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**Photo for Media, Law and Ethics**

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The cover picture is a combination of two separate exposures taken from the same spot and direction but a few minutes apart. It is as such a “doctored” photo, and therefore taboo in a media context. For more; see pages 30-31.

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All material is, to the best of my knowledge, used according to Norwegian legislation and with no harm of any kind intended. I would appreciate being contacted at gauteh@hivolda.no if anyone should disagree on this.

I am grateful to my colleagues Ellen Lexerød Hovlid and Svein Bruraas for getting me back on track when my lesser expertise in their fields of media law and ethics have led me astray. Burhan Özbilici has kindly accepted my views on his prize-winning photo and its sibling and permitted my use of them. I thank him for that, as I also must thank Erling Sivertsen, Turid Øvrebø, Hans Martin Dypvik, Gunhild Ring Olsen, Kjartan Bjelland, Annemor Larsen, Jarle Aasland, Christina Ulriksen, Magnar Fjørtoft, Ragnar Albertsen, Theo Jordahl, Nils E. Øy, Earle Bridger, Stuart Franklin and Lars Nyre for valuable feedback during my research. Last but not least, my friend Howard Medland have once again served as my trusted guide through the mazes of English grammar and vocabulary. They have all done their best. All remaining flaws and all of the expressed opinions are my own.

Volda, August 2019

Gaute Hareide

Content	
Page 3	Introduction
Page 04 - 20	Law
Page 20 - 45	Ethics
Page 46 - 47	Near future challenges
Page 49 - 53	Codes of Ethics
Page 54 - 57	Notes
Page 58 - 63	Booklist

## Introduction

In all societies embracing the liberty of free speech you may freely utter your opinions on any conceivable matter as long as it is clear that these are your personal opinions, and as long as they cannot be seen as encouragement of any criminal action. You may also publish any kind of statement as long as you can verify that these statements are based on facts. The few exceptions are mostly related to national security. To some degree, depending on how much this liberty is valued, even obvious lies are protected under the pretext that irony and sarcasm are important elements of the individual's freedom of expression. (*US- supreme Court: Hustler v. Falwell 1988.*)

Photography is a more complicated matter, since apart from the one uttering an expression it includes both a motif and photographer and these three roles will normally include more than one legal object. To exemplify: Posting your own selfie on Facebook is very different from publishing someone else's photos from a private party on the same platform.

The following will focus the questions of:

What can be photographed, where, and when?

Who have rights to a photograph, and what kind of rights, and for how long?

Do photographs always show us what we think they do?

Can photographs be harmful and if so, how?

These questions are partly covered by law, partly by ethical rules of the profession, and partly by common decency. Whatever the case there may be reactions if written or unwritten rules are violated. Some reactions may be serious.

Law in particular is a huge theme with several national and international rules and court decisions to consider. I have as a layman addressing an international group of students to the best of my ability treated these questions in relation to the letters of the Law, to relevant Court verdicts and to common practice as it has been observed. Some of the texts present my own opinions on recent and ongoing developments, and all examples are of my own choice. As an entry level introduction to this vast realm it should be treated as no more than that.

Critical opinions are welcome.

## What can be photographed?

In a world-wide society much Law is internationalized, so even if the following focuses Norwegian Law much will apply to other nations. But do check your own, and not just the paragraphs. Court verdicts give precedence and guide how paragraphs are interpreted. Breaking the law can be expensive, as a few following examples will show, while knowing your rights can be profitable.

A basic principle is that anything is permitted as long as it is not prohibited. Courts-of-law is one “no photography” case, military installations is another.

That warning presented, anything in plain view from any publicly accessible area can be photographed. People on private property like in a garden or behind a window can, consequently, also be photographed as long as they are in plain view from a street, a park or other common ground. The case is different if a long lens is needed to get the picture, or a step-ladder, drone, periscope or other support. Then the motive is not in plain sight. The act of photography is now an invasion of private space and permission will be needed. Invading people’s private space should also be avoided in public areas. As a rule it means keeping an arm’s length distance or more from the subject and your number off shots to a minimum. Stalking is illegal under most jurisdictions, as a part of people’s right to privacy.

Photography on publicly accessible private grounds like shopping malls, train stations or sports fields is generally accepted, but you may be asked why and you may be told not to. Owners have a right to prohibit photography on private property. There will normally be a sign saying so, but not always.

On sports fields, photography for general use may be allowed but not video for broadcast or streaming, since that has a commercial value. Regarding stage performances, artists may want control of their image or just want to avoid disturbance during the show. There are many reasons to resent cameras.

Some people resent photography for religious or superstitious reasons, but their numbers are dwindling as the number of cameras are growing. Others have specific ideas of photography; resenting candid shots but cherishing the posed portraits. See Photo for Media; the Portrait pages 5-7 and 34-35.

My experience regarding photographing spontaneous situations as they are observed, versus photographing only after granted permission under the same conditions, have thought me two important lessons:

Lesson 1: If you see a great motif, take it. If it is something that can disappear if disturbed; do not ask permission. Take it and ask forgiveness later. The digital camera with its little display is a great help in that way. Approach; say “Sorry, but I couldn’t help noticing... The light was so beautiful... I think I really got a good picture... Do you have an e-mail address so I can share it... ”, and show the person the picture you just took. Explain who you are and what you will use it for, and ask for permission to do so (keep a few written forms in your bag). And ask permission to take a few more. These may turn out to be of very little value to you, but of great value to your model and provide ground for an agreement for using the others. This will take care of your needs if you succeed, and with such approach you will succeed often.

Lesson 2: Show respect. If you are asked to delete it, do so at once with no further questions, and apologize. There may be many reasons for someone not wanting to have their pictures taken, and most of them are not your business. So just delete all pictures as they watch and make sure they are satisfied that all are gone. Apologize again and go to find a new motif. And feel good about it.

Lesson two applies only in cases of candid street photography for illustration or art. As a journalist you have a right to photograph situations, but you may have to fight for it. When, and how hard, will be a matter to decide in each case. Your adversaries will often wear some sign of authority. That does not have to mean they are right (p. 41). But do also know that even if you have a right to take and keep your photos you may not have a right to publish them.

## Who owns the photograph?

The law is rather clear on that point. If you *create* something, you *own* it.

This simple idea entered Law by the Berne Convention of September 1886. It is now repeated by EU Council Directives and generally adopted world wide. The principle is that profits generated from a creation should benefit the creator and the family for two generations. Recent texts state that the Author of a Work

and his/her successors have an exclusive right to profit from that Work for the Author 's lifetime plus 70 years. A Work is therefore automatically protected, you do not have to register any copyright or whatever. You own it.

So what is a Work? The key word is originality, and for photography that means a tiny bit of trouble. **EU Directive 93/98** tries to give clear definitions in:

**Recital 17:** “a photographic work within the meaning of the Berne Convention is to be considered original if it is the author’s own intellectual creation reflecting his personality, no other criteria such as merit or purpose being taken into account” and in:

**Article 6:** “Photographs which are original in the sense that they are the author’s own intellectual creation shall be protected in accordance with Article 1. No other criteria shall be applied to determine their eligibility for protection. Member States may provide for the protection of other photographs.”

In Norway, following EU regulations, photographic *works* are protected 70 years PMA (Post Mortem Authoris). Photographic *images*, following domestic law, are protected 15 years PMA but at least 50 years after they are made. After that they enter the Public Domain (and are free for all to use).

Complicated? Yes, a bit, and we have only just started.

The difference is as we see not just about time. Works *are* protected for a longer time, but they are also protected under *international* law. Pictures are protected only under *national* law, and for a shorter time.

So what is a Work, again? This is not quite clear. There is one EU court verdict (*Case C-145/10, 1 December 2011; Painer vs. Springer etc.*) indicating rather clearly that arranged portraits where the photographer has made decisions about pose, light, background etc. are Works. Some say that all photos made by professionals are Works. Some say amateur photos, landscapes and press photos are not. There is broader agreement that medical, scientific and police photographs are not, but not full agreement. There is general agreement that automatic camera recordings (surveillance cameras) are not covered at all. The phrase “*own intellectual creation reflecting ... personality*” is perhaps as precise as one can be. Disputes may eventually have to be settled in court.

Straight photo (above) and manipulated illustration (below): Gaute Hareide



Caution is advised even in legally clear situations. The entrance to the British Treasury and the beach scene below were both in plain public view, but both the staff guarding the entrance and the parents guarding their child may fear misuse, so stating your needs and asking permission is wise. Hiding people’s identity as in the picture above is one way of compromising, Anonymizing by changing appearances as below is a less acceptable way. (See page 12 and 46-47.)



## Copyright.

Ownership means *copyright*. Copyright means the right to sell copies. You can buy a copy of a work, and you can make as many copies as you like for yourself, but you cannot sell them or rent them or lend them or distribute them in any way. That is the sole right of the copyright owner, and if you violate that right the normal reaction is that you have to pay an average fee for each copy you have made, plus a bit extra. 100% extra is common.

This rule applies even if you buy unique art like an oil-on-canvas painting. You own it, but you cannot distribute copies of it of any kind. The copyright is still the artist's property. It follows that you cannot photograph any copyrighted material and use it freely even if it is publicly available.

The picture below was made in 1975 as a diapositive "sandwich". One close wide-angle shot of the statue from below and one telephoto shot of the sun, as seen through a water fountain and a red filter gave my mind an impression of "cosmic fury". It made the front page of the photo magazine "Fotografi", and



that was illegal. The statue by Gustav Vigeland was still protected. The crime was not discovered by the copyright owners before his works entered the public domain on January 1th. 2014, so the magazine was lucky.

Buildings are, according to Norwegian Law, public domain for photography, but this is not so in all countries. The Eiffel Tower is public domain, but the illumination of it at night is not.

Designer material is protected, so if a Corbusier chair is part of a photograph, you may have to pay for permission to publish that photograph. If you don't, you may have to pay more. A piece of good advice is: Be careful.

On the bright side; if you discover that anyone has used *your* picture without permission, you may charge them your normal fee plus 100% for each case and you will as a rule get paid. If the publishers feel they have a right to publish without paying, it will be up to them to prove that they have that right.

You can sell your copyright, in part or full. That is how photojournalists make a living. As a freelancer I sold my right to each particular project but kept all other rights. Due to that I own my archive and may charge extra also when old customers want access to old material for new projects.

You can give away your copyright, in part or full. This is generally known as Creative Commons, and is how some amateurs (and sometimes professionals) find extra pleasure in being appreciated through others using their work. CC-licensed images may be used as they are, without payment. Sometimes they may also be cropped or otherwise changed, but the author should always be credited. It is common decency. In Norway it is also the Law, see below.

An alternative is to publish your material for free but ask for contributions, also called crowd-funding. With the world as your market, as Internet has provided, even that may provide a living.

## Crediting.

You have a right to be credited, and if your picture is published without crediting a normal reaction is to add another 100% to your fee.

My personal fee for uncredited use is NOK 1000, even for pictures I normally give away for free. The right to be credited is probably the most violated right we have and I feel strongly about it. I have always been paid.

Your right to be credited *cannot* be given away or sold. When you have created something you are also responsible for it and should not be anonymous.

## Copyright to own self .

Even if you are not self- created you are your own property with an exclusive right to your own image. In Norway this right is extended 15 years PMA out of concern for close relatives, and it is regarded as a rule of personal protection.

Even so; this rule is a part of Norway's *copyright Law* and though nothing I can find in the preparations of the law supports such view; I will argue that it should also be recognized as a *copyright rule*.

The obvious objection is that we are not our own creations. We are made by God, or more directly (through divine intervention or not) by our parents. This is of course a valid argument even in a time of advanced plastic surgery, but I should not need to point further than at Donatella Versage and Michael Jackson to illustrate that the argument is less valid than it used to be. Lowering the line a bit I might point at tattoos, piercing, eating habits, fitness habits, smoke, sun, hairdo, dress and pose. EU's definition of a "Work" as just described (p.5) applied to people makes it rather clear, I think, that we are all to some degree our own intellectual creations and that our visual appearance does reflect our personality. Even in uniform; as that also, mostly, is a matter of choice.

### Shared copyright

Following this line of thought we must admit that photographs may have more "copyright holders" than just the photographer. Art is mentioned as well as design, and buildings under some jurisdictions. Persons are now added to the list, and we need to know when this is a concern or not. One key element is publishing. You can take pictures and you can sell them, but if you publish them without consent from every "copyright holder" represented in the picture you may find yourself in trouble. The other key element is image value. This has to be substantial, which is why I use quotation marks. See next page and Notes.

### What is publishing?

According to Norwegian law, something is published if it is made available to a group of 20-30 people or more. This includes most school classes and most groups on Facebook, and defines most lecturers and most Facebook account holders as Publishers, with publisher's responsibility.

In Norway, school classes are specifically defined as "not public" even if the number indicates otherwise, due to the supposed "familiarity" between teacher and pupils. Auditorium lectures, however, are "public" even if the number of students is less than 20. This is due to the principle of open access to lectures; it is sufficient that they are "available" to more than 20. (See Notes.)

### Who can give consent?

Adults in a responsible condition may consent to pictures of themselves and of those under their care, like children or demented seniors, to be published. In Norway, persons aged 15 may consent to publishing of non-sensitive images in normal connections. (<https://www.datatilsynet.no/personvern-pa-ulike-om-rader/skole-barn-unge/samtykkje-fra-mindrearige/>)

The responsibility for proving that consent is given stays with the publisher. A signature on paper, an e-mail or a sound-recording should be sufficient proof.

Consent must be freely given, specific, informed and precise. It has to be given through some kind of active, verifiable response and the giver should be able to withdraw it just as easily as it was given. This last point means that "consent" is not an ideal form of acceptance for photographs, since photographs published on paper or screen are not, as a rule, easily removed or replaced.

### Other forms of acceptance.

Consent is just one (a) of six legal bases for processing personal data, defined by the EU General Data Protection Regulation. (<https://gdpr-info.eu/art-6-gdpr/>) The other bases for "lawful processing of personal data" according to GDPR article 6 are (b) a contract, (c) compliance with a legal obligation, (d) protection of vital interests (for the subject or other person), (e) public interest and (f) legitimate interest that is not overridden by the interests or fundamental rights and freedoms of the subject.

Even if the GDPR is not, basically, a regulation targeting the use of photos in private, literary, artistic, academic or journalistic context it is worth noticing these definitions, since they reflect views also used under copyright legislation.

Point (b), about contracts, should be of particular interest for photographers, since this is a much stronger agreement than "consent".

### Is consent always needed?

As article 6 indicates, processing may be lawful also without consent if the individual's right to privacy is deemed of less importance than other needs. Points (e) and (f) should be of particular interest for photography.

GDPR article 6 point (e) is in agreement with the basic rule of press photos that they can be published if they are of “public interest”.

§ 1 b) in **Norway’s copyright law of 2018** expresses the same view. It says that the law should aim for a reasonable balance between the interests of copyright holders and the interests of society regarding the private sphere as well as freedom of speech and information.

§ 104 point a) states that images of “topical and common interest” can be published without consent from any of the “copyright holders” in the motif. Once again I’m using quotation marks to indicate that the image value of a person or other copyrighted material in an image has to be substantial to support a claim on the image value. I do not need permission from Levis each time I publish a picture of someone wearing Levis jeans, for instance.

The current (Aug. 2019) inclusion of the word “topical” in Norwegian law means that the publishing has to be linked to a case of interest at the moment of publishing. This is not in accordance with International nor Norwegian court practice at the moment of writing, which is that “public (or common) interest” should be sufficient. A suitable example could be the street view shown below from Haga, Gothenburg. It demonstrates a typical morning situation of the area as the shops are opening, but without any “topical” value.



A second exception from the rule of “consent” is if the identity of the person is less important than the main content of the image (§ 104 point b)). This is a bit more tricky, as the example below may illustrate. It shows a worker coating a statue with a layer of wax to protect it from potential graffiti damage and could be used both in a topical report (of the work being done now or recently), or as an illustration of this process having been done sometime earlier.

The man is clearly identifiable and the only person in the picture, countering an opinion that he is “less important”. Still, he is part of the image due to what he does, not who he is, and one may argue that the preservation of this statue made by the convict Gulbrand Mørstad in 1866, who received a pardon from a lifetime sentence due to his masterly work, is of considerably higher public interest. Accordingly, the image should fall within the mentioned exception and be OK for publishing without need of permission. It is, however, a grey-zone-case where most journalists would, as I did, present themselves and their intentions and obtain an informed consent before publishing.

The man with the grey hat in the previous picture is a much clearer case of an individual being of “less importance” to the main image content, but I like to include the one below to illustrate that the words of the law are as a rule open to more than one interpretation, and that one is well advised to be careful.





The third important exception permits publishing of crowds, open air public parades and issues or incidents of public interest. A case that may illustrate the last part of this is an image printed in Stavanger Aftenblad March 17th 2018. It is from May 1945 and shows an incident where a young woman has her hair cut by an angry mob while two young boys are incomprehensibly observing. It illustrates an issue of public interest, namely that many women were treated this way and worse for “fraternizing with enemy” and that governments at that time both condoned and performed unlawful actions of similar kind.



Other publishing of this picture has been done after anonymizing either all, the woman and the boys, or just the woman. None of them are identified by name and arguments for anonymizing have been that permit therefore cannot be obtained, or/and that all or some of the individuals need protection due to the sensitivity of the situation. The argument for printing the image uncensored is that even if it *is* sensitive for all involved and many of them may still be alive it illustrates an important issue in a rare and direct way, and that public interest in this case therefore should be considered as more important than the concern for the individuals involved and their relatives.

