

Annotation #3
Notes on "The Right to Privacy"
By Dave Olson

Whenever we trod out into the world, we expose ourselves in some manner (not "obscenely" let's hope) to the public. We can choose (for the most part) what degree of exposure we wish to grant to the public's eye collective eye. Additionally, I think there is a demarcation line of legality and affording civilized humans a private space to just "be." Despite this demarcation line (and my personal dreams of a world where graciousness and tact are the norm), I think it unlikely we can expect the lofty degree of personal privacy away from prying eyes of instantaneous photography which Warren and Brandeis spoke for in their noteworthy essay.

No matter how we choose to behave when out and about, we (all of us) become part of the social public domain in some manner or another when out in public. Though disconcerting, in the same way people may stare at us on the bus-stop for example (and perhaps make us feel uncomfortable whilst doing so), they can also photograph us from near or afar in the public space. Social norms (gratefully), and politeness (hopefully), suggest asking before shooting (makes for a better subject as well) and perhaps some amount of disclosure of what you are up to (eg: a school project, artwork, or a tourist memento) but such niceties are not required nor should they be.

Indeed intrusive photography may even start confrontations (as are often evidenced in scuffles between upset celebrities and obnoxious paparazzi). However, an attempt to limit what people can photograph causes a situation in which one ostensibly would have to gain permission from each person in the background to take a photo in front of Old Faithful for the family slide show.

The manner of usage of an image however makes a significant difference. If the image is a purely commercial purpose, the company is required to gain releases and you entitled to compensation - even if compensation consists of, for example, a "thank you," a credit in a film or less.

In a newspaper that is reporting news, such permission is not necessarily necessary. This again depends on where the news event occurs. Advice suggests that if you don't want your picture taken (and possibly published) in relation with a newsworthy event in a public area, you had best leave the area. However, when the news event occurs in a private area, a photographer, like the rest of us, cannot violate the sphere of private space. Such invasion of private space may be considered criminal breaking and entering.

What constitutes a public area is difficult to define beyond, "places where any person can enter and be without specific permission or undue hindrance." I would include roads, sidewalks and public transport mediums, including what you can see inside cars. Public shopping markets and malls but not necessarily all types of shops and offices which one cannot 'just wander in.' Add in parks, all but the most secure government offices, public amusements and festivals.

There are a few tools one may use to alter their 'personal amount of public disclosure' to fit what we are comfortable with sharing. Examples include hiding one's face or eyes with a mask, scarf or dark glasses; disclosing opinions on a t-shirt, button or bumper sticker; expressing a view point with a sign or protest slogan; yodeling a tune; or just staring blankly oblivious to all other people.

At the same time, when one is in a private zone, one should expect to be left alone from unwanted visits, hassles, and miscellaneous intrusions. Some modicum of privacy, including not being photographed or bothered in our

daily private business, should be a valued part of our contemporary social experience.

As for where that private zone *is*, I would include one's house or other dwelling, a private office, or private business (such as a club or restaurant), event or ceremony or other space that is not open to general foot traffic and passers-by without specific permission or reason.

Where these two spheres intersect - for example taking a picture from a public place of a person or event in a private space, or being photographed while attending an event in a private arena - generally the rules of the public apply.

By the nature of such events held in private venues (ie: concerts, sporting events), the norms of public sphere apply despite the possible private ownership status of the facility. By purchasing and using a ticket, attendees generally agree to be photographed (including appearing on TV broadcasts) without compensation. The public (attendee) can also photograph the event for their private recollections sharing but not selling and publishing.

As for photos from public locations onto private locales, ... the invention of draperies has proven to be an effective deterrent from this type of invasion of privacy. Indeed, long driveways and tall hedges provide a similar preventive measure.

Such measures are wise advice for those who wish to control the amount of disclosure to both casual passers-by and malicious snoops.

