

## **“Street” Photography and the Law**

### **1. Model releases are generally not required...**

This is one of the biggest misconceptions about what is required when photographing people. Granted, it never hurts to obtain a release, and it may be required if you are going to license your image commercially. However, simply photographing a person in public view — including children and law enforcement officials — does not require either a model release or expressed consent.

### **2. ...but use common sense.**

There are certain exceptions to the above generalization, most of them related to a person’s “reasonable expectation of privacy.” For example, if you’re shooting from a public street into someone’s bedroom or bathroom window, you may be crossing an ethical and even legal line. If someone waves you off when you try to photograph him or her, you may be well within your legal rights to take the shot, but ask yourself if it’s worth the verbal or even physical altercation that it may yield. Confrontation aside, be respectful and considerate towards your subjects, and if they say they’d rather not be photographed, simply moving on.

### **3. Your rights as a photographer are broadest in public places.**

For the most part, that means that as long as your shooting position is on public ground, you can photograph whatever you wish; this includes subjects situated on private property but within public view, such as a couple sitting on a restaurant patio that you can view from the street or a waiter who is taking a smoke break on his employer’s back step. Similarly, contrary to popular belief, you do not need to obtain parental or guardian consent to photograph children on or visible from public property.

### **4. Just because a property is open to the public doesn’t make it public property.**

Locations often thought of as “public,” such as shopping malls, amusement parks, airplanes, theaters, and performance arenas may be subject to restrictions imposed by property owners once you enter onto their property. You are legally obligated to comply with property owners’ requests (or that of their agents, such as an employee or security guard) to cease photography or even to vacate the premises. Military bases, crime scenes, airports, museums, energy installations, courthouses, public hospitals, and certain government facilities — while technically property owned by taxpayers — may also be physically (and sometimes photographically) off limits to photographers or subject to significant limitations for security, privacy, or logistical reasons.

### **5. There may be restrictions on photography that interferes with others’ enjoyment or use of a public area.**

Even broadly accessible public areas — such as public streets and sidewalks — may be subject to restrictions on the use of certain equipment, particularly tripods, supplemental lighting, reflectors, and similar. If your setup is likely to disrupt the general flow of traffic, interfere with administrative activities, or cause a safety hazard, there’s a good chance that you need a permit to conduct your photography as planned. In Washington DC, for example, photography is permitted but tripods are prohibited on the Capitol grounds, national memorials, most Smithsonian museums, and the Metro system.

### **6. Concerned parties have the right to approach you and inquire about your activity.**

If confronted, be calm, respectful, and prepared to explain yourself. We live in a relatively fearful society, particularly post 9/11. Accept that most approaches — whether they come from a private citizen or a law enforcement officer — are probably coming from an honest place of fear, defensiveness, or concern. Confidently and honestly explain to those who ask about your activity that you are a

professional photographer, a photographer taking part in a photo walk, or a photography student completing an assignment (even if it is self-assigned). Any one of these explanations is very likely to defuse the situation. If you are advised that your activity (or use of equipment) is prohibited, feel free to respectfully ask for clarification as to the relevant policy, regulation, or statute and its terms. Broadly speaking, private citizens may not detain unless they have witnessed a felony, and law enforcement officials may detain only if they have reasonable suspicion of criminal activity afoot. Neither private citizens nor law enforcement officials have the authority to require that you delete your photographs or relinquish your equipment (including film or memory cards) except when acting in accordance with a court order or in conducting of an arrest.

## **7. You are allowed to display and even sell the images that you've photographed.**

If you had the right to photograph a subject or scene, generally speaking, you also have the authority to display the photograph as an illustration of art or news – and that includes showing those images on your blog, in print, in news media, and in your photography portfolio (print or online). Indeed, you can even sell prints or digital copies of your street photography. Things start to get more complicated when “commercial use” (typically tied to advertising) comes into play, which is the reason why stock agencies that license images for both personal and commercial use tend to require a model release for any photos that they agree to manage which contain a personally identifiable individual. If you are in business, this may also become relevant to you as you put together your own promotional materials, in which case you will need to ask yourself if your image of an identifiable subject suggests some sort of endorsement, advocacy, or sponsorship of your work — or whether the inclusion of the subject is simply a matter of illustrating your art.