Photos, above: Erling Søiland, right: Gaute Hareide

The image is of course also showing a crowd in open air, but that part of this rule is meant primarily for gatherings of a more normal nature. Publishing pictures of people in the act of committing a crime is exceptional and should be reserved for extreme cases and never under that rule only. This exception is included mainly to ensure that national holidays and similar celebrations can be covered by media without unnecessary complications, even if single individuals sometimes may be focused more than others.



Portraits may be used without permission in texts of biographical nature (§ 37) but if the image is a photograph the author of that is entitled to compensation. The same goes for photographic images used in texts for teaching or in critical or scientific texts intended for “general enlightening” (popular science). Nothing of this applies if the text is published in “digital form”, unless the text is of a “non-general enlightening character”. In that case even photographs can be used without permission or compensation as long as the use is reasonable.

Photographic images of people can also be published by the police as part of crime-fighting (§ 33). A result of that is a popular TV-program where images from CCTV-cameras can be published; also on Facebook. See the screen-shot below. The face is identifiable in the on-line image and so is the car that was “borrowed” by using a stolen drivers license. This co-operation between the TV-station and the police has identified several suspects, after which the image is removed or the persons anonymized (as I, not licensed, have done here).



The earlier version of the law opened for a more general use of photographs in searching for the identity of someone; missing persons in general so to speak. One such “sweet news case” occurred when dedicated hobby photographer Roger Kristiansen in July 2017 got a masterly shot of a bridal couple posing for someone else in a beautiful mountain scenery. Wanting to share his luck with the unknown couple he posted the image on social media, got connected soon after the case went viral and all were happy.

## Tidenes bryllupsbilde – men aner ikke brudeparet er

Hobbyfotografen ventet til turistene hadde gått for å få de beste bildene av Trolltunga. Da dukket det perfekte motivet opp.



The current letter of the law gives little room for this. With no crime and no police involved, unidentified photographed persons have to stay unidentified. That also means that the image has to stay unpublished, until one is certain that all depicted have been dead at least fifteen years. Given a maximum lifespan of 105 (or 120?) this means a picture like the one above would have to be left unpublished at least until 120 (135?) years after their estimated birth year, with a safety buffer of let's say five years? Age estimation by looks is rarely precise.

A popular custom in many local newspapers - the one of printing pictures of the past asking readers for information - is also endangered by this new text. All these four tunnel workers were identified much to the delight of family and relatives, but since the last of them left this life only one year earlier, publishing the picture without consent was, strictly speaking, illegal. Or maybe not? There was "topical" interest regarding the tunnel they built at the time of printing...

The thing to do when in doubt is of course to safeguard by blocking or blurring unidentified persons, as I did on the previous page. The question is when and how and how much. If overly cautious we may perhaps just skip the image, since it will lose some, much, or all its value, see below.



Facsimile Vikebladet. Festival photo and blocking/blurring: Gaute Hareide



Sari-Johanna Hannukainen performing at Selje Viking Festival 2017.



Blurring or blocking or not, that's the question.

One definition of identification is that you are “identified” in a published image or video if close friends or family are able to recognize you after freeze-frame or/and digital image enhancement. A rigid definition like this, enforced in at least one case (*Datatilsynet 2015; Justisdepartementet*) means that the entire physical shape of individuals may have to be blocked or blurred or otherwise made unrecognisable for legally publishing a picture without consent. This altering may, as demonstrated on the previous page, easily destroy the image. An alternative is presented in the bottom image on page 5, where body shapes, hair and dress have been changed in a rather time-consuming process by hand. This raises, however, new questions, and particularly so as emerging software is making such solutions more easily available.

A Bergen University project (Prosopo) led by Prof. Lars Nyre has studied this possibility for some time, while researchers in the UK and US have developed software for such purpose both for stills and video with impressive results. AI-operated software is now able to generate facial portraits of non-existing individuals at an alarmingly realistic level, and even if others have published clues to how fake faces can be spotted due to remaining software flaws, most of these flaws can be removed manually and probably soon also automatically.

I use the word alarming quite seriously, since it threatens the fundament of documentary photography and thereby the authority of the press itself. As Norwegian photographer Johan Brun stated in 1986: “The purpose of the press photo is to prove that what the writer writes is true”. In the digital world of today, that statement has lost much of its value regardless of media’s efforts at protecting it.

Even video statements can no longer be trusted, since dubbing technique has developed to a degree where anyone now may be presented uttering statements they never have made in languages they may never even have heard of.

<http://www.whichfaceisreal.com/> <http://www.whichfaceisreal.com/>  
<https://www.theverge.com/tldr/2019/2/15/18226005/ai-generated-fake-people-portraits-thispersondoesnotexist-stylegan> <https://www.synthesia.io/>  
<https://nrkbeta.no/2019/02/23/yama-kan-ikke-samisk-eller-mandarin-for-na/>

For more of this, see pages 46-47.

Another risk regarding these techniques is that an artificial image used, let’s say to illustrate a case without identifying offender or offended may turn out as the unintended likeness of someone with no connection to the case at all.

There is at least one known case of a person having served time for someone else’s crime <https://edition.cnn.com/2018/12/19/us/doppelganger-crime-lawsuit-award-trnd/index.html>, and even if chances are small and the consequences probably less dramatic regarding an unintended look-alike appearing as a news-case “photo” illustration, the possibility should not be taken lightly.

The matter may seem of little importance and little consequence, but I fear it is not. Photographs are now used to a degree that was unimaginable less than ten years ago and still is for most people. With closing on half the world’s population having a smart-phone plus an unknown number of CCTV-cameras around, “everyone” is now photographed “always”, “anywhere”. George Orwell’s “1984” dystopia seem finally to be close, if not here already. People are getting anxious, some outright afraid. One sign of this is the rather rigid definition of “identification” mentioned at the start of this page. Another is the increasing use of “blocking” and “blurring” in diverse media, which cannot be completely explained by increasing caution linked to decreasing media economy.

Anonymizing licence plates of cars has been common practice for a long time. Now we sometimes even see entire cars being blurred beyond recognition like in the case below, and one must be permitted to ask: If that was necessary, why include the car in this image at all?



Photo: Eskil Mehren. (The inserted police photo , blocked by me, is of a case related object.)

### **A rather odd distinction.**

According to the Law still in question, commissioned photographic portraits may be displayed in the photographer's studio/shop window as long as this is not explicitly prohibited by the client. They may, however, *not* be published on the photographer's web-site since the law seems to regard digital publishing as more serious than physical display (*Prop.104 L, Datatilsynet 2017 Sofiemyr*). At a time when smart-phones can cross this barrier in seconds such distinction between physical and digital presentation may seem odd, so it shall be repeated here that the current wording is identical to that of fifty years ago and that a revision process is under preparation. (*Letter from Norwegian Ministry of Culture July 2018*). If one should be as bold as to suggest; "commissioned" means there must be an agreement where all image use should be stated, so is the rule needed at all?

### **Grey zones with need for caution.**

Anything in plain view from public space can be photographed, as mentioned. That is the rule. It does not mean we have a right to place a camera in front of a window and document all doings inside. Someone's house is somebody's home and we have no right to treat it as a zoo even if location and construction make that possible. People have a right to privacy, as mentioned on page 4. This right is also legally protected and violating it can be costly.

Accidentally including an identifiable person behind a window in plain sight is permissible as long as that is not the main purpose or content of the image. Deliberately recording the comings and goings and doings of people on private property is an altogether different matter, and the rulings have become stricter on par with more telephoto lenses, drones and more money paid for candid shots of celebrities. California has by law restricted media's access to children of celebrities and a French court has determined that the use of long telephoto lenses to obtain images of people on private property can be seen as a "serious breach of privacy". The case at hand fined photographers, magazine and editor a total of €145,000 and shows that even royalty, who were the offended party here are no longer free game - if anyone ever thought so. See:

<https://www.theguardian.com/film/2013/sep/26/halle-berry-anti-paparazzi-law>

<https://www.theguardian.com/uk-news/2017/sep/05/topless-photos-of-duchess-of-cambridge-were-invasion-of-privacy>

Photo: Per Thrana (faces blocked by me).

Still, there are cases where stealth photography using telephoto lenses through windows etc. may be necessary. The facsimile below of Dagens Næringsliv from October 2005 (anonymized by me) shows a moment of entrapment where a fake identity receives a physician referral from an identified person allegedly participating in a corrupt network of physicians and psychologists. The main characters of that story were convicted, while the person here identified was acquitted on the ground of no criminal activity being proved and later, by court, awarded a compensation of NOK 390 000 plus legal expenses from the newspaper, editors and journalists for damage to his good name and reputation. The newspaper appealed to a higher court, where this judgment was reversed; both parties covering their own legal expenses.

Covert reportage techniques are, as this case demonstrates, not without risk.



## Publishing photographs of children.

Consent to publishing pictures of children is the privilege of the parents, who in their decisions on whether or not should consider the Berne Convention, the European Human Rights Convention, the UN Convention on the Rights of the Child as well as National Law regarding privacy, protection of personal data, copyright, decency and children's rights in general.

Basically this means that children have a right to privacy, to not be harmed or exploited, to be asked (more so as they grow older) before photos including the child are published, and that *"the best interests of the child must be a primary consideration"* in all actions regarding the child. Questions one should ask are therefore not just: Is this picture invading the privacy of, or in any way exploiting or harmful to the child, but also: Can the publishing of this picture in any way be in the best interest of this child?

Endearing scenes like the one below of a child performing a natural function on a warm summer's day while imitating what grown up's frequently do while sitting down is to be found in many an album and many a blog.



One may easily argue that a cute picture like this is in the child's best interest, as it prompts positive attention from grown-ups. One may just as easily argue the opposite, since it may prompt teasing comments from not-so-grown-ups. The final outcome will most probably be personal, depending on how the child is brought up to handle the occasional teasing remark.

There is also the question of abuse, but: Nudity is natural, so dressing up kids from fear of cameras is overprotection, according to sexologist Margrethe Wiede Aasland. She claims that the child's joy of being naked outweighs the small chance of dirty-minded photography. Her view is supported by police press spokesman Axel Due, who sees dangers of abuse as absolutely minimal.

In some cultures, however, nudity is very controversial.

When Elise Flåten Øygaren, employed at NRK's SoMe-desk shared a report on measles and vaccination in February 2019, half of her colleagues lost access to Facebook. The reason was the illustration re-presented below. She and her contacts had been banned due to Facebook's no nudity policy.



Some societies are a bit more sensitive than others, seemingly proportional with social insecurity. Facebook standards are more or less US standards and do not always agree with other cultures, which is a serious concern in a global society. Fear of abuse is a major part of that and should not be taken lightly,

but here as ever we have to try balancing the one against the other. Too much fear of confrontation may soon result in poorer societies.

The question of publishing pictures is one of many that parents must consider and the current situation in this field is new. Never before have pictures been made and distributed so easily, cheaply, quickly and widely, and we all have to learn how to handle this in the best way for all.

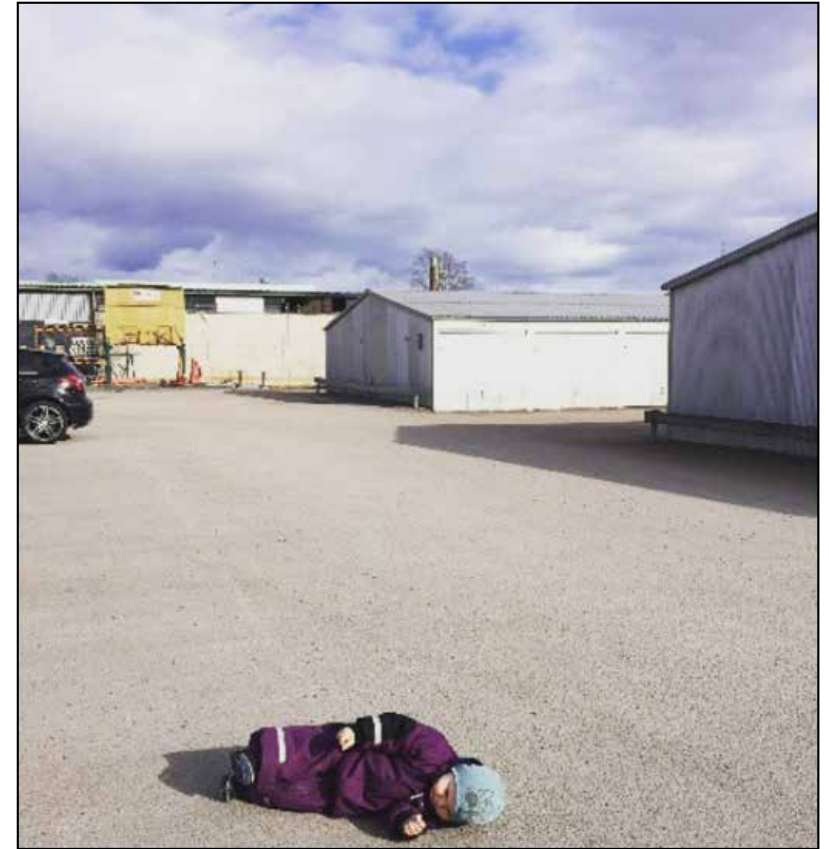
Swedish politician Ebba Busch Thor was criticised for this Instagram picture of her 2-year old lying down in protest, as frustrated kids sometimes do. The criticism was about children's right to privacy, not to be ridiculed etc. The last part is very important. No child should ever be exposed to ridicule or sarcasm. That makes them unhappy without understanding why and it is harmful (please read "The Invisible Child" by Tove Jansson for further insight). Laughing *with* children who feel loved and included is an altogether different matter.

Journalist and lawyer Pauline Neuding has claimed that images of misbehaving children should never be shared outside the sphere of the family, since such conduct never takes place outside of this safe haven. She may be out of touch with reality here, but does have some sort of a point.

Another lawyer, Sara Eline Grønvold advocates a view of extra sensitivity regarding children's right to privacy. According to her, no picture of kids who are angry or upset, or with faces full of food or other sticky stuff should ever be published.

Grønvold and Neuding are not alone. A Norwegian court verdict, fining a mother NOK 12000 for posting an image of her 7-year old daughter crying, is at the moment of writing pending a final Supreme Court decision. Even if the parents do have the formal right to decide what and where and how to publish images of their children, this should, as mentioned, always be done considering "*the best interest of the child*". Diaper change and bottom rash can be mentioned as motifs that might best be kept private. To include crying in such a list seems overly sensitive, and it should be mentioned that this particular case is complicated far beyond the question of a parent's right to publish a picture of a crying child.

Smart phones and social media has made photography easier to use than verbal text and have therefore more impact than earlier. Photography as a language has taken a giant leap forward, and in learning how to use this new language effectively and respectfully we should listen to people like Grønvold and Neuding. We should also contest their views. An ideal of uttering nothing controversial may easily turn into never uttering anything of value at all.



A world without pictures of kids acting as kids would to my mind be poorer world. Such pictures remind us that children are individuals with their own ups and downs and their own spontaneous ways of showing it, and I think we need them.

As for Ebba Busch Thor's photo of her 2-year old kid I find nothing laughable or demeaning. On the contrary. I see it as a daringly composed report on a little person protesting the hardships of a wide, cold and unfair world in the only effective way little persons with little voices can do.

This child has my respect and I would not be surprised if we here have a future politician to be reckoned with.



There may be cases where you are entitled to publish a photograph without permission, even against a person's expressive wish and even if it is including an identified child. Whether or not you will end up doing it, and if so, how, is a moral dilemma where you have to balance diverse conflicts of interest.

An illustrating situation occurred in London, May 17th. 2017; the National Day of Norway. Norwegians in exile had gathered, traditionally, in Southwark Park to celebrate in the traditional Norwegian way. That means flags, national costumes for those who have (and they are many) and a very strong focus on children, soda, hot-dogs and ice cream.

Speaker of the day was Torbjørn Røe Isaksen, Minister of Education and Research. Afterwards, he sat down with his daughter to enjoy a band playing. This is a typical situation of the day; a loving father enjoying entertainment while caressing a child in his lap. The child sparsely dressed with bare feet even

in a drizzle, happy for a temperature most Norwegians insist on defining as summer; the father more sensibly and formally dressed in "bunad" with the traditional knife safely but readily suspended from his belt.

The image focuses an idyllic moment in a world of turmoil, terror and distrust. This is an image of "The Norwegian Way" of celebrating the nation without armaments or bodyguards, just members of an egalitarian nation peacefully commemorating their independence.

According to Norwegian law, this motif could be freely and legally recorded and published as of "topical and common interest". Still, knowing from asking, this particular father would appreciate not having the picture of his daughter published, and being who he is, he has a point.

So, what to do? Walk away? Or walk around?

Seen from his right side and partly from behind he is still who he is but the child's face is hidden, partly by an affectionate caress. The knife becomes visible, not a weapon in this context but a tool and an ornament. There are flags and more "bunad" in the background, and umbrellas - so commonly needed back home on such occasions that they are even available with printed "bunad embroidery" imitations. The story is still told, but with less invasion of privacy.

