

TERMS AND CONDITIONS

The project SNS Challenger* by Gary McLeod is licensed under a Creative Commons Attribution-No Derivatives 2.0 UK: England & Wales License.
(*Excluding original HMS Challenger images and participants' contributions)

"SNS Challenger" is a PhD project. To join the project, you must read these conditions carefully. Any misuse of images, unethical or inappropriate behaviour on behalf of the member will result in the ceasing of the member's participation.

In these conditions:

"YOU", "YOUR" and "MEMBERS" refers to consenting members of the project who are voluntary participants from different backgrounds.

"I" or "ME" or "MINE" refers to Gary McLeod, the creator of the project.

"CONTRIBUTIONS" refers to all content added to the site by the consenting members. This includes 'comments', 'images' (including photographs, scans etc), 'website log entries' (i.e. *blog*), 'notes', 'emails' etc.

"PROJECT" refers to the project titled "SNS Challenger".

"WEBSITE" refers to the main site. (www.snschallenger.org)

"SNS" or "SOCIAL NETWORKING SITE" refers to the site where all communication will take place between members. (<http://sns-challenger.ning.com/>)

"RESEARCH" refers to my research of photography and social networks, which the project informs.

As a member:

- a) You agree to look for the locations photographed by HMS Challenger as best you can, re-photograph them and post your pictures to the project website (<http://www.snschallenger.org>).
- b) You agree to write blog posts about your experiences with the project.
- c) You need to have access to your own computer and digital camera.
- d) You must be over 18 as this is widely considered to be the consenting age of an adult.
- e) You need to be able to communicate in English. English is widely considered to be the language of business and international communication, and is therefore the preferred language through this project.
- f) When taking photographs, you agree to observe ethical guidelines as advised by the University of Arts, London (see *appendix B*). These guidelines cover the moral rights of others when photographing people and using their image.
- g) All of your contributions to the project are contributed under a Creative Commons Attribution-Share Alike 2.0 UK: England & Wales license (see *appendix C*) with your contributions. This allows you to copy, distribute, display and perform contributions by you and by other participants, providing you give the original author credit. As part of promotion, your contributions may be used in lectures, exhibitions, presentations, newspapers, websites, magazines, journals and books, where credit will be given.
- h) You **MUST NOT** print the original challenger photographs, or use them in any way other than to find the original locations. The original Challenger photographs displayed on the project website are the property of the Natural History Museum in London. **ANY** reproduction of their images in print or on websites must be authorized by the museum's picture library and a fee charged. The picture library can be contacted in the following ways:
 - Address: NHM Image Resources (Photography/Picture Library/Filming) The Natural History Museum Cromwell Road London SW7 5BD
 - Tel: +44 (0) 20 7942 5324/5401/5376
 - Fax: +44 (0) 20 7942 5443
 - Email: nhmpl@nhm.ac.uk
 - Website: <http://www.nhm.ac.uk/piclib/>
- i) You agree to not use this project for personal commercial gain, as it is a non-for-profit project. If you post anything unrelated to the project, it will be removed. If you have any commercial suggestions, please contact me at the email address below.
- j) You agree to share all information regarding the locations in the photographs with me and other members through the social network site. All communication between participants must take place within the project's website.
- k) You agree to not post any personal information that you do not wish others to know, such as telephone numbers, bank account details etc. Any such information is added entirely at your own risk.
- l) If you wish to stop participating in the project, please notify me by email. All contributions made to the project up to that point remain as part of the project, and continue to be covered by the licence under which they were contributed. If you wish contributions to be removed, this is possible in extreme cases where your privacy or personal safety is threatened.

- m) When searching for locations, you agree that you are responsible for your own health & safety. However, you need to make sure that you take care of yourself and others. Anything you use to make photographing locations easier and safer should be used. If you have an accident or an incident, which could have led to an accident, please report it to me. When lifting loads, ensure you do so by standing with feet slightly apart, keeping your back straight, bending from the knees while holding the object close to your body. If you have any concerns about doing something, please refrain from doing so and contact me for advice.
- n) You agree not to trespass. In UK law, all land belongs to someone, but laws against trespassing will vary from country to country. If the location you wish to photograph is clearly marked as 'private', then you must enquire with the owners and seek permission to photograph. If you are not sure who owns the land, then it is best to make enquiries first. If it is not possible to establish the owner, then please notify me and I will make enquiries and seek appropriate permission.
- o) You agree to observe local laws at all times, and not commit crimes whether knowingly or unknowingly while participating in this project. Local laws may include littering, public smoking, or illegal parking.
- p) You acknowledge that the data on the website and social network site will be backed up to a DVD.

