



STREET PHOTOGRAPHY: ASK TO TAKE THEIR PICTURE- OR NOT?

Quick Guide
Written by Diane Wehr





Photograph by Diane Wehr

As a street photographer, I am sometimes faced with the question, "Should I ask for permission to take pictures of strangers, or should I take them without permission?"

It is a question that is somewhat akin to the one that I fielded long ago as a young mom, "Are you a stay-at-home mom or do you work?"

Either question, no matter how it is answered, can evoke defensive feelings.

My strategy for making the choice, then and now, is to straddle the fence.

I worked, and when possible I stayed at home. Now, when I am out on the street taking photographs, I ask some people and others I don't.

Two of my top Instagram posts for 2016 are perfect examples of the straddle.




Photograph by Diane Wehr

The woman in the first photograph (previous page) was not asked for her permission. The man in the second photograph (on the left) was.

For me, the decision on whether I need to ask someone if I can take their picture is down to four issues.

- Is it **legal** to take the picture without asking?
- Is it **culturally appropriate** to take the picture without asking?
- Is it **ethical** to take the picture without asking?
- If all of my pictures are taken with the impediment of having to ask first, how does that affect my “street photography” portfolio of work?

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DOES THE LAW REQUIRE ME TO ASK?

I took this picture of a child on an NYC subway train. I did not ask permission, which was an entirely legal choice.

In the United States, and most English-speaking countries, it is legal to take pictures of anything or anyone on public property.

On private property, owners have the right to prohibit or restrict photography.

Of course, there are many nuances to the law.

For example, can you take someone's picture that is on private property if you are standing on public property? The answer is 'yes,' as long as there is no reasonable expectation of privacy.

I feel free to photograph someone through the window of a restaurant or if my neighbor is washing the car in his driveway.

You do have to use common sense in determining what a reasonable expectation of privacy is.

If you shoot under a bathroom stall, in a public restroom, you will be in trouble. Also, pass on any bedroom window shots, even if you are on a public street.

Another issue that requires consideration is the question of whether the property is public or private.

Many places, like shopping malls, airports, and amusement parks, seem like public places, but they can be subject to restrictions imposed by the owners when you enter the property.

In these types of locations, signs will generally be posted that list the restrictions.

Also, there are some public places where photography can be restricted.

Examples include military bases, public hospitals, and courthouses, even though they are clearly public; the government owns them, and the government can impose restrictions.

⚠ Important Note: Having the legal right to take someone's picture, without permission, is quite different from having the legal right to publish it.

If you take a picture of someone in a public space, do you have