### **Responsibility for and reactions to publishing.**

Print, web, social media; any kind of publishing (see p. 7) is subject to the same kind of responsibility and possible reactions. For traditional media, both the editors and the journalists may be held responsible (see p. 13) and parents may be held responsible for what their children share on social media. Private lawsuits targeting people with low income are rare but not unheard of.

In 2014, the District Court of Gottenburg ruled that two adolescent girls and their parents should pay a total of SEK 570 000 compensation to victims of grave Instagram harassment. That one parent was single with little money was not seen as relevant for the case.

In 2017, a Playboy model had to pay compensation to her victim and perform



30 days of public service, after photographing a woman (70) nude in a fitness club shower and posting it on Snapchat with a nasty (bodyshaming) remark.

In 2018, several persons were fined and sued for sharing private photos stolen from the cell-phone of a Norwegian athlete. That the athlete posted pictures of those accused of sharing the private photos in question may in turn become a part of private law-suits; the fines of NOK 15000 each was a police matter.

A 2016 story of an Austrian teen suing her parents for baby pictures posted on Facebook turned out to be fake, but it highlighted a principle and is, as far as the law is concerned, a possible scenario. See Notes for last updates.

Digital images and Internet have created a whole new situation regarding the use and abuse of photographic images, challenging both traditional thinking and traditional law.

Images of abusive nature have led to a series of reactions, some of them severe even in cases of no malicious intent. Unintentional damage is still damage.

Publishing of “normal” or “innocent” images with no damaging effect might be seen differently, something that the law does not do today. Sweden stated in 2007 that only “insulting” pictures should be protected, but that rule was changed when the EU’s General Data Protection Regulation was enforced in May 2018. Maybe it should be changed back.

In Norway, statistics for the years 2015, -16 and -17 show that only one person was prosecuted during that time, for repeated cases of clear malicious intent against police officers. Considering the millions of photos shared each day on social media, the full effect of prosecuting each single violation may be hard to imagine.

Pictures with damaging effect on individuals, groups or society as such will still be liable for prosecution. Cases like the ones mentioned above will still be valid, and pictures with commercial value will still enjoy copyright protection. But the everyday sharing of images on the web that many of us have done at least once without full permission from all should perhaps be legalized.



The law’s reaction is as a rule financial. People claiming loss of income, or loss of honour, or emotional stress from invaded privacy may be entitled to compensation. In addition to that, legal expenses can be extensive.

One illustrating case is Andy Finch versus Tromsø 2018 (above). The world class snowboarder Andy Finch was captured in a lofty position during The Arctic Challenge 2004. Tromsø 2018 used the picture on a pamphlet and on the web to promote Tromsø as host of the 2018 Winter Olympics but did not ask Finch. As a result they were sued all the way to Norway’s Supreme Court. The final verdict was that Finch even from behind was easily recognizable, and that he as a professional snowboarder was entitled to a fee of NOK 80.000 for the use of his image. Legal fees amounted to an additional 910.000 and it could all have been avoided by simply asking. Quite an expensive lesson, so to speak.

The rule does not always apply. In 2010 an US astronaut sued singer DIDO for using a picture of him inside a space suit far out above the planet. The case was settled under undisclosed terms few months later. One may suspect that his being there on a salary and with some help from NASA, all financed by taxpayers money, may have weakened his claim.

The “Finch” case was finally determined without specific legal reference on the presumption that even if the rule applies to Norwegians, which Finch was not, it should apply also to him since the photo was taken in Norway. For laymen, this is a rather obscure argument even if the outcome seems reasonable. Personally I find more logic in presuming that Finch in dress and performance then and there was his own, intellectual creation expressing his personality, and therefore a “work” liable to copyright protection.

The astronaut case is different, since he was there as a result of a huge team effort and neither dress nor performance could be claimed as his design.

A different case along the same line can be illustrated by the following, freely told story: A Greek came home after a visit to Sweden, greeted his neighbour and said “Hi Minas, do you know the Swedes are selling yoghurt with your face on it?” “Cool,” replied Minas, “is it good?” “I don’t know” his friend replied, “it is Turkish.” “WHAT!” exclaimed Minas and sued the Swedes for 50 million. They settled in the end for a little less; 160 000 Euro according to contemporary headlines. That is still quite a sum for a picture, but we must keep in mind that calling a Greek Turkish is even worse than calling a Norwegian Swedish!



Minas Karatzoglou, acceptably compensated for promoting Turkish yoghurt.

Violation of copyright is one thing, violation of honour and privacy another. The Norwegian broadcasting company NRK once showed a short film clip of a couple having sex in a boat, as illustration to a case where this scene had been parodied in another movie. The clip included two seconds of female frontal nudity. This led to a law-suit by the actor who had agreed to the scene in the artistic context of the movie, but specifically not to any publishing outside that frame. The final Supreme Court verdict was that NRK had a right to show the clip, but not the frontal nudity part. That was not necessary to illustrate the similarity of the scenes. Showing those two seconds out of context was therefore in violation of the law and NRK had to pay the actor NOK 155.000 plus legal fees. The parody did not contain frontal nudity at all, by the way.

The MEMO-verdict deals with another case of image use out of context. The Lebanese-born immigrant Ahmnad Youssef El Youssef was photographed attending a legal demonstration, and his portrait was later used by the MEMO magazine to illustrate a statement that immigrants are “social bombs” representing danger of an increasingly violent society. The Supreme Court ruled that using this image in this context was a violation of El Youssuf’s rights and awarded a compensation from the magazine and editor of NOK 120 000 plus legal expenses of NOK 424 000.



Ahmad El Youssuf, engaged demonstrator but not a social explosive.

El Youssuf's only public action had been to legally and peacefully demonstrate his protest against an act he and others saw as disrespectful to his religion. If the magazine had stated that fact along with publishing the picture, the legal outcome might have been different. Confer also point 4.10 in the Code of Ethics of the Norwegian Press: "Exercise caution when using photos in any other context than the original".

### **Why compensation and why so much?**

Photos for advertisement usually involve paying the models; anything from nothing but a smile to tens of thousands, depending on the model's status.

Finch had high model status as a professional. Minas Karatzoglou had not, but here high market investment was at stake, not to mention the matter of insult.

NRK presented an actor in frontal nudity with no valid excuse. This was just a dirty step out of line and emotionally distressing to the actor.

El Youssuf had participated in a peaceful demonstration. When he later found himself presented as an icon of muslim violence, since the magazine used his image in article of that concern with no reference to the original context, he had a right to feel his privacy invaded and his character disreputed.

When the magazine later presented him as an icon of muslim violence, as they did by using his image to front an article of that concern without permission and no reference to the original context of the photo, the Supreme Court found this to be a wilful violation of the law.

It is here worth noticing that even if compensations for economic loss or harm of non-economic nature may seem high, legal expenses are as a rule higher.

### **Who can be held responsible, for what and for how long?**

Companies and news agencies are more vulnerable to law-suits since they as a rule have more money to be sued for, but even private persons, as we have seen, may be sued for publishing protected material of any kind. There is to my knowledge no "use-by-date" in cases of violated copyright, apart from the 70, respectively 15 years PMA mentioned on p. 5.

### **Consent or agreement?**

All cases here mentioned could have been avoided if the publisher had secured a valid consent from the person in question prior to publishing. "Consent" is however not necessarily a good solution, since that, according to GDPR definition has to be freely given on an informed base for each particular case, and may be withdrawn just as easily as it is given. The case of the Swedish Turkish yoghurt promoted by a Greek is a good example of that. The photographer might have obtained a general "consent" to use this image, but it is rather clear that he could not at the moment of photographing Mr. Karatzoglou, have been given a permission for its use in promoting anything "Turkish". For one thing, that was at that moment not an intention and for the other, the probability of a freely given such consent would have been small. Third and last: It could have been withdrawn at any moment at much harm to the dairy company.

As mentioned on page 7, a "contract" or an agreement, specifying how and when and by whom an image can be used is a more solid fundament, particularly where there is something of value in it for both sides.

### **CC-licensing.**

Copyright can be given away, as mentioned on page 6, but if the image includes a "likeness" of a person or other copyrighted material, a permit of some sort from those copyright holders may also be needed.

Let us take a look at a very unlikely example: An eager amateur captures a stunning image of Elisabeth Hurley looking for something in her Luis Vuitton handbag while reclining in a Corbusier sofa in front of a Picasso painting in a London gallery. The amateur posts it under a CC-license, and you, working for a traveling company at the moment, download it and use in a brochure for your employer. The result may become rather expensive, since both Hurley, Vuitton, the Corbusier and Picasso estate plus the gallery might present a bill for unlicensed use of their market value.

The danger for a media institution's use of such imagery is considerably less since one may claim that the image has public interest, but it highlights the principle that any recognizable element of a photograph may be protected.

### **Some last few words on the topic of Law**

The text on these pages is, as mentioned, a layman's attempt to gain and convey a basic understanding of how national and international law try to balance the concern for individual rights with the concern for society's need of information and free expression.

As I have tried to underline a few places, this is also an area where national and international law is under revision as new and emerging technology changes the way photographic images are recorded, made and distributed.

The text should be read as both an attempt at understanding relevant rulings, and an attempt at influencing the ongoing revision. The letter of the Law is carefully selected to provide the best possible ruling of a well functioning society, but the words refer always to a reality as it was when the words were chosen. They will therefore also need adjustment when that reality changes.

The rules of the Law are always written. When they are violated, the reactions are always discussed with deep concern and they are always administered with as much equality as possible.

The rules of the Law are also man-made. They are therefore not perfect and liable to change as society changes or accidental flaws are brought to attention, and they are not the same in every society. The base of this text is Norwegian law with a few examples from the US, the EU and a few singular nations to illustrate diverse cases of interest and ways of thinking. The reader is therefore strongly advised to study her or his own domestic law before starting any professional activity in the field of publishing photographs.

### **Purposes of Law and Ethics.**

The purpose of the Law is to provide rules for a well functioning society with as much fairness and as little disharmony as possible. The Law should guide the public on questions on what to do and what not to do, and determine how to react towards those who cross the lines of acceptable behaviour.

The purpose of Ethics is much similar to Law, but the rules are not always written, the reactions are not always deeply discussed and they are not always

fairly administered. The reactions can be much milder than those the Law imposes. They can also be much more severe, depending on who decides and under what circumstances, and with little room for appeal.

Ethics are not just institutional, they are also personal and part of your own integrity. To some, that personal integrity is more important and more valuable than anything, sometimes even more important than life itself.

These are Grand Words, and as far as photographs are concerned our daily dealings are normally of slightly less importance. Still, since media see the value of documentary photographs as very high, and the photographers are the ones vouching for the documentary value of the photographs they deliver, all photographers have to watch their integrity at all times.

### **News Media Ethics:**

Ethics change as society changes and Man moves forward in wisdom. More to the point; as technology has made cheating easy to do and less easy to detect and as photographs have become an increasingly large part of media itself, Media's interest in preserving and protecting the integrity of the photograph has increased manifold.

The diverse way photographs can be used in deceptive ways, intentionally, unintentionally, accidentally or by unrecognised bias is an important part of Media's ethical codes of photography.

The gathering, selection and eventual publishing of photographs is another important part of those codes. Sometimes this comes very close to what the Law permits and sometimes there is a crossing of the line, but mostly media try to keep a good balance between what the public has a right to be informed about and what is better left alone.

The following is a brief overview of some things that are generally permitted, and some things that are not. And some grey zones.

### **Preserving an image of The Image.**

The idea of “photographic truth” is sacred. This is a strong opinion in media today. It is a world wide opinion, it is mostly restricted to news media, it is not quite absolute but those who hold it hold it dearly. So, why is it so important to preserve this idea? Why it is found more necessary to preserve it now than it was before, and to what extent is it possible to do so?

The basic fact is that the photographic image is a witness. It is a document of something that is or has been. The true photograph describes in accurate detail what once was before the lens. Nothing is added and nothing is removed, as Arago spoke of in 1839 and Talbot indicated when describing his photo of a haystack. Photographs could be used as evidence in court, he suggested (if the law-men approved, which they do not always do, partly since many of them thrive on uncertainty), and as we have seen in many cases, not even photographs are always truthful.

How can photographs deceive? The answers are many.

How can photographs be trusted? The answer is, to be frank, they cannot.

Even if the camera was sealed at the moment the shutter closed, to prevent any attempt at changing the image in any way, we have to trust someone claiming that this was the case. And even if we do believe this, we have to trust that the motif in front of the lens was not staged, or arranged. And believing this also, we have to trust that the photo was taken at the given time and place.

### **Brief historical review.**

Even before Talbot in 1844 published his comments on the trustworthy “pencil of light”, photos had been made that were not true to fact. Niepche’s backyard did not have sunshine on both sides simultaneously, as it appears in his photo from 1826. The streets of Paris were not empty, as they appear in Daguerre’s view ten years later. Daguerreotypes of people from 1840 onwards show gilded jewellery and books; added by hand after exposure and development, and hand colouring expanded during the nineteenth century and far into the twentieth.

The wet plate gave us the first images composed of more than one negative.

The dry plate made negative retouching possible, and photo retouching became a part of the photographer’s profession as well as a profession in itself. Crooked teeth were straightened, warts and birth-marks removed, people were picked out of group portraits and snapshots, dressed up and framed for the wall. Tricks like these are still cherished in the branches of portrait and advertising.

Press photographers had photos of sports-balls in diverse sizes and types ready to be glued into any kick-off-photo exposed a second too late. Poles and sticks “sticking out of” peoples heads were carefully removed, and absent group members added to the group-photo later. These things do *not* still happen, at least not often and rarely with approval from the media branch of photography.

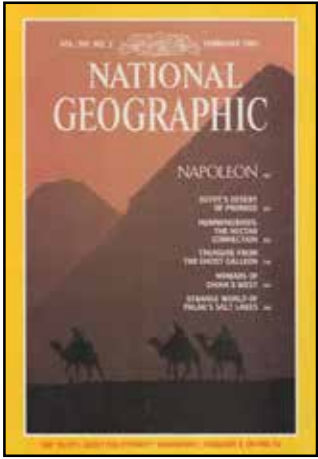
Orwell wrote his futuristic novel 1984 describing how history was constantly adjusted to fit the political reality of the day. His inspiration came partly from political practices on both sides of the Atlantic, where persons were removed from or added to pictures according to what was convenient for the current cause. It was frowned upon, but too obvious for Media to see as a problem.

Barthes wrote in 1980 that the motif of any photograph must have been in front of the lens at one time. Regarding what you see in a photograph, you can never deny that “the thing has been there”, he claims. “This Once Was. Photographs Can Not Lie.” The technology to disrupt his view completely was, however, already developed. It became public knowledge few years later.

The change of opinion came when digital image handling started threatening the photograph’s value as evidence. The point of no return came in my opinion with the release of “Jurassic Park” in 1993. Image adjustments impossible to detect had already been done for some time, but when a full movie presented dinosaurs you actually believed were real, the illusion was complete. Images that looked like photographs could not be trusted anymore.

The old myth of “This Once Was” was mortally wounded. It had to be saved, and *that* is done by denial. Media state collectively that “We Do Not Change Photographic Images”, and they mean it.

Can we believe them?



### What is permitted, and what is not?

Media's policy regarding digital image handling has developed over some time. National Geographic apologized when they in 1982 were caught in altering a photo of the Giza pyramids to fit better with their magazine format. Sorry, they said, we will not do it again.

Comparing the front page with the original photo it is easy to see why they were tempted to perform this little deception. The photo was good, the front page resulting from it was good, the deception of little practical importance and the chances of being arrested were slim. But they were arrested and small *practical* importance turned out to have substantial *principal* importance. If National Geographic could not be trusted in little things like this, how could they be trusted on any of the big issues?



Alan Detrich above and below, originals to the left, adjusted to the right.



Little more happened in the area until powerful computers, editing programs and digital cameras started the digital revolution around the turn of the millennium. Until then, the opportunities had been for the few and the process was slow. Now the process became fast and the opportunities common. Digital image recording and processing became part of the daily press as well as film, TV and animation industry; soon also ordinary people. Most of us applauded.

Photographic images became an immediately accessible commodity with no more waiting for development. Photography became gratis. You no longer had to pay for anything but equipment. Photography became instantly shareable through Internet, also at no cost. But innocence was lost. Easy access to image handling made every photograph a possible fraud. Barthes' statement from 1980 needed adjustment. "This Once Was" no longer applied.

Some press photographers embraced the new technique as a gift to produce even better pictures, free of disturbing details, focusing the story they wanted to tell. Most of them had no other intention than doing a good job. Such an intention, in view of the new situation, could not be appreciated.

Alan Detrich, working for Toledo Blade, Ohio, USA was one of many who continued doing what he loved to do; telling stories through photographs to the best of his ability. He was fired for doing it too well. He has my sympathy.

As digital image handling became available around 1990 diverse media actors developed policies as to what was permitted and what was not. Adjustments similar to what was done in analogue darkrooms is generally permitted. This includes cropping, overall or partial adjustment of brightness/darkness in a picture, conversion into grey-scale, colour balance and toning necessary for “clear and accurate reproduction of the photograph”. Removing, obscuring or adding image elements is taboo. “*Photographs must tell the truth. We do not alter or digitally manipulate the content of photographs*” is a common rule.

Press photographers world wide (like NPPA and others, see p. 48-52) support this rule and add quite a few others. We will start with this latest, digital form of photographic deception, the one that deals with image processing. This is done automatically in all electronic cameras more or less according to pre-set desires, but can always be adjusted later by hand or “filters”. It can also be done almost exclusively by hand, if we choose to work with “RAW” files.

