant permission. Any costumes, props or other materials used must be rented or borrowed with the permission of the owner, and all other relevant permissions must have been obtained.

Remarkably the competition gallery then shows many street photographs depicting numerous people who surely

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<sup>19</sup> 'Review of Australian Privacy Law' [2007] ALRC DP72 <http://www.austlii.edu.au/au/other/lawreform/ALRC DP/2007/72.html>

<sup>20</sup> *Serious Invasions of Privacy in the Digital Era* (ALRC Report 123).

<sup>21</sup> *Australian Broadcasting Corporation v Leah Game Meats Pty Ltd* [2001] HCA 63.

<sup>22</sup> *Giller v Procopets* [2008] VSCA 236.

<sup>23</sup> <https://www.lensculture.com/photo-competitions/street-photography-awards-2020> accessed Monday 20 April 2020.



did not grant permission to the photographer to be portrayed, let alone 'as shown'. Even more remarkably the sub-rule seems to have allowed issues of legal capacity into the argument by using the words 'and has the right to grant permission'. In other words, the competition organiser arguably requires confirmation that the permission is granted in each case by a person who has attained the age of majority and is of sound mind. After all it is only those with legal capacity who have the right to grant permission. A person lacking in legal capacity by reason of a disability cannot grant permission.

The second sentence of the sub-rule creates, in my submission significant uncertainty. In my view, it points to the approval of entries being contrived with the use of costumes, props, or other materials. Alas, the definition of street photography again comes into question.

I can only reiterate my view that street photography is all about shooting images of chance encounters with people in public places and shooting images of public places themselves. To further emphasise, one Arts Encyclopaedia says of street photography<sup>24</sup>:

This type of street art is about capturing the exact moment in time when the ordinary becomes the extraordinary. As a result, it has nothing to do with staged photography, also known as pictorialism, since authenticity remains a key attribute.

#### VI. CODES OF ETHICS AND CONCLUSION

All in all, good form remains the answer to street photography i.e., good manners and etiquette.

A good approach to similar issues has been adopted elsewhere. Take for example the Communications Council, the Australian Association of National Advertisers and the Advertising Standards Board which have, within their memberships, a code of ethics. The TCC's is particularly good as it included the point that members should '(r)espect all people. No stereotypes ... individuals should be understood, not portrayed in a way that could bring disrespect.'<sup>25</sup>

Stations showing Australian TV commercials observe privacy standards. Again, a code of practice applies. ACMA publishes that the channels commit to not use material relating to a person's private or personal affairs or which invades an individual's privacy in circumstances where there is no clear public interest in the disclosure. That code of practice also points to the need for consent or, in the case of a child, the child's parent or guardian to be obtained before the relevant broadcast. The ABC and SBS have editorial codes of practice worthwhile reading.

The criminal law covers anti-voyeurism and anti-obscenity matters. I do not intend to raise those.

Adelaide, South Australia

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<sup>24</sup><https://visual-arts-cork.com/photography/street.htm> accessed Monday 20 April 2020.

<sup>25</sup><https://advertisingcouncil.org.au/wp-content/uploads/2022/11/ACA-Code-Of-Ethics-A4-2023.pdf> accessed Saturday 20 March 2020.

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