As the creator of the project:

- a) I agree to license the project (excluding the original Challenger images and the participants' contributions) under a Creative Commons Attribution-No Derivative 2.0 UK: England & Wales License (*see appendix A*). Therefore the intellectual property of the website and the concept are mine.
- b) I agree to use the project and information collected solely in activities stemming from and pertaining to my research degree at London College of Communication, University of the Arts London.
- c) I am entitled to use your contributions to promote the project in any shape or form providing I give credit to the original authors of the contributions.
- d) I agree to help you and other members in any way I can with regards to the project and locating the locations in HMS Challenger's photographs.
- e) I agree to make contributions to the project under a Creative Commons Attribution-Share Alike 2.0 UK: England & Wales license (*see appendix C*).
- f) I agree not to distribute information about members with any third parties.
- g) I agree to not provide equipment to participants or be responsible for participants' actions.
- h) I agree to regularly back up the data on the project website to DVD.
- i) I agree to notify participants of any changes to these terms and conditions as and when they occur. This will be communicated through the project's website.

For further information, I can be contacted at the following email address: info@snschallenger.org. Alternatively, I can be contacted by writing to the following address: RMA Office, University of the Arts London, 272 High Holborn, London WC1V 7EY, United Kingdom

APPENDIX A

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- e. **"Original Author"** means the individual (or entity) who created the Work.

- f. **"Work"** means the work protected by copyright which is offered under the terms of this Licence.
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- sublicense the Work;
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Each time You publish, distribute, perform or otherwise disseminate

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- the Work as incorporated in a Collective Work

the Licensor agrees to offer to the relevant third party making use of the Work (in any of the alternatives set out above) a licence to use the Work on the same terms and conditions as granted to You hereunder.

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6.1. The validity or enforceability of the remaining terms of this agreement is not affected by the holding of any provision of it to be invalid or unenforceable.

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APPENDIX B

University of the Arts London Guidance Notes on Photographing People and use of the Image.

This guidance is developed from the guidance on informed consent, supplementary to the University's Code of Practice on Research Ethics. It should be consulted and its recommendations and references utilized when a photographer intends to include people in photographic work on projects.

Introduction:

Photography and the manipulation and use of a person's image raises issues relating to the privacy rights and data protection. Key issues include: -

Legal

The **Copyright, Design and Patent Act 1988** and the **Data Protection Act 1998** govern the way images of people are handled. The following practice is designed to ensure compliance when using images of **clearly identifiable people**. This applies to images in any of the following formats; paper, printed material, photographs, videos, webcams, the Internet and multi media (mobiles phones).

Copyright

Photographic images are considered artistic works under the laws of copyright. Images obtained from the internet/web are also subject to copyright. The first owner of copyright is the photographer. When work is made in the course of employment the employer owns the copyright. For more detailed information please refer to Artquest the University site at www.artquest.org.uk

Moral Rights

As well as limiting the right to copy, copyright and privacy legislation also protects the individual's Moral Rights. These include the unlawfulness of distorting or manipulating an image in a derogatory manner.

To address these issues, this guidance emphasizes the key principle of informed consent.

Examples of forms of consent commonly used within some professions contexts:

- Social Sciences: consent normally obtained, either written or oral.
- Documentary film: written consent forms normally obtained
- News journalism: verbal consent to be interviewed/filmed usually obtained where possible, but phrased in a simple question such as 'do you want to be interviewed/can I take your photograph' (the assumption being that interviewees understand the consequences of being in the media), although in crowd situations or news such consent is not usually possible nor obtained.
- Commercial photography: signed consent forms (model release forms) always obtained, usually in return for payment i.e. model fees.

The three fundamental tenets of informed consent are

1. Protection: it exists to protect the subject the subject, not the photographer
2. Quality: within the limits of the work the quality of the consent obtained is paramount with the expectation being that consent is freely given and fully informed.
3. Process: informed consent is a dynamic, ongoing process and consent may need to be revalidated due to changing circumstances.

All three are relevant for photographic work involving personal images. They should be seen to have informed the use of a consent form and any accompanying documentation. Further detail on each tenet is provided below.