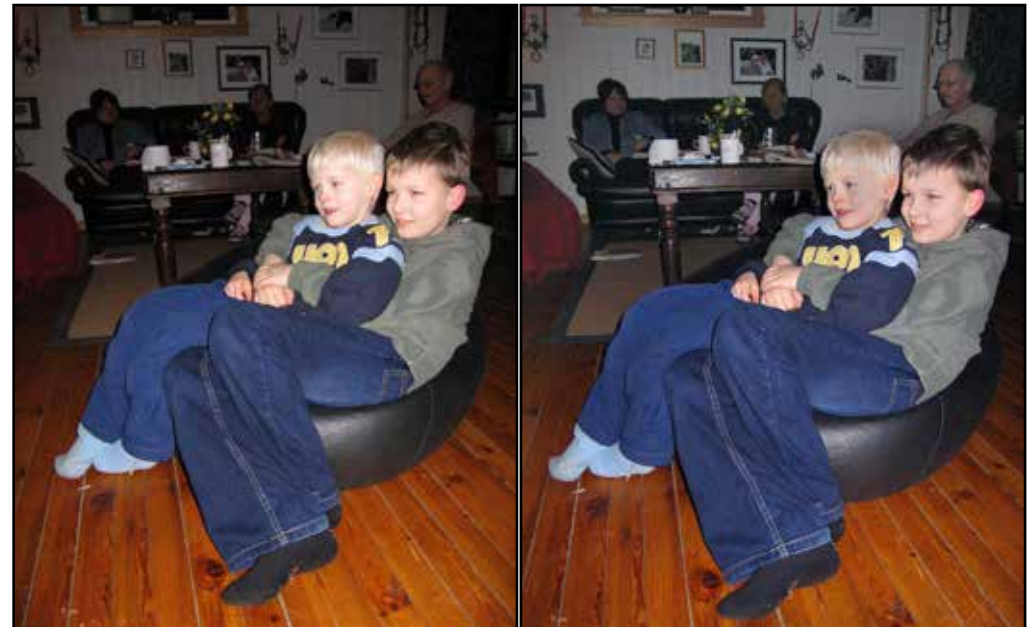
The morning view to the right is as it came out with in-camera processing set at High Resolution, ISO 200, white balance 2800K and .jpg Fine. Below the RAW file was adjusted to



5000K, exposure, highlights and shadows are adjusted and dodge and burn have been partially used; bringing the image closer to how the motif appeared to the eye.

This should be within acceptable limits. The adjustments only compensate for the difference between what the eye could see and the camera could record. Nothing is added or removed and the final image is true to nature.

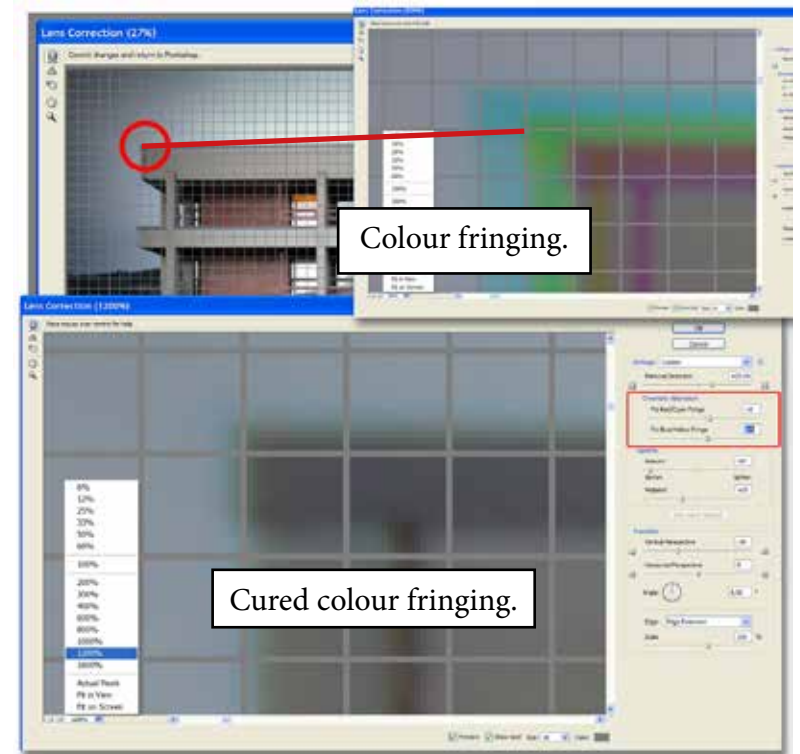
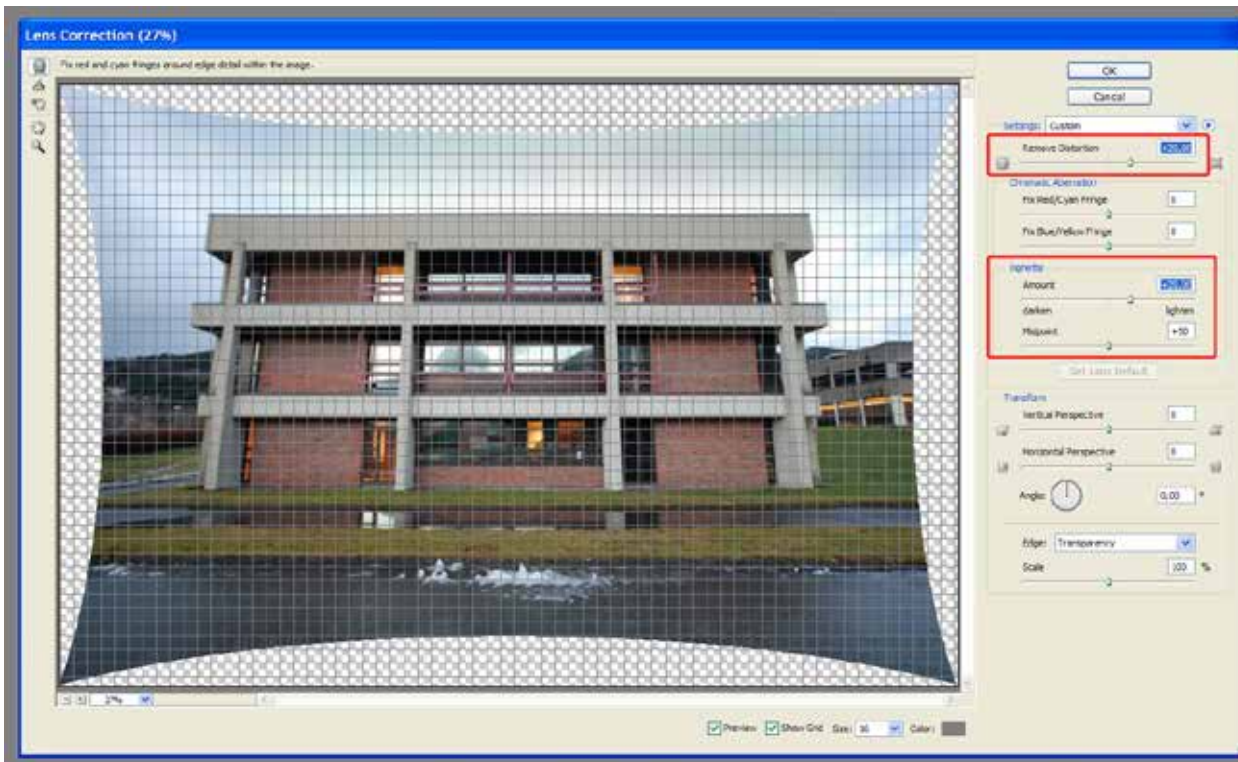
The example below should also be within limits. It is straightened and cropped, burn has been roughly used to adjust for uneven flash illumination, and the background has been “lifted” by the aid of a contrast mask - even this an old technique from the darkroom days. Nothing added or removed apart from red eyes, and even if that is unacceptable by some, there is reason to contest such a view. Our purpose is to re-present the motif as it appeared to the eye, and since all else we have done, including the use of flash, has been to obtain just that, removing red eyes should be permitted. Red eyes are a direct result of the flash and are seen *only* by the camera, *not* by the eye.





Lens correction is necessary in our time and often done automatically in the camera. Lens constructions should create images that correspond exactly to human vision, but that is impossible. Lenses have flaws. *Barrel or pillow distortion, vignetting, chromatic aberration, spherical aberration, astigmatism* and *coma* may all be corrected, but not all of them in the same lens construction. Today, the first three of these flaws can be eliminated by mathematically redefining pixel positions and density, so the lens constructors can “leave these be” and concentrate on a physical fix for the others. As a result, most lens constructions now produce images that *require* correction; by external software or in the camera direct. It is of course “doctoring”, but in this case acceptable, like prescription medicine. Nothing is added or removed, just corrected.

To the left is an exaggerated case for demonstration. Vignetting is cured in Photoshop by asking the Lens Correction filter to gradually brighten the corner pixels. Barrel distortion is cured by asking the program to move pixels gradually to the corners and interpolate pixels in the gaps that will occur. Chromatic aberration is cured by doing the same for each channel RGB until there is no more colour fringing of the corners.





Even the adjusted building at bottom left opposite page is not as the eye saw it. Well, it is in a way, but not as the eye *perceived* it. Taking in a view like this the eye will move up, down and sideways, scanning the building, always focusing at the centre of vision where vertical lines always look vertical. Here they do not. The camera is tilted slightly upwards, so vertical lines are converging. This can also be corrected, using the “vertical perspective” control. Rotation adjustment is also often needed. “Horizontal perspective” should NOT be adjusted, since this is a natural part of human perception. The only exception to that is when paintings etc. are reproduced and the picture is taken at an angle.



Vertical perspective adjustment is mostly used for architecture photography, where it is essential, and in cityscapes and other urban environments where we expect straight lines to be straight. One needs to be careful doing this, though, since the motif sometimes should be only partially adjusted, sometimes not at all. This depends on how much of it falls within the central area of vision; skyscrapers and towers at close range are typical examples.



Landscapes also need adjustment, especially those with reflections in water. The reflected star or light or whatever should always be exactly below its origin.

Below is a wide-angle view of Trollveggen, Norway. The mountains are tall and should be presented as they are. Right: Adjusted. Left: Not.





Bracketing is another adaption technique. It conforms to the principle of not adding or removing image elements, but breaks with the principle of capturing one moment.

Exposure bracketing means combining two or more exposures into one image.

It is used mostly to deal with high-contrast motives like sunsets. To the left is a bracketed series, below the result. Only motifs with no moving elements can be used, and it is essential that the camera position is static. Using a tripod is recommended.



To the far left a view of Gothenburg railway station, where also RAW-file adjustment is used for the leaves. These images are handled manually, but automatic blending is an option in Photoshop and other programs.



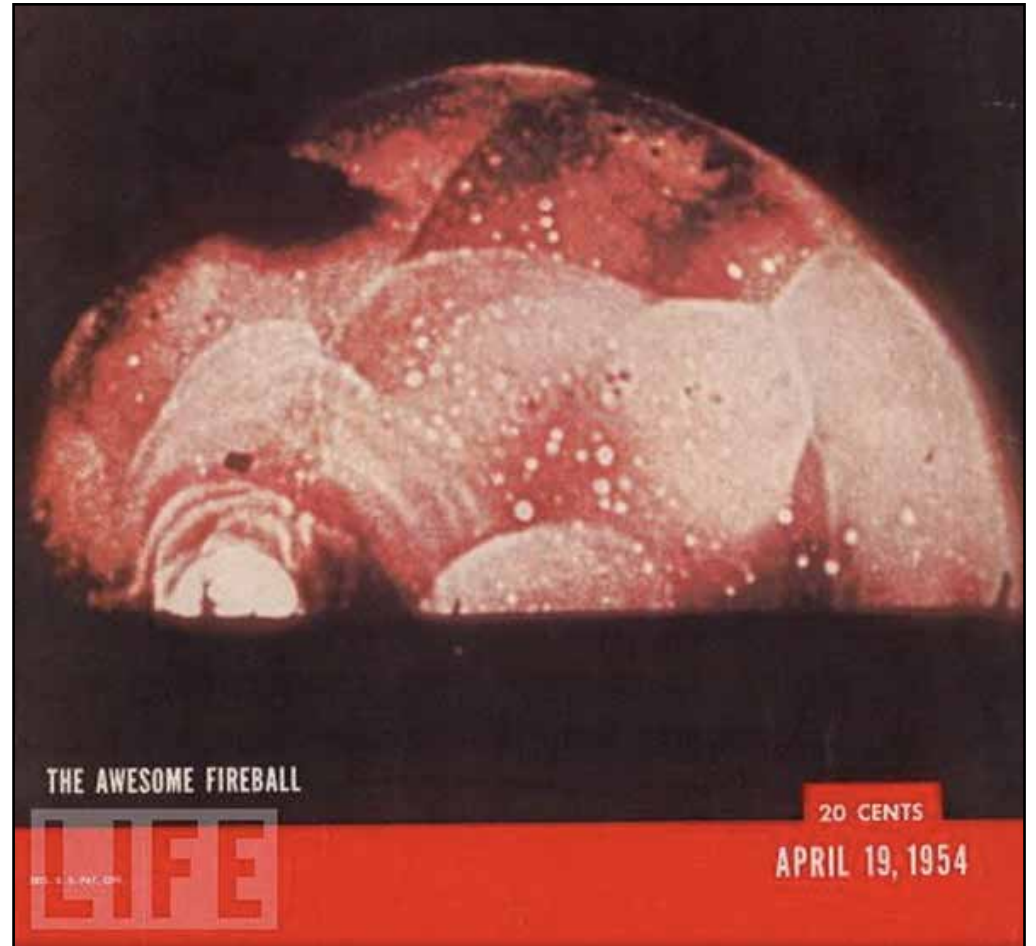
Exposure bracketing is also known as HDR (High Dynamic Range) and may be used excessively to obtain “artistic” results, see the village lights to the right. Overdoing HDR will normally be seen as a breach of ethics, but used soberly it is a valuable tool also for photojournalists. The history goes back to the 1850’s (see *The Beginning* page 18, and check out Gustave Le Grey [http://www.metmuseum.org/toah/hd/gray/hd\\_gray.htm](http://www.metmuseum.org/toah/hd/gray/hd_gray.htm)).

HDR had a new step forward when Charles Wyckoff (1916-1998) constructed a film with 3 layers of different colour and sensitivity, enabling “exposure bracketing” in one shot. It is mainly used in technical photography. His photo of the first H-bomb testing in 1954 was shown on the cover of *Life*.

A photographically more impressive HDR image came from Africa the same year. W. Eugene Smith made a photo essay of Albert Schweitzer, and produced this remarkable portrait of the man working in the light of the oil lamp.



W. Eugene Smith used all his skills to produce images as he saw them in a time when formal restrictions were few. HDR, along with all other tools available in today’s digital darkrooms, should be used carefully in our time when the credibility of photography is at stake and self-justice in media is as strong as it is.





Adjustment of converging vertical lines, or “perspective correction” as it (most incorrectly) is often called, is acceptable because it is a correction of an optical phenomenon and not an alteration of what human eyes would see then and there. It is also possible to do optically, with a shift-lens or a technical camera.

Exposure bracketing is accepted because, again, it is way to compensate for Photography’s poorer ability to handle contrast.

*Focus bracketing* or focus stacking (both terms are used) is a technique to get super sharp pictures of dead insects etc., using a small trolley to stepwise move the object towards the lens, taking several exposures on the way to be merged electronically. This is also considered as acceptable, even if the one to the left combines a total of 219 images of the same dead fly placed on a rose petal.

Partly, we see it as method for adapting to how human vision would perceive the insect through a magnifying glass, and partly we regard it as scientific photography with different but absolutely no less strict rules on credibility.



Time-bracketing is more debatable. There are people using this term for a still picture constructed from a series of exposures with a steady camera focused on a steady motive, creating an image where the left side of a mountain (if that's the motif) is shown in evening light and the right side in morning light, or the opposite. This is beyond human vision.

For live images the technique is called time-lapse and is the opposite of slow-motion. A carcass can decay in a minute or a bloom may blossom in seconds, to mention some uses. This is also beyond human vision.

Astrophotography is another case of long exposure time, but this does not qualify as time-bracketing or time-lapse since only one frame is exposed.

Panorama or Gigapixel images, however, do qualify. Both are today normally made by a series of exposures along one or more lines, stitched together in a calculation program. Some cameras, or even cell phones, have opportunities like this as a built-in option; a “filter” or an “app”.

The picture below, both sides (split as it is - I truly hate pictures disappearing into the crack of a double page), is an example of a series of pictures stitched into one. Different versions of it show people in different positions, so none of them can claim status as absolute evidence of one frozen moment in time. Still, pictures like this are normally accepted, even in media.

One reason may be that panoramas do just claim to do what they do: Show what the place looked like over the time it took to take the photo.

Gigapixel images fall in the same group. Scanning the horizon 360° at several levels, pictures may be stitched into one extremely detailed patchwork photo. Even with motorized tripod and camera, a full series of the often hundreds of pictures necessary for such pictures may take several minutes, maybe hours. Cars will have moved along with people, birds and animals; even shadows will have moved a little.

Even so, we accept both types for what they are. They do not pretend to be anything else, and that is an important point.



Time-bracketed panorama photo: Gaute Hareide



A face, a head and a back in front of the soldier's knee is also seen behind the soldier's legs. This led to questions and immediate admittance of the facts from Walski. Apologizing for a moment's lack of judgement,



he explained that he had tried combining the two in order to "improve composition".

What he really did, was try to improve the story.



### Crossing the line.

Bracketing, as a term within photography, should to my mind be reserved for techniques to adapt camera vision to human vision. Exposure bracketing and focus bracketing fulfil this criterion. Panorama (including Gigapixel) also does.

The problem arises when time-bracketing is used to try visualizing how *one particular individual* perceived one particular moment.

As opposed to the camera that in one single moment records one projection, the human eye records over time not one but two *not identical* projections on separate retinas, constantly shifting focus within the area of vision and constantly processing impulses from both retinas into what we call sight, or vision. Storage and recalling of this "sight" or "vision" is even more complex, because earlier visual impressions plus sound, smell, taste, temperature, memory, fantasy, personal biases etc. will influence the process. In view of this, the value traditionally attributed to the eye-witness appears rather dubious.

The best known example of time-bracketing used this way is Brian Walski's report from Iraq in 2003, on the front page of his employer LA Times. It is a great image. One armed soldier is controlling several sitting civilians, his head held high, his right leg lifted as if ready to move, his left arm stretched out as if signalling an approaching civilian to stop. The civilian is carrying a child; from a slightly crouched, standing position he seems to look at the soldier, who seems to be looking back. A few of the other civilians are looking at the soldier and the overall feeling is one of stabilized tension ready to burst.

There is just one problem here. The image was composed from two originals, and since the job was hastily done in the field by an exhausted photoreporter, there were imperfections that led to discovery and Walski was fired.

Personally, I thought little of this until two years later when my love and I went island-hopping in Kristiansund and she and the captain got into a very nice conversation over buying tickets. Looking through my pictures later nothing of this showed, as they had no direct eye-contact in any of the captured moments.

Combining two of them into one, however, the resulting image did present an eye-contact that confirmed my personal memory of the moment.

Looking through some of my video footage after this episode I noticed that the crucial “decisive moment” sometimes does not happen. Some of the stories told by my live video recordings, as they would have been perceived by a one-eyed person then and there, were not possible to compress into one single frame.

The reason for this is, as mentioned, that our eyes are constantly scanning our surroundings, focusing different things at a time. My focus shifted from him looking at her to her looking at him, creating an impression of contact in my mind. Other people might have observed differently. This means that my constructed image is personal and not neutral, as all plain photos are. Here lies the difference, and the reason for media not accepting such images.



Walski’s constructed image and mine are equal in being fairly accurate reports of what both of us experienced then and there (I *suppose* this also applies to Walski), and here lies the problem. Photo reportage including news, documentary and press photos in general is *not* supposed to provide “fairly accurate reports” on *personal experiences*. It is supposed to provide hard evidence of what happened between the opening and closing of the camera shutter, nothing more and nothing less.

My front page picture of the cows relaxing may well work as an illustration of the prairie and the one from Kristiansund may work in a tourist brochure, but



constructed images like these are not accepted in news media today.

Whether time-bracketing will have a place in future media or not is hard to say. Technology changes and views on photos may change along with that. “The Civil Contract of Photography” as Azoulay calls it may also change, but until then this part of the contract stays steady: A press photograph covers one moment of time, and one moment only.



Adding or removing image elements may only be accepted if we also accept the idea that the photograph should not just report *factually* from a situation, but more *personally*, like writing reporters do. This may as mentioned be a possible future, but is a clear violation of today's codes of ethic.

Norwegian press photographer Johan Brun stated in 1986 that the purpose of the press photo was to prove the truth of the writing reporter's text. He hit the mark well, though he pointed out that the photo also had a value of its own. Photographs *are* seen as evidence, and tampering with evidence is a danger to democracy. A key expression in the west after the US 2016 election is "alternative facts" as opposed to, well, they have not been quite clear on that. But one good media reaction has been to focus on "fake facts" - which in plain words would imply checking on information before it is published. As in the old days.



Josef Stalin's removal of rivals fooled few. George W. Bush campaign's fake soldiers are more pitiful than fatal. New York Evening Graphic's 1924 "Composograph" was more criticized for indecent content than for manipulation. Israeli orthodox newspaper Actualis' 2015 removal of three female ministers from a photo (replacing one with a man) is pitiful religious fanaticism. Still, the principle of adding things we wish for and removing things we do not like or creating images we do not have is dangerous for media. It is particularly dangerous in a time of Photoshop and Internet, when unlimited quantities of "alternative photographic facts" can be made and spread around the world in no time and at no cost. It is plain scary.



Another scary thing is that most fake photos are spotted due to poor performance, making me think: What about the clever ones? Those with time and skills to fake images you need specialists to detect. Are they all de-masked?

Ap and Reuters and the rest can only state their policies, and they have, and I fully believe their sincerity. I just doubt they have the capacity to scrutinize all pictures they handle each day, including the conditions of their creation.

Look for the byline! Just as you should know who wrote the articles you read, you should know who took the pictures you study. Since *they* are the ones who were there, they are also the ones who know. They are the only ones, really.



The photo scandal of 2016 came in May and de-masked photo legend Steve McCurry. A picture from Cuba exhibited in Turin had an impossible detail. This was discovered by local photographer Paolo Viglione who posted it on his blog and the scandal was world-wide in days. A search for extra evidence of foul play revealed two more. An image of playing kids has had one kid removed, another fitted with a missing arm and the ground around extended. The surgery was good, the gardening less impressive. It all looked like the early test of Photoshop it probably was; not bad but detectable just by studying it.

Another image (right) shows more craftsmanship. People and wheels and many other details are removed and changed in this monsoon rain image, and the doctoring is hard to detect without the original to compare it with. It is also easy to see why it has been done. McCurry today defines himself as a “visual story-teller”, and an important part of story-telling is focus. You do not include excessive details. George R. R. Martin started doing that and his stories became boring. Weiss and Benioff cut and edited; and “Game of Thrones” became a success. This is slightly similar. We have a straight *photograph* giving detailed evidence, and an edited *picture* that tells a better story by omitting disturbing details, and for that same reason is no longer good as evidence.

The *picture* (above) is a distilled version of McCurry’s impression from the monsoon season; seen with his “*imperialistic gaze*” as one of his Indian critics calls it. The *photograph* (below) is a factually correct recording of what the place looked like from that position in that moment. It is most surely a more precise description of India as the overcrowded chaos people who have been there claim it is. It is also a poorer story of the monsoon rain, since so many other details draw attention away from the people on the tricycle soaked by it.

How many of McCurry’s pictures that are doctored is only known to him. We just know that some of them are, without him telling us which ones. That makes all of them less valuable as evidence. It does not mean we should find them less valuable as stories. But we need to know the difference.



### Are there other ways of photographic deception?

The National Press Photographers Association (National being the US) along with other associations of photographers, clearly think so and go far in defining their own code of ethics. (Full NPPA Code: see p. 48.)

We read that subjects should be represented accurately and comprehensively, that all subjects should be treated with respect and dignity, that one should avoid stereotyping, recognize one's own biases and work to avoid presenting them in one's work. The US is a multicultural society with a recognized need for such rules. We would be fools to think we are any better, so they are good rules for everyone. Compassion and respect for privacy is also mentioned.

We read that one should resist manipulation by staged opportunities, as well as not intentionally seek to alter or influence events. We read that one should maintain the integrity of photographs, not manipulate images or sound, not pay or reward sources or accept payment or reward in any way, and not intentionally sabotage the efforts of other journalists. These are good words.

Good words indeed, and they start at home! I am surely not alone in having had a other photographers (presumably more important, or feeling so) blocking my TV-camera and ruining a scene. Friendly feelings were not produced.

The exchange of money, gifts, favours or a free drink does affect judgement. Exchanges we are quick to label "corruption" when observed in others have the same effect on us, so it is wise to be careful.

Doctoring of images is duly dealt with, but the combination of images and text/elements on a spread as well as the scenes and sound selection in a video will also affect the message. Such subtle ways of leaning a story in a certain direction are also tools of deception; more or less consciously used.

Photographs are solid evidence. This fact, that an original photograph that is not tampered with in any way is evidence of something that at some time took place in front of the camera, is part of the civil contract of photography. This is what we believe, and expect, and demand from media photographs. Still, the something that once took place before the camera is not necessarily The Truth.



### Posed and arranged images.

The most common photographic deception there is, to the point that it is not seen as deception at all, is *posing*. The pose is universal wherever photographs are known. It is natural to have an opinion of how one wants to be preserved in a photograph for public view, and to do one's best to achieve just that.

In many cultures, the right to dress for or at least pose for a photo is seen as common decency, and "snap-shots" or "stolen photos", are resented. See: Portraits p. 4 and WhereWhatWhen p. 44. Bourdieu's observations are still relevant and Azoulay's Contract is valid.

Two typical situations of posing are presented on the opposite page.

Above: Norwegians posing for Facebook, Ålesund, 2016.

Below: A Cuna woman posing at her Mola-sales stand, Panama City, 1990.

Studying pictures from other cultures and times, we should keep in mind that what the pictures show is rarely representative for daily life. Apneseth's photos from Jølster 2008 do not show the reality of daily life then and there, but they do show real people then and there posing for his camera, just as my models in Trondheim 1973 were posing for mine. See Portraits p. 22-23.

Neither do Knud Knudsen's photos from rural Norway show life at the end of the nineteenth century exactly as it was, even if many of his pictures probably came close. The head-dress of the woman, see the Beginning p. 31, takes too much effort to justify being set up like that every day but it would be done for a photograph. The man and the kids on the same page would also have tidied up a bit before the shoot. To be photographed, one tries to look one's best. This attitude to being photographed has to do with honour and respect. It is of course facade, but a facade that is part of the reality media reports from every day.

McCurry has just been mentioned. Many of his pictures are clearly posed or arranged, and there has hardly been any dispute about that.

Arranging or posing for a photo is rarely seen as a problem as long as the result is an accurate and comprehensive re-presentation of the subjects, without stereotyping and as little influenced by the photographer's and the publisher's biases as possible.

Still: NPPA rule 2 is: "*Resist being manipulated by staged photo opportunities.*"

Dealing with royalty, dignitaries, celebrities and politicians as press photographers generally do, this is almost impossible. The opportunities you are given with such folks are, with few if any exceptions; staged. In other cases, staging may be initiated by your editor or your own desire.

Handshakes, ribbon cuttings, baby liftings and wavings alternate with inspections of kindergartens, constructions sites and production plants. A prince is playing ball with kids in a street. A minister is holding hands with a senior citizen. A potential apartment buyer is energetically passing a SALE sign on his way to have a look at the prospect, the picture fitting well with the sketch drawn up at the desk the day before. Much is staged, from both sides. Does that mean we are manipulated?

Below we see the Picture of the Year in Norway 2009, criticised almost as heavily as awarding Obama the Peace Prize in the first place. Bad picture, isn't it? Parts of the First Lady in one car window. The face of the President in the other. An empty gaze in our direction. Looking slightly lost within the safety of the car as if thinking: What *am* I doing here? In this picture he is not posing. Perhaps the only one that day. So, maybe, not a bad picture after all?





“Staged” is not necessarily the same as “manipulated”. Once again we touch upon Azoulay’s “Civil Contract of Photography”. In a society where both the photographed, the photographer and the public are familiar with photographs and their use, photography is a language with its own particular grammar.

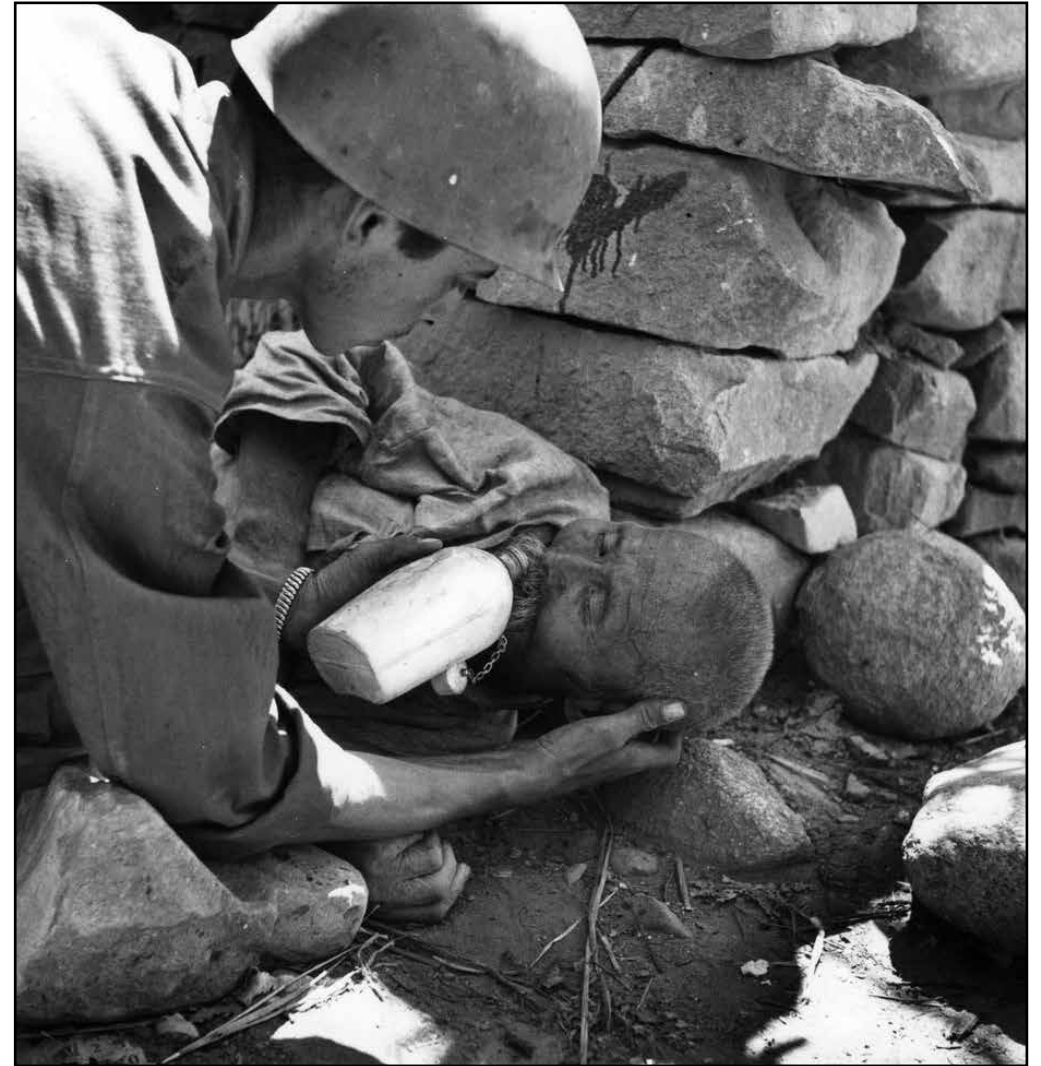
Few will misinterpret the picture above. There is little doubt that the chewing on the carrot is real and energetic. It is “staged” in the sense that she was asked to turn around to face the low autumn sun, but the chewing is her own desire and opportunity, so calling this manipulated would be strict. As a small report from the carrot harvest it should be acceptable.

Trying to follow the “Dogma” rules, it should be permissible to photograph an activity even if you ask for this activity to happen at a certain time and/or place. As long as that time or place is not contrary to normal, and the activity is not instructed, one may still argue that the activity is “real” and that the photograph is “documentary”.

Initiating an activity that is not normal is less innocent. The picture to the right shows an American soldier during the Korean war offering water to a wounded

civilian at the edge of the road. It tells a story of kindness across the horrors of war. It is good and endearing as we would like things to be, but it is a lie.

It is pure propaganda. Learning that the scene was the photographer’s idea, that the soldier only accepted to pose for the camera if it was quick and he could use the photographer’s canteen, we feel cheated. There is a difference between fact and fiction and they should not be mixed. But the editor was pleased at the time, the readers were pleased and the generals were probably delighted.



The following pictures are also fakes, but less serious and more obvious, The one below is duly criticised in a master thesis, see Notes, but is rather harmless. Even without specific information to the fact, people with a little experience will see it as arranged, primarily based on the camera position. It is a familiar motif, but not a familiar view. Still, pictures like this will normally be marked “illustration” to point out that the image is constructed. The fact that the model in this case is a source both identified and cited in the image strengthens the need for such precaution, and media today are as a rule careful in doing so.

One may argue that illustrations with low “propaganda value” like this are harmless. Agreeing with such a view is easy.

Sunnmørsposten’s Roger Engvik illustrated the very wet spring, summer and autumn of 1983 by marking the total rainfall (1169,2mm) on the waistline of a man and have him walk into a lake up to that point, shaking his fist at the sky. Enough is enough, and no one saw anything but a funny illustration.



Pictures like this are photographic illustrations at their very best. Telling a story without words in a way that leaves no room for misunderstanding is rare and the stunt deservedly won the county “Picture of the year” award.

But even if these pictures are harmless, the principle is not.