1. Protection

Informed consent exists to protect the subject, not the photographer. It is important to remember that you have, "*no special entitlement to study all phenomena; and the advancement of knowledge and the pursuit of information are not in themselves sufficient justifications for overriding the values and ignoring the interests of those studied*"

The fact that photography is artistic does not give the photographer an automatic defense either in common law or under the Data Protection Act.

Photographers should assess the work they wish to undertake in terms of the value of the work considered in relation to the implications for the participants. This initial evaluation or risk assessment for the work informs the photographers (and any supporting body's) decision to proceed with the work and helps determine how that work will be carried out.

2. Quality

Assuming that you have addressed the first tenet then, within the limits of the work being undertaken, the quality of the consent obtained is paramount. The onus is on the photographer to ensure that the consent is freely given and fully informed. The quality of the consent is affected by a number of factors, these being: the format of the record of consent (see 2a.), the competence and capacity of the subject to give consent (see 2b), and the clarity of the information provided to the subject (see 2c).

2a. Format of the record of consent

i. Written: where ever possible a signed consent form should be obtained.

ii. Oral/recorded: if written consent is not possible, oral consent can be given after the photographer has read out the details of the consent form and information sheet. This should preferably be witnessed by a second person and recorded with time and date stamp, either on video (preferable) or sound.

iii. None: if the work involves photography in public spaces, consent is not generally required, but then the onus is on the photographer to use the material so gathered in an ethically responsible way, and not to exploit the subjects nor to identify them with any specific project claim. In such cases the photographers' actions should be seen to be safeguarding the interests of the public, to be fair, to be reasonable and honest, to have and to have had due regard to issues of privacy.

2b. Competence and capacity to give consent

There are a number of circumstances where the competence and/or capacity of photographic subjects is absent or compromised. These circumstances typically fall within the following categories, however this list is not exhaustive and photographers should consider the issue of competence and capacity for all participant groups.

i. Children and young persons

Photography involving children under 16 will require the informed consent of parents, carers or guardians. Young persons (i.e. between the ages of 16-18) are generally thought to be able to give informed consent but it might be appropriate to seek advice depending on the nature of the work. All photographers intending to work with children should endeavor to gain informed consent from the child participants in addition to the consent of their parents, carers & care givers. Photographers working with children or young persons are advised to consult the National Children's Bureau Guidelines and adopt the good practice therein:

<http://www.ncb.org.uk/ourwork/detail.asp?PID=144>.

When working with children and young persons please note the following:

- Notwithstanding the fact that parental consent has been obtained, the primary responsibility for safeguarding the rights of the child remains with the photographer.
- All photographers working with children must consider that they and anyone other than the parents, carers and guardians require clearance from the Criminal Records Bureau <http://www.crb.gov.uk/>.
- All photographers must ensure that they are not left alone with a child participant or unobserved by another responsible party.

ii. Adults incompetent to consent to being photographed.

Where adult participants are not in a position to give informed consent the photographer should have regard to the **Mental Capacity Act (2005)**:

http://www.direct.gov.uk/DisabledPeople/HealthAndSupport/YourRightsInHealth/HealthRightsArticles/fs/en?CONTENT_ID=10016888&chk=Rbs32A

Photographers should be aware that English law might not currently permit guardians/parents to give consent on behalf of mentally incapacitated adults in certain matters. Photographers should seek advice from the Legal Services Manager as to whether they need to obtain a declaration from the court that the proposed photographic procedures are lawful. The advice of the Royal College of Physicians (1990) and the Royal College of Psychiatrists (1990) <http://www.rcpsych.ac.uk/publications/cr/council/cr82ii.pdf> may also prove valuable.

iii. Other vulnerable populations

Photographers should be aware that there are many factors that may affect the ability of participants to freely give informed consent, and some instances are outlined below. More detailed guidance can be found through the British Sociological Association: http://www.britisoc.co.uk/new_site/index.php/area=equality&id=63, and the Association of Social Anthropologists of the UK and Commonwealth <http://asa.anthropology.ac.uk/>

- Institutional populations (employees, prisons, etc). Photographers should be aware that institutional populations might feel coerced into taking part in the work by the consent of the institutional authority to carry out the work within their domain. Photographers should, therefore, ensure that members of an institutionalized population understand that the institutional consent places them under no greater obligation to participate in the photographic work.
- Populations where significant cultural differences may affect the capability of participants to give fully informed consent

Where this is the case, the photographer should employ culturally appropriate methods to allow subjects to make ongoing decisions to participate or to withdraw from the photographic process. The clarity of the information provided (see 2c below) is paramount in these circumstances.

iv. Methodological- Filming with consent.