**1** Oles Klode  
Ole Mathismoen  
Journalist  
Blogger om klima og natur  
på [ga.no/olesklode](http://ga.no/olesklode)



- 1** Blåstål (hann)
- 2** Begerkorall
- 3** Eremitkrevet (Pagurus prideaux)
- 4** Langpøttert krakkebolle
- 5** Seistim gir fortis sjøstjerne på tryggerpilarene
- 6** Fjærstjerne
- 7** Sjøsne Biocoral
- 8** Rodkotte
- 9** Sjøpær
- 10** Sjønellik

Fotograf  
**ERLING SVENSEN**



## Hvor er dette paradiset?

Det er havbunnen og fjellskråningene under vann på nedsiden av Fingebafjellet i Førdefjorden, i Sogn og Fjordane. La deg blende av ikornbeten, for svart er alt godt. Det er akkurat her vår regjering har tillatt utgraving av fukt gruvestein, kjemikalier og tungmetaller. Fire milliarder tonn i året – uttatt hvert niende, 24 timer i døgnet i kantskje går. Bleggspurtene kan ikke beskytte seg med blekk, kamskjellet kan ikke hoppe unna, sjøanemonene på 40-50 cm kan ikke lukke seg inne og sjøpæren vil bli ute av stand til å dykke ned i musklere.

På overflaten er Førdefjorden som fjorder flest. Vann med bølger. Men undervannsfotograf og hobbybiolog Erling Svensen har avslørt en verden vi ikke har sett før. Han har dykket i norske fjorder og i de mest unike farvann elkers.

– Dette dykket åpenbart noe av den mest ekstrime naturen vi har. Dyrelivet er spektakulært, det er på øverste høyde av hva vi har i Norge, helt i verdensklasse. Unik!

I åre år har Anne-Lise Thingnes Førsund og den lokale Vevring og færdjviten Miljøgruppe kjempet mot gruveplanene.

– Det handler ikke bare om Førdefjorden. Når Norge i 2025 kan ta en fisk og ten fjord – en svært viktig gyteplass for kystfiskeriet, og gjelden bort som en slags subsidie til et gruveselskap – kan det samme ikke med andre fjorder, sier hun.

Norge er nå det eneste landet i Europa som driver med sjødepotier fra gruveindustri. Av verdens 22 gjensvarende sjødepotier er seks i

Norge. De andre seks er fordelt på fire andre land. Ingen andre land har vedtatt nye sjødepotier. Norge har vedtatt to nye.

– Nøe har gått helt galt her i landet. Det er et kosmopolitisk spill mellom Norges profilering som et naturland med ren, frisk mat og det som nå holder på å skjule i Førdefjorden. I resten av verden jobbes det innest med å holde matlæret rent, mens vi skal dumpe ekstremt mengder gruvestein nedt i matlæret. Dette skjer samtidig som det altså brukes millioner av kroner på å reparere på gamle miljøprosjekter i fjorder og havrområder, sier Anne-Lise Thingnes Førsund.

Nå er frykten stor for at steinpudderet, som er sammensatt av partikler fra 0,4 millimeter og nedover til nanostørrelse, skal spres med havstrømmene og tas opp i næringkjedene langt ut over ødeleggende på dunningsstadiet.

Derfor har nå helseforskningssjef i Helse og Fiskeridirektoratet satt ned foten. Av samme grunn har Verke og NHO retselv sagt nei. Og Sjømat Norge, Fiskerilaget og samtlige natur- og miljøorganisasjoner – ja, over 30 internasjonale miljøorganisasjoner har engasjert seg.

Miljødirektoratet sa i år 19, av miljøpolagige årsaker, men sa deretter ja, da regjeringen ba dem vurdere prosjektet ut fra tver generell samfunnsnytte.

Så kan man lure, både lokalbefolkning, naturvernere og politiker: Hva skjer med Førdefjorden etter at alle fjordturistene har sett Erling Svensens bilder?



### **Deception by wrong place or time.**

Presenting pictures out of context is another use of photographs that can be anything from harmlessly to harmfully deceptive. The opposite page shows a facsimile of Aftenposten Sunday May 29, 2016. It tells us that this paradise, located at Engebø in the Førde Fjord in Norway, is the exact spot where the Norwegian government has permitted dumping of mining residue, destroying all of this beauty forever.

That information is not quite correct, making the statement completely wrong.

All the pictures show locations less than 50 meters below the sea surface. The deposit area is at the bottom, 300 meters below, where eternal darkness results in a far less paradisaical diversity of life forms. The residue will be transported down to this location through a pipeline, and the permit explicitly states that no residue may ever reach a higher level than 150 meters below sea level. The predicted destruction of the paradise shown here has therefore no base in fact.

I know this from having asked the photographer and studied the relevant case documents, including the permit. <https://www.regjeringen.no/contentassets/d64de37507d347f0b2ea6beaf6f8b288/nordic-rutile-asa--tillatelse-pdf-l239074.pdf>

My reason for checking up on the facts is that I happen to be a shareholder of the mining company with a need to know what I am risking my savings on. This means that I am also biased. For more on bias, see p. 45.

The mining operation and the waste disposal plan in particular is controversial. Many have protested. Some have been fined for obstructing work at the site. These are people who act at considerable personal risk and expense out of a personal conviction that what they do is important and what they try to prevent is an institutionalized environmental crime. If anyone is led into such action due to media presenting wrong information, then media deserve criticism.

I am using this example reluctantly, due to my personal bias, because it is a rare demonstration that even if the GPS-coordinates may state the longitude and the latitude correctly down to the last cm, the location may still be wrong if it misses out on the vertical positioning and that, as it does in this case, matters.

It stresses the point that one can never be too careful in verifying the facts of a story. Even the image file's data of time and location may sometimes, as this case shows, not be precise enough to avoid misleading the readers.

Deception by using images from wrong place or time is today rare except for unwitting or careless cases, mostly regarding archive portraits. People subject to loss, crisis, criticism or disaster are sometimes presented with happy, smiling faces, and even if we normally understand that this is neither correct nor intentionally abusive, such use of images should be avoided.

Internet makes image research so easy now that other deceptive use of images is rare indeed, at least as far as editor controlled media is concerned.

One such incident that I may be criticised for not correcting in time, occurred in November 2010 when Næravisa, the student practice newspaper at Volda University College needed to illustrate a case of underpaid Baltic workers at a local Norwegian fish processing plant. Having no photos from the premises the students searched for, found and printed a CC-licensed image from Japan under the presumption that “fish is fish”. Such solutions may be perhaps be excused in practice training but not recommended for professional media.

Using ostrich pictures from Africa to illustrate turkey farming in the US might be a suitable parallel, so even if the image was correctly labelled “illustration”, no illustration at all would have been a better choice.



There are cases where one consideration collides with another. The Virginia Tech school massacre in 2007 went frontpage world-wide with this picture, showing a wounded male carried to safety with his private part sticking out.

That was at least what editors believed at the moment. It turned out to be just a strap to stop the bleeding, nothing private at all, but that was known only after most had decided that the man's (and readers') dignity was less important than the integrity of the press, and printed it as it was. Verdens Gang, Norway, was to my knowledge alone in retouching it, and was heavily criticised for that.

This is a rare case of such dilemma. Still, reality is complex and decisions that feel right for all are sometimes impossible to make. One "impossible" alternative would of course have been not to publish the picture at all.

Catastrophe, disaster, accident; cases where people are vulnerable and the camera is an intruder on tragedy are cases in need of caution. My own approach to a site has always been with the camera over my shoulder until I had a view of the situation and a chat with rescue personnel at the site. There are some rare cases you leave alone as too sad for photos. There are less rare pictures you



do not publish, even if they are good. There are some you delete, but as a rule you photograph anything that happens. That is and should be *instinct*. But you don't have to shoot or keep or publish everything.

When I arrived at the scene above there were two dead people lying in the road. I saw no point in photographing their transfer to the hearse, so I waited. One hour later I got my video shots for TV of removing the wrecked cars plus some still pictures for paper and web, sufficiently demonstrating the impact of the crash that had so brutally ended three lives that night.

My waiting hour was spent talking with police and rescue personnel, and the initial tense moment of my arrival eased into a situation of mutual respect and cooperation. To my experience, press photographers are often not welcome in such situations, and this is most efficiently met with a decent approach.



Utøya and Oslo 2011.07.22. was soberly illustrated in Norwegian media. Few photos of wounded or dead were taken and fewer were published. The cameras focused on material damage and grief. Too many of our small population had lost someone, the tragedy was too deep.

One of the strongest pictures of the days, an image close to becoming an icon of the massacre, was the one to the right of the Norwegian Marine flag halfway up the pole, framed by the broken window of the government office building.

Pictures from Utøya were scarce and none at all from the island itself were published in Norway. This part of the tragedy was still too painful.

Swedish photographer Niclas Hammarström arrived early and captured some scenes from the place as the police found them. A photographer's exposure to danger and to heartbreaking sights on a site like this will be identical to that of police and medics, but without the comfort of feeling welcome or even accepted. The opposite is more often the case. Hammarström was ordered off the area by the police who also tried to confiscate his camera. Few Norwegians at the time saw the value of documenting the horrors of this massacre.

Some people deny Holocaust. Luckily, we have photos documenting that atrocity.

Luckily, we also have the few photodocuments Hammarström's managed to secure from Utøya. When this tragedy also is reduced to an exact number of dead and a less exact number of survivors marked for life, we will need them to remember. It may already be time for that, too many of the survivors are ignored already, while the narcissist killer got all the attention he wanted.

*«Niclas' images help us take in the incomprehensibly diabolic act that took place at Utøya.»* The quote from Jan Helin, chief editor of Aftonbladet is a more sober evaluation of his work than our own media representatives were able to give at the time.

According to Norwegian law (p. 6) photographs of dead people are protected 15 years PMA, meaning that Hammarström's images may be published freely in 2027. Some will say that is much too soon. Others would say it is time already.



Pictures of dead people have a long tradition. During the times when photos were scarce and costly, deceased family members were often photographed in bed or in their coffin as the last chance of having their likeness preserved for posterity, and these pictures are tokens of love.

Pictures of dead people as part reportage is a different story. They show us the horrors of war and accidents and disasters and remind us that life is not secure. That is disturbing and revolting, so Media are as a rule restrictive in showing such pictures. This does, however, depend on context, and the barrier seem to be lower as the distance increases. After the 2004 Indonesian tsunami, the Dec. 28 English frontpage of Belgian La Libre shows a local couple mourning a child, presumably their own. The French edition next day shows a beach littered by Caucasian bodies washed ashore. As for illustrating tsunami, the beach picture is clearly the strongest. According to my colleague who downloaded it from the web it was available just a few hours. Was it removed because European casualties numbered only one percentage of the death toll, or out of consideration for European readers? Both questions were probably considered, as they should. If we believe that photographs have an effect, then we also have to consider how the effect will be and if that effect is desirable.



Death is a fact of life that parts of Western culture do not like to talk about, like age. We do not get old, we get “elderly” and we do not die, we “pass away”. This is verbal cosmetics and a rather pitiful view on life. We *do* get old, and we *do* die, and that is good and as it should be. A good example on how deeply felt sorrow from the end of a life is dealt with, even with photographs, is when the body of late Pope John Paul II was displayed for a last farewell, and all kinds of video- and still cameras recorded as the crowd defiled past the casket.



Some Norwegians saw this as disrespectful at the time. To those involved it was the opposite, a sign of deep respect and grief at the loss of a loved leader.

Sudden, unexpected, unnecessary death is different. That is a shock, particularly to those bereaved of a loved friend or relative and Media is normally careful not to add to that shock by showing pictures of the deceased. Sometimes other considerations are weighted heavier, and disturbing images are released.

Sometimes other concerns than ethics may tip the balance. New York times showed photographs of the dying man when the US Ambassador to Libya, John Christopher Stevens was killed in 2012, and close-up video of the Russian Ambassador to Turkey Andrey Karlov as he was assassinated in Ankara in 2016.

Others did the same. One may wonder if this has to do with the “war on terrorism” declared after 9.11., or if it is just another sign of increasing brutality in our now instantly world wide media society.

### Should all great pictures be published?

The propaganda value of a photograph seems appropriate for discussion after the 2017 World Press Photo of the Year award. The decision was controversial. Some jury members declared it very difficult, some declared a wish for a broad debate and the jury chairman officially declared disagreement. The big question is, to my mind: Should this picture be published at all? It is a *very* big question.

It is a great picture. I am of course green with envy and if I ever had the luck and the nerve to capture something like this I would be proud and happy and probably much more. I would of course have tried to get the most out of it for myself in money and status.

It is a great picture, as mentioned. There is iconic potential in all its expressive simplicity. That is part of what makes it controversial.

Jury member João Silva calls it "*the face of hatred*". Jury member Mary F. Calbert calls it "*an explosive image*". Jury member Tanya Habjouqa thinks the selection will push forward a debate that is essential to have. Jury chairman Stuart Franklin distanced himself from the decision with reference to NPPA rule no.2; "*Resist being manipulated by staged photo opportunities*".

It is easy to agree with all these views. This is a portrait of man delivering a message, at the moment of having brought attention to himself by killing an ambassador and on the doorstep to martyrdom. His victim spread-eagled on the floor, his gun pointing down, his legs apart after a forward movement, his jacket and tie still penduling, his left arm raised, fist clenched, index finger pointing, shouting out his message he stands there victorious. His mission is successful. He has won. He is a hero.

There is no doubt in my mind that many people will see him like this and that a part of his motivation was a hope to be remembered this way. Since that is exactly what the picture gives him, it is also why publishing it is controversial.

This *was* a staged photo opportunity. Award winner Burhan Özbilici stumbled upon it by chance and he had no choicem of avoiding it. There was more than one photographer covering the event, they recorded it in stills and video as

photographers should, performing admirably well under stress. The concern is therefore not about what to do then and there, but about what to do after.

Other of Özbilici's captured moments show the assassin as a less admirable character. They show someone who is nervous, afraid, insecure. He is still fanatic, but less heroic. He is still murderous, but less brave. The awarded photograph has iconic potential, the others have not. Others tell the same story about the assassination, and they do it without glorifying the assassin. But they do not have the same visual impact; not the same marketing value.

Is he glorified? I think so. Not to me, or Russians or Europeans or Americans in general. But many who hate American or European or Russian imperialism will see him as glorified. To them this picture may be inspirational. There is reason to believe that just this outcome may have been his ultimate hope.

So the question is again: Should the chosen picture be put aside in favour of a different one, even if the chosen one is the most catchy?

That is, in my mind, what this debate should be about. I have no illusion that there will be much of a debate, not with the media situation as it is, and I have absolutely no illusion that there will be any final conclusion. But I do hope that photographers and publishers will ask this question sometimes.

Is it conceivable that a great picture should be put aside because the effect of it could be bad?

On the next page I have placed the winning picture and an almost identical one side by side, both kindly put to my disposal by the photographer. They were both used by media at the time to illustrate what happened, along with other images. The discussions that led to the chose of one above the other are unknown to us, but we do know that one of them won an award and that the decision was disputed. We also know that jury members felt that a debate is needed. So debate! In what way is one of these two pictures better than the other? Which one would the assassin prefer? Which one suits his intentions best? These are ethical questions all makers and distributors of photographs should ask, continuously. They are, to my mind, what NPPA rule no. 2 is all about.

Mevlut Mert Altintas photographed after shooting Andrei Karlov, the Russian ambassador to Turkey, at an art gallery in Ankara, Turkey, Monday, Dec. 19, 2016. These are two almost identical versions of the same motif, but telling two different stories about the assassin.



## **Bias.**

NPPA rule no. 3 warns us to recognize and work to avoid presenting our own biases in our work. Bias in media is commonly defined as an inclination against or in favour of someone or something, as opposed to a balanced presentation of pros and cons of diverse matters.

My personal bias regarding the mining operation mentioned on p. 37-38 is of a financial nature and as such very clear. All that I say and write regarding this operation should be seen in that light. Still, even an obvious bias like mine should not stop anyone from pointing at wrong use of facts, as long as such facts can be verified and the bias is openly declared.

There are also biases of other and sometimes less obvious nature. Nationality, religion, culture, family, age, gender, skin-tone, friends as well as political or any other interest frequently make people more inclined to base their opinions less on facts and more on feelings, or just to highlight some facts and ignore others. Journalist are subject to bias just as anyone else, and the first step to stop us from being ruled by biases is to recognize that they are there.

Having established now, I hope, that photographs tell stories and that selecting one above the other decides what story is told, we should agree that our own bias may sometimes influence that selection. See Photo for Media, the Portrait p. 35 for a possibly biased portrait series of a certain political person.

Even if most pictures have little impact, the power of pictures to tell stories and influence actions has been recognized since the beginning. We may safely assume that palaeolithic tribes saw history and probably also magic in their rock carvings and cave paintings. Making them took time and even if they had plenty of that, their picture-making would hardly be just mindless doodling.

We may also be assured that the Pharaohs and the Romans and the Church did not commission art just for the sake of something pretty to look at. Displays of victorious rulers, of powerful gods and pious saints have influenced opinions.

As for photography, we know for a fact that the British Government hoped for a positive turn of opinion from Fenton's Crimean war images, and that the US

military ever since Vietnam, not to mention the Israelis on Gaza, have tried to control all photography in their area of activities. Pictures of proud officers and well-tended wounded as Fenton provided worked well in the 1850's. Pictures of atrocities, death and destruction worked well in the opposite direction in the 1960's and -70's, and have, at least in some areas, furthered the Palestinians' cause in later years.