Where the nature of the photography is such that informing participants before the work is carried out might render the results invalid, there should be appropriate explanations following the study. In these circumstances, justification for this course of action is to be submitted for approval to the Dean's Office. Photographers must provide convincing reasons why such work should proceed without informed consent. Photographers should not mislead participants if it is thought that permission will not be obtained.

Secret filming in a public space can in principle be unlawful. Photographers must be aware that this could result in successful claims for damages. The practice of secret filming raises serious issues around liability for common law breach of confidence.

The photographer will have to show that any interference with individual privacy rights was no more than was necessary and could not reasonably have been avoided by e.g. asking the individual for consent. The privacy rights of the individual are present prior to any broadcasting or future 'embarrassment' that may occur.

2c. Clarity of the information provided

Consent forms and information should be written in language of the participant. They should avoid using jargon, be as simple, accessible and appropriate as possible.

Photographers should make a sincere and conscious effort to understand their subjects when drafting these documents and/or considering the means of delivering the information.

Participants should be given sufficient time to understand the information, to ask questions and to express any concerns that they may have.

It should contain contact details for at least two persons, one the photographer and the other (another) person at the School/College/University.

An essential element of informed consent is telling participants clearly about the following:

1. The purpose of the photographic work, expected duration, and procedures;
2. Their right to decline to participate and to withdraw from the project once participation has begun;
3. The foreseeable consequences of declining or withdrawing;
4. Reasonably foreseeable factors that may be expected to influence their willingness to participate such as potential risks, discomfort, or adverse effects;
5. Any prospective benefits;
6. Limits of confidentiality;
7. Incentives for participation; and
8. Who to contact for questions about the photographic project and the subject participant's rights.

In short the following should normally be made clear and be understood to the subject; a) why the person's image is being captured b) what the image will be used for and c) where the image will appear in the public domain.

3. Process: Reviewing and renewing subject's consent for new or changed uses of their image.

Consent in photographic work is a process, not a one off event, and may require renegotiation over time depending on the nature and timescale of the project and the use of dissemination of any images. It is an issue to which the photographer should return periodically both during the course of the project and after its completion.

Photographers should where appropriate identify the possible need for renegotiation of consent, particularly where the project takes place over a lengthy timescale, where the nature or outcome of the work changes or where the images obtained are to be used in a way not covered by the original consent.

Using existing images including from your own archive

- With previous consent from the subject: if re using older images in paper format, consent is strongly recommended if the images are placed into different formats such as on the web.
- Without previous consent from the subject: if using images where no previous consent was received (e.g. before the DPA 1998) extreme caution should apply. A balanced decision should be made considering the following:
 - ◆ For what purpose was the original image taken
 - ◆ Where was the image taken e.g. in a public space
 - ◆ When was it taken (picture of a child who is now an adult)

Well-organized image management applies and it is suggested that consent forms and images are filed together. When consent has expired the image should not be retained.

Rules for images on the web (published image)

Again obtaining consent is expected. If the image is for a specific purpose e.g. a prizewinner, the full name would be applicable (not contact details). If the image is non-specific e.g. a model used for a promotion this would not be acceptable.

University of the Arts London conclusion and practical tests

Practical steps to comply with this guidance;

- Obtain consent
- Obtain image fairly
- Store securely

- Dispose of carefully
- Address any copyright issues

This advice is fact sensitive. The principles will apply more strongly if the photography is of a sensitive nature and the weight of justification will vary according to the intimacy, privacy or sensitivity of the subject matter.

Photographing a person doing acts of a sensitive nature without their consent **is a breach** of the Data Protection Act and/or the right to privacy.

Photographing a person doing non-sensitive acts in public without their consent **could, in certain circumstances be unlawful**, unless good reasons were shown for the photography.

Whether a person's rights in respect of their image has been abused, will depend on such matters as,

- Was the publication of the image in the public's interest, which depends very much on the context and the particular facts?
- Does a person appear in an incidental manner in a photograph of a public place i.e. what is the 'true subject' of the photograph?
- How diligent the photographer has been in acknowledging and respecting the subject's rights?

APPENDIX C

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- impose any digital rights management technology on the Work, the Derivative Work or the Work as incorporated in a Collective Work that alters or restricts the terms of this Licence or any rights granted under it or has the effect or intent of restricting the ability to exercise those rights;
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