During the 1930's depression, US Farms Security Administration deliberately used this capacity to swing public opinion in favour of spending taxpayers money on people in need, an otherwise very un-American activity, and they did so by showing that these people in need were worthy people. God-fearing, hard-working, decent people "like us" who had fallen into hardship through no fault of their own. It worked.

Pictures of people suffering, as images from war as well as famine and natural disasters have proved, do have a capacity for evoking sympathy; sometimes also inducing actions to amend and relieve and sometimes even change.

The presidential debate among candidates Kennedy and Nixon in 1960 was the first to be broadcast by both TV and radio. Nixon refused to accept stage make-up and also in pain at the time, while Kennedy was in good shape and had received make-up from his own team just before going on camera. Those who followed the debate on radio favoured Nixon afterwords by a small margin, while those who watched TV preferred Kennedy, who won the election. The incident is often used to illuminate the power of the visual media, and fits very well with Aristotle's lectures on Rhetoric. Logic (Logos) was his favourite followed by emotion (Pathos), but he had, reluctantly, to admit that Ethos, loosely defined as the charisma of the speaker, created a willingness among many to listen and believe despite flaws in logic. The phenomenon is well known and used by quite a few politicians and others with something to sell.

Vision communicate in a different and much more subtle way than words. Most of us have little training in questioning the subtleties of visual communication and biased photo selection is often overlooked. Due to this, photographs are excellent tools for propaganda which, consciously or not, is also part of Media. NPPA rule no. 3 is therefore well worth studying.

### Can Photographs be Trusted? Recent and near future challenges.

The police may publish portraits as part of crime-fighting, as mentioned on p.10. Recent developments present a problem in this area. If the portrait shows a very pretty person, there is good reason to be sceptical. In search of a young woman Berlin police published a photo from her Instagram account not realizing that the face is a fake. Access to “filters” make many people “improve” their profile pictures, often to the extent that the published picture no longer looks like the original. This face does not exist, or, well; it might. Possibly. But it is not a clear identification of the missing person in this particular case.



February 2019 came with disturbing news in the area of automated adjustment and creation of images. One of them was a major break-through in developing a dubbing-technique for film. Software developed by the London-based company Syntesia may now let actors realistically speak any language known to man by digitally adjusting the actor’s mimic to someone else’s.

A convincing video shows former president Obama claiming that “President Trump is a total and complete \*%\$£&%\$!” He would of course never say such a thing, he admits in the same video, at least not in a public address, but someone would. Like Jordan Peele, who is an actor and the one actually uttering the words that the video make us believe are Obama’s.

In another demonstration Yama Wolasmal of the NRK fluently reports in Sami and Mandarin, none of which languages he has any knowledge of and with no

idea of what he, apparently, is reporting. See: <https://www.synthesia.io/> and <https://nrkbeta.no/2019/02/23/yama-kan-ikke-samisk-eller-mandarin-for-na/>

This means that any video of anyone uttering anything at all can no longer be trusted. It will need sincere and convincing testimony that it is what it claims to be, and how such testimony can be made and trusted is a challenge.

The other news was that Artificial Intelligence is now able to create portraits of non-existing individuals. The degree of realism is so high that a research group at the University of Washington shortly after launched a website designed to teach people how to spot these fakes due to certain anomalies the program still may produce. See <https://arxiv.org/pdf/1812.04948.pdf>. and <http://www.which-faceisreal.com/> plus next page. But: the “tell-tale” signs here pointed at may to a large degree be remedied manually and will probably soon also be remedied automatically.

The implications of using artificially created faces have been part of Bergen University’s Prosopo project since 2016. <https://teklab.uib.no/prototyper/prosopo/> <https://ojs.bibsys.no/index.php/NIK/article/view/426>. One benefit of using this technique is that individuals in photographs illustrating sensitive incidents may be effectively anonymized by realistic artificial replacements, instead of blocking or blurring parts of the image, see pages 5 and 9-18.

The number one objection as far as media is concerned is of course that this is a violation of the photograph as a document, and that any use of such technique therefore is unacceptable.

Another objection is that given a total number of seven billion people on this planet, chances are that even artificial portraits may actually look like someone who thereby may find themselves wrongfully linked to crime or disaster.

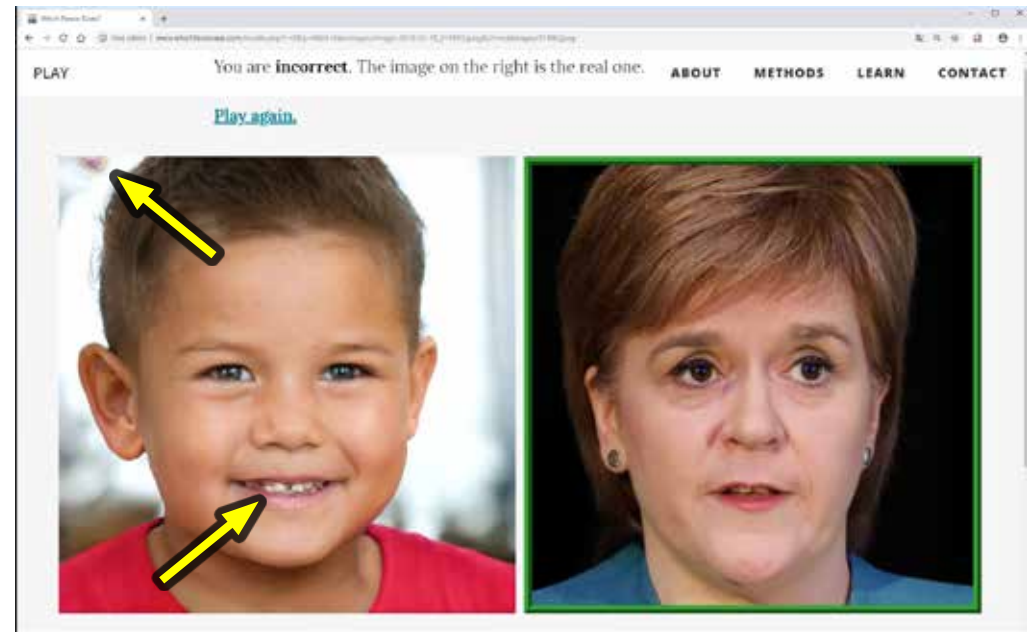
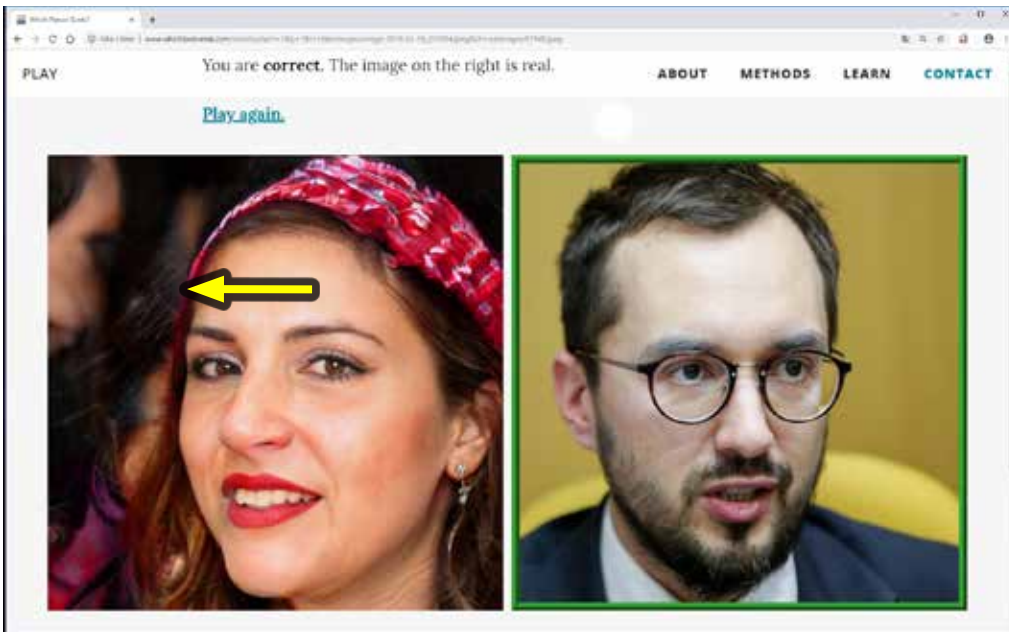
My conclusion is that realistic image adjustment and creation technique is now so developed and so easily available that we can no longer trust photographs as documents, unless we have some form of verification that they show what they claim to show. To my mind, the only person that can do that with first hand authority, is the photographer.

Four examples of artificially created images paired up with images of real people, as presented by the website whichfaceisreal, with indicators inserted by me to point at give-away details still flawing this AI-operated construction program.



Symmetry, regarding facial hair, glasses etc. is still a problem (above), and the same can be said for strands of stray hair against a background. Both can as a rule be adjusted manually. This is also the case for the “water-splotches” that

often appear (top above) and irregular shadows as from the man’s cap. Background noise is easily remedied (top below). Tooth irregularities and hair structures are still a bit more of a challenge, but probably not for long.



### **What or who to trust.**

During a lecture in Volda January 2019 AP photographer Burhan Özbilici told my students that his most prized possession is his integrity. As a young writing reporter he was asked to sometimes “adjust” his stories to make them front page friendly. He responded by switching to photography since photographs do not lie. That was more true then than it is now, but following the NPPA code of ethics to the best of his ability; declining gifts and favours and standing up for his values he feels that his reputation for unbribable honesty has been of great value in his work, which for a major part has been in areas where many of us westerners see bribes and nepotism as an unavoidable part of the culture.

This has to do with respect, what some cultures define as “face” and the Vikings saw as their reputation; their epitaph or legacy. A well respected ancestry was of high value to them, personal respect likewise and loss of respect more feared than loss of life, according to the legends. If such “face” is based less on capacity for violence as the case often was with the Vikings, and more on moral fibre, this is a good philosophy even in civilised societies.

Following my thought that the photograph as evidence of something sometime having happened in front of a lens is a myth of the past, and that the credibility of the photograph now depends on the photographer, the first thing to do is to make sure that all photographs are signed.

Photographer’s right to be credited for their work has always been among the smaller concerns in the world of media. Crediting practise has improved much during later years, but maybe not for the best reason. Declaration of copyright, which signing of any work is an important part of, is of course important and not to be neglected. To my mind, however, a declaration of responsibility is even more important.

If we can no longer trust photographs and have to start trusting photographers, we will need to know who they are. If we do not trust documentary articles written by anonymous writers, why should we trust documentary images made by anonymous photographers?



## **NPPA CODE OF ETHICS**

Visual journalists and those who manage visual news productions are accountable for upholding the following standards in their daily work:

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.
7. Do not pay sources or subjects or reward them materially for information or participation.
8. Do not accept gifts, favors, or compensation from those who might seek to influence coverage.
9. Do not intentionally sabotage the efforts of other journalists.
10. Do not engage in harassing behavior of colleagues, subordinates or subjects and maintain the highest standards of behavior in all professional interactions.

Ideally, visual journalists should:

1. Strive to ensure that the public's business is conducted in public. Defend the rights of access for all journalists.
2. Think proactively, as a student of psychology, sociology, politics and art to develop a unique vision and presentation. Work with a voracious appetite for current events and contemporary visual media.
3. Strive for total and unrestricted access to subjects, recommend alternatives

to shallow or rushed opportunities, seek a diversity of viewpoints, and work to show unpopular or unnoticed points of view.

4. Avoid political, civic and business involvements or other employment that compromise or give the appearance of compromising one's own journalistic independence.
5. Strive to be unobtrusive and humble in dealing with subjects.
6. Respect the integrity of the photographic moment.
7. Strive by example and influence to maintain the spirit and high standards expressed in this code. When confronted with situations in which the proper action is not clear, seek the counsel of those who exhibit the highest standards of the profession. Visual journalists should continuously study their craft and the ethics that guide it.

## **ASSOCIATED PRESS CODE OF ETHICS FOR PHOTOJOURNALISTS.**

AP pictures must always tell the truth. We do not alter or digitally manipulate the content of a photograph in any way.

The content of a photograph must not be altered in Photoshop or by any other means. No element should be digitally added to or subtracted from any photograph. The faces or identities of individuals must not be obscured by Photoshop or any other editing tool. Only retouching or the use of the cloning tool to eliminate dust on camera sensors and scratches on scanned negatives or scanned prints are acceptable.

Minor adjustments in Photoshop are acceptable. These include cropping, dodging and burning, conversion into grayscale, and normal toning and color adjustments that should be limited to those minimally necessary for clear and accurate reproduction (analogous to the burning and dodging previously used in darkroom processing of images) and that restore the authentic nature of the photograph. Changes in density, contrast, color and saturation levels that substantially alter the original scene are not acceptable. Backgrounds should not be digitally blurred or eliminated by burning down or by aggressive toning.

The removal of "red eye" from photographs is not permissible.

When an employee has questions about the use of such methods or the AP's requirements and limitations on photo editing, he or she should contact a senior photo editor prior to the transmission of any image.

On those occasions when we transmit images that have been provided and altered by a source — the faces obscured, for example — the caption must clearly explain it. Transmitting such images must be approved by a senior photo editor.

Except as described herein, we do not stage, pose or re-enact events. When we shoot video, environmental portraits, or photograph subjects in a studio care should be taken to avoid, misleading viewers to believe that the moment was spontaneously captured in the course of gathering the news. In the cases of portraits, fashion or home design illustrations, any intervention should be revealed in the caption and special instructions box so it can't be mistaken as an attempt to deceive.

## **CODE OF ETHICS OF THE NORWEGIAN PRESS**

Ethical Code of Practice for the Press (printed press, radio, television and net publications). Adopted by the Norwegian Press Association June 13. 2015.

Each editor and editorial staff member is required to be familiar with these ethical standards of the press, and to base their practice on this code. The ethical practice comprehends the complete journalistic process from research to publication.

### **1. The Role of the Press in Society**

1.1. Freedom of Speech, Freedom of Information and Freedom of the Press are basic elements of a democracy. A free, independent press is among the most important institutions in a democratic society.

1.2. The press has important functions in that it carries information, debates and critical comments on current affairs. The press is particularly responsible for allowing different views to be expressed.

1.3. The press shall protect the freedom of speech, the freedom of the press and the principle of access to official documents. It cannot yield to any pressure from anybody who might want to prevent open debates, the free flow of information and free access to sources. Agreements concerning exclusive event reporting shall not preclude independent news reporting.

1.4. It is the right of the press to carry information on what goes on in society and to uncover and disclose matters, which ought to be subjected to criticism. It is a press obligation to shed critical light on how media themselves exercise their role.

1.5. It is the task of the press to protect individuals and groups against injustices or neglect, committed by public authorities and institutions, private enterprises, or others.

### **Integrity and credibility**

2.1 The responsible editor carries personal and full responsibility for the contents of the media and has the final decision in any questions regarding editorial content, financing, presentation and publication. The editor shall act freely and independently towards any persons or groups who – for ideological, economic or other reasons – might want to exercise an influence over the editorial content. The editor shall safeguard the editorial staff's production of free and independent journalism.

2.2 The editor and the individual editorial staff member must protect their independence, integrity and credibility. Avoid dual roles, positions, commissions or commitments that create conflicts of interest connected to or leading to speculations of disqualification.

2.3 Be open on matters that could be relevant for how the public perceive the journalistic content.

2.4 Members of the editorial staff must not exploit their position in order to achieve personal gain, including receiving money, goods or services, that can be perceived as compensation from outsiders for editorial benefits.

2.5 A member of the editorial staff cannot be ordered to do anything that is contrary to his or her convictions.

2.6 Never undermine the clear distinction between editorial copy and advertisements. It must be obvious to the public what is deemed to be commercial content. The distinction must be obvious also when using web links and other connective means. Decline any commercial content that can be confused with the individual medium's journalistic presentation.

Editorial mention of products, services, brand names and commercial interests, including the media's own, must be motivated by editorial considerations and must not appear as an advertisement. Maintain an obvious distinction between marketing activities and editorial work. Turn down any offers of journalistic favours in return for advertisements. Avoid indiscriminate reproduction of PR material.

2.8 Hidden advertising is incompatible with good press practice. Commercial interests must not influence journalistic activities, content or presentation. If the editorial material is sponsored, or a programme has product placements, this must be obvious to the public. Sponsorship must always be clearly marked. Sponsorship or product placement in news or current affairs journalism or journalism directed at children is incompatible with good press practice. Direct expenses for journalistic activities must in the main be paid by the editorial department itself. In the event of an exception, the audience must be made aware of what is financed by external interests.

2.9 Members of the editorial staff must not accept assignments from anyone other than editorial management.

### 3. Journalistic Conduct and Relations with the Sources

3.1. The source of information must, as a rule, be identified, unless this conflicts with source protection or consideration for a third party.

3.2. Be critical in the choice of sources, and make sure that the information provided is correct. It is good press practice to aim for diversity and relevance in the choice of sources. If anonymous sources are used, or the publication is

offered exclusivity, especially stringent requirements must be imposed on the critical evaluation of the sources. Particular caution should be exercised when dealing with information from anonymous sources, information from sources offering exclusivity, and information provided from sources in return for payment.

3.3. Good press conduct requires clarification of the terms on which an interview is being carried out. This also pertains to adjacent research. Any agreement regarding quote check should be made in advance of the interview, and it should be made clear what the agreement includes and what deadlines apply. The editors decide for themselves what should finally be published.

3.4. Protect the sources of the press. The protection of sources is a basic principle in a free society and is a prerequisite for the ability of the press to fulfil its duties towards society and ensure the access to essential information.

3.5. Do not divulge the name of a person who has provided information on a confidential basis, unless consent has been explicitly given by the person concerned.

3.6. In consideration of the sources and the independence of the press, unpublished material as a main rule should not be divulged to third parties.

3.7. It is the duty of the press to report the intended meaning in quotes from an interview. Direct quotes must be accurate.

3.8. Changes of a given statement should be limited to corrections of factual errors. No one without editorial authority may intervene in the editing or presentation of editorial material

3.9. Proceed tactfully in journalistic research. In particular show consideration for people who cannot be expected to be aware of the effect that their statements may have. Never abuse the emotions or feeling of other people, their ignorance or their lack of judgment. Remember that people in shock or grief are more vulnerable than others.

3.10. Hidden cameras/microphones or false identity may only be used under special circumstances. The condition must be that such a method is the only possible way to uncover cases of essential importance to society.

3.11. The press shall as a rule not pay sources or interviewees for information. Exercise moderation when paying a consideration for news tips. It is incompatible with good press practice to employ payment schemes designed to tempt people, without due cause, to invade the privacy of others or to disclose sensitive personal information.

#### 4. Publication Rules

4.1. Make a point of fairness and thoughtfulness in contents and presentation.

4.2. Make plain what is factual information and what is comment.

4.3. Always respect a person's character and identity, privacy, ethnicity, nationality and belief. Be careful when using terms that create stigmas. Never draw attention to personal or private aspects if they are irrelevant.

4.4. Make sure that headlines, introductions and leads do not go beyond what is being related in the text. It is considered good press conduct to reveal your source when the information is quoted from other media.

4.5. In particular avoid presumption of guilt in crime and court reporting. Make it evident that the question of guilt, whether relating to somebody under suspicion, reported, accused or charged, has not been decided until the sentence has legal efficacy. It is a part of good press conduct to report the final result of court proceedings which have been reported earlier.

4.6. Always consider how reports on accidents and crime may affect the victims and next-of-kin. Do not identify victims or missing persons unless next-of-kin have been informed. Show consideration towards people in grief or at times of shock.

4.7. Be cautious in the use of names and photographs and other clear identifiers

of persons in referring to contentious or punishable matters. Special caution should be exercised when reporting cases at the early stage of investigation, cases concerning young offenders and cases in which an identifying report may place an unreasonable burden on a third party. Identification must be founded on a legitimate need for information. It may, for instance, be legitimate to identify someone where there is imminent danger of assault on defenceless individuals, in the case of serious and repeated crimes, if the identity or social position of the subject is patently relevant to the case being reported on, or where identification protects the innocent from exposure to unjustified suspicion.

4.8. Reporting on children, it is considered good press conduct to assess the implications that media focusing could cause in each case. This also pertains when the person in charge or parent, has agreed to exposure. As a general rule the identity of children should not be disclosed in reports on family disputes or cases under consideration by the childcare authorities or by the courts.

4.9. Be cautious when reporting on suicide and attempted suicide. Avoid reporting that is not necessary for meeting a general need for information. Avoid description of methods or other matters that may contribute to provoking further suicidal actions.

4.10. Exercise caution when using photos in any other context than the original.

4.11. Protect the credibility of the journalistic photograph. Photos used as documentation must not be altered in a way that creates a false impression. Manipulated photos can only be accepted as illustrations if it is evident that it in actual fact is a picture collage.

4.12. The use of pictures must comply with the same requirements of caution as for a written or oral presentation.

4.13. Incorrect information must be corrected and, when called for, an apology given, as soon as possible.

4.14. Those who have been subjected to strong accusations shall, if possible,

have the opportunity to simultaneous reply as regards factual information.

Debates, criticism and dissemination of news must not be hampered by parties being unwilling to make comments or take part in the debate.

4.15. Those who have been the subject of an attack shall have the chance to reply at the earliest opportunity, unless the attack and criticism are part of a running exchange of views. Any reply should be of reasonable length, be pertinent to the matter and seemly in its form. The reply can be refused if the party in question has rejected, without an objective reason, an offer of presenting a contemporaneous rejoinder on the same issue. Replies and contributions to the debate should not be accompanied by polemic editorial comment.

4.16. Beware that digital publication pointers and links could bring you to other electronic media that do not comply with the Ethical Code. See to it that links to other media or publications are clearly marked. It is considered good press conduct to inform the users of interactive services on how the publication registers you, and possibly exploits your use of the services.

4.17. Should the editorial staff choose not to pre-edit digital chatting, this has to be announced in a clear manner for those accessing the pages. The editorial staff has a particular responsibility, instantly to remove inserts that are not in compliance with the Ethical Code.

## Notes

### Page 2.

Hundreds of cows were resting behind an electric fence alongside the road, with flashes of lightning in the background every few minutes. I got one shot of undisturbed animals as the car slowed down. Before the car was fully stopped most of them had started rising, curious of what was happening now, and the vision of tranquillity was gone. I put on a density filter to reduce the light, set my camera to lowest ISO and smallest lens opening, steadied it on the car and was lucky to capture one flash in a series of long exposures. Back home I picked the bolt of lightning out of that frame and put it into the frame with the still undisturbed, drowsy cows. I am pleased with the result and I was a little bit proud of having made it. It is the view as we saw it when driving by and locals have responded that it captures the spirit of the prairie. Today I would have set my smartphone to video, recorded a few minutes as we drove by and picked one HD or 4K frame out of the sequence. In 2004 smartphones were still science fiction and this was what I could do with my state-of-the-art Fuji SII. Even so, as mentioned, it is a fake and therefore an abomination that should be deleted with excuses and never made in the first place. Or maybe not?

### Page 5.

The guards: They agreed to have the entrance photographed, but not themselves. This one where they were not recognizable, however, was accepted. Child and mother on the beach: I never got the chance to ask permission, so these two persons are changed in body shape, hair, profile, ear and dress as a painter might do. Consequently, this is not a journalistic photograph, but an illustration of an idyllic beach very close to the city.

*EU Court decision Painer vs. Springer etc.* The 8 year old Natascha Campuch was abducted. The police used her latest photo in searching for her, which they have a right to without asking or paying the photographer. The press used the same photo to illustrate articles, also without asking or paying. The photographer sued. Austrian law ruled that not paying was OK since this was not a Work and therefore not protected in Austria. The EU Court ruled that since this particular photograph had many elements deliberately chosen by the author it *was* a Work and therefore protected in EU. Springer etc. had to pay.

It may be interesting for Norwegian readers to know that a definition of “works” very similar to the current EU definition was agreed upon by Norwegian journalists at the Røros conference in 1969. (see N.J. 25 years p. 57.)

### Page 6.

“Copyright to own self” is an idea yet to be clearly adopted by Law, but still a reality that seems to have been in the back of the judge’s minds in some court cases. Tromsø 2018 is just one of many cases where missing model fee has led to successful law suit (page 17).

### Page 7.

“Shared copyright” is a phrase I have so far not seen used in the meaning of models or objects in a photograph sharing rights to that photograph with the photographer. I still do find it helpful in describing the effect of diverse rules regarding the publication of photographs.

The “not public” definition of school classes due to the assumed “private” nature of pupil-to-teacher relations is one of several challenged opinions in current Norwegian law.

A written contract signed by two or more parties is a very strong document protected by international law, in a several century-long tradition.

### Page 8.

Publishing as part of illustrating a story is very different from publishing as part of selling a product. The one from Haga could probably be used freely promoting Haga as a tourist destination. The other one could definitely not be used without permission from the worker to *promote* the waxing technique, but quite possibly to *inform* about the waxing having been done, to mention these possibilities.

### Page 9-11.

Legislation regarding photographs of unknown persons presents a dilemma. You have to get permission before you publish, and you have to publish in some way to find out who they are, so you can ask permission. The longer you wait, the slimmer the chances of identifying the persons. Out of regard to the

persons and/or their closest relatives, you can not publish without permission until the person has been dead at least 15 years. Now, if the youngest person in the picture is a newborn baby and the picture is new that means you have to wait a long time; 120 years to be precise, since many now live up to 100 and some even 105 years of age and you have to add another 15 to that. By that time even you would probably be dead and there is a good chance that both picture and information are lost. This is not necessarily a bad thing, but for archives who have an obligation to collect and preserve information about past and present for the future, it is a severe obstacle. Norwegian GLAM institutions (gallery, library, archive, museum) have therefore adopted a rule saying that 100 years after the predicted date of birth (determined by the estimated age of the person at the estimated date of photography) should be OK, since the average life-span of a Norwegian today is 85 years. This is a very dubious understanding of a law that states explicitly that the protection lasts 15 years PMA. An exception for archives on par with the police's exception regarding missing persons would be considerably more in line with the law as well as with the archive's obligations of collecting information about archived objects, and adds to the parts of the law where alterations should be considered.

#### **Page 14-16.**

Photographs of children is a sensitive issue these days partly due to a certain media focus on child abuse in diverse forms. Now, sexualized images of kids or grown-ups are covered by rules partly designed to protect common decency, partly to protect privacy and partly to prevent abuse. Most of this is outside or at the outer reaches of traditional media and therefore not a vital part of this little pamphlet, but visual reporters should still keep in mind that even parents sometimes fail to understand the full impact of a published photograph, and that caution regarding the best interest of any child in any situation is well advised when dealing in these matters.

Nude kids on the beach: [https://www.nrk.no/trondelag/sexolog\\_-\\_barn-bor-fa-vaere-nakne-pa-stranda-1.13540025](https://www.nrk.no/trondelag/sexolog_-_barn-bor-fa-vaere-nakne-pa-stranda-1.13540025)

Ebba Busch Thor: <http://www.aftenposten.no/norge/-Foreldre-bryter-daglig-barnekonvensjonen-om-barns-rett-til-privatliv-620647b.html>

#### **Page 16 - 19.**

Instagram and Facebook harassment:

<http://www.aftenposten.no/verden/To-jenter-domt-for-sexsjikane-pa-Instagram-115775b.html>

<http://www.dailymail.co.uk/news/article-2250087/Teenagers-riot-Instagram-sex-rumours-Swedish-students-berserk-police-outside-Plusgymnasiet-high-school-Gothenburg-hundreds-slut-photos-posted-online.html>

<http://www.vg.no/nyheter/utenriks/datatilsynet/saksoeker-foreldrene-for-aa-publisere-pinlige-bilder/a/23795044/>

Bodyshaming: <http://www.latimes.com/local/lanow/la-me-ln-playboy-model-dani-mathers-plea-snapchat-20170524-htmlstory.html>

Stolen photos: <https://www.nrk.no/sport/ni-botelagt-for-spredning-av-noramork-bilder-1.14009852>

Fake Austrian story:

<https://www.telegraph.co.uk/news/2016/09/14/austrian-teenager-sues-parents-for-violating-privacy-with-childh/>

<https://www.dw.com/en/story-of-austrian-teen-suing-parents-over-facebook-pictures-debunked/a-19562265>

Related real case from Italy:

<https://www.independent.co.uk/news/world/europe/facebook-fines-woman-son-photos-post-social-media-court-italy-rome-a8155361.html>

Related pending case from Norway: A mother fined NOK12000 for publishing pictures of her 7-year old daughter weeping got the ruling confirmed by an Appeal Court, now pending for a Supreme Court final verdict.

<https://www.vg.no/nyheter/innenriks/i/K38J26/doemt-for-facebook-bilder-av-datteren>

[https://www.nrk.no/norge/ble-domt-for-a-ha-delt-bilder-av-datteren\\_-\\_kan-vaere-en-oyeapner-for-mange-1.14509682](https://www.nrk.no/norge/ble-domt-for-a-ha-delt-bilder-av-datteren_-_kan-vaere-en-oyeapner-for-mange-1.14509682)

Tromsø 2018: <https://www.nrk.no/troms/tromso-2018-tapte-i-hoyester-ett-1.6906022>

DIDO: <https://www.theguardian.com> › Arts › Music › Pop and rock

Karatzoglou: <https://www.theguardian.com/world/2010/jul/15/greek-pensioner-sues-over-turkish-yoghurt>

NRK frontal nudity: <http://www.dagbladet.no/kultur/ekspert-kritisk-til-mau-seth-dommen/65358361> (the URL is linked to the verdict.)

MEMO: <https://www.nrk.no/kultur/vant-over-memo-i-hoyesterett-1.6511453>

Consent or agreement: <https://www.sandtro.no/tag/samtykke/>

CC. <https://creativecommons.org/licenses/>

### Page 21.

Arago and Talbot, see: Photo for Media, the Beginning.

Barthes: “Camera Lucida” 1980 Part II, 32, several phrases.

Orwell: 1984

Kobré: Photo Journalism

### Page 22.

History of photography, pages..

### Page 28.

Focus bracketed fly, see:

<https://www.flickr.com/photos/m-a-r-t-i-n/9088854658>

### Page 32.

Johan Brun: Norske pressefotografer, page 10.

Israeli Cabinet: <http://europe.newsweek.com/israeli-newspaper-photoshops-female-ministers-out-cabinet-photo-327594> Use of the word “stupid” is justified since the religious command referred to could be fulfilled by placing a patch over each female face, or pixellating them, as also has been done. Trying to deny the fact of the existence of female cabinet members by removing them from the photo like this backfires, making the newspaper look stupid. And that is a stupid thing to do.

Imperialist McCurry:

<https://thewire.in/36155/exposing-steve-mccurrys-photoshopped-world/>

Documentary photo definition: “*documentary photography*” is a type of *sharp-focus photography that captures a moment of reality, in order to convey a meaningful message about what is happening in the world* - see: <http://www.visual-arts-cork.com/photography/documentary.htm>

Illustration photos are normally captioned as that, but this was a front-page picture, and front-page pictures are normally not captioned or credited there. There may be a statement and crediting attached to the story, as was the case here. See: Bjerknes, Fredrik (2012) Rett sted til rett tid. Masteroppgave i Journalistikk, Institutt for medier og kommunikasjon, Universitetet i Oslo.

### Page 35.

“the Pose” - “take on an air”= act or pretend

“likeness” = photograph, US-expression

snap-shot - stolen photo = a photograph that is not planned/posed/permitted

### Page 36.

Bert Hardy’s picture from Korea: “ I set it up” he told Harold Evans later.

“Everybody was walking past but I had the idea and asked a GI to give the old man some water for the sake of the picture. He said he would if I was quick - and if we used my water ration”. *Evans: Pictures on a Page, Introduction.*

### Page 37.

See Bjerknes page 70 ff.

### Pages 38 - 39.

“Wrong facts” is a polite legal expression for statements contrary to documented or otherwise determined facts, implying that the one uttering “wrong facts” may be inadequately informed or mislead. To avoid being mislead in this case, see:

<https://www.regjeringen.no/no/aktuelt/tillatelse-til-gruvevirksomhet-i-engebofjellet-stadfestes-av-kongen-i-statsrad/id2476448/>

<https://www.regjeringen.no/contentassets/d64de37507d347f0b2ea6beaf-6f8b288/nordic-rutile-asa--tillatelse-pdf-l239074.pdf>



<https://www.regjeringen.no/no/aktuelt/utslippstillatelse-til-gruvevirksomhet-i-engebofjell/id2406887/>

The journalist has by e-mail stated that he has not intentionally presented any wrong facts in his article, indicating that he may not have thoroughly studied the permit he is criticising.

The depth of less than 50 meters is confirmed by the sub-sea photographer, who by the way should not be blamed for how his photographs have been used in this context or for what media may have led him to believe. The responsibility for collecting and verifying facts before publishing stays with the publisher.

#### **Page 41**

Utøya. Bilder. «Niclas bilder bidrar sterkt til att forstå det obegripliga och fasansfulla på Utøya. Hans agerande och fotograferande är genomprofessionellt i det allra svåraste tänkbara nyhetsläge». Hans redaktør Jan Helin, chief editor of Aftonbladet.

#### **Page 43-45.**

<https://www.worldpressphoto.org/news/2017-02-13/world-press-photo-announces-winners-2017-contests>

Mary F. Calvert, member of the jury, spoke about the winning photograph:

“It was a very very difficult decision, but in the end we felt that the picture of the Year was an explosive image that really spoke to the hatred of our times. Every time it came on the screen you almost had to move back because it’s such an explosive image and we really felt that it epitomizes the definition of what the World Press Photo of the Year is and means.”

Jury member João Silva added:

“Right now I see the world marching towards the edge of an abyss. This is a man who has clearly reached a breaking point and his statement is to assassinate someone who he really blames, a country that he blames, for what is going on elsewhere in the region. I feel that what is happening in Europe, what is happening in America, what is happening in the Far East, Middle East, Syria,

and this image to me talks of it. It is the face of hatred.”

Jury member Tanya Habjouqa said about this year’s winners:

“It was a very intense, sometimes brutal, discussion—sometimes even emotional—but I feel proud. I think we were brave in our decision. We were bold. I think the selection is definitely going to push forward a debate and I think it is a debate that is essential to have.”

On the ethics of supporting fame through murder:

<http://www.bjp-online.com/2017/02/wpp-winning-image-raises-questions-for-jury-chair-stuart-franklin/>

#### **Page 46.**

Cell-phone camera applications:

<https://www.enlightapp.com/blog/what-is-hdr-photography-then-and-now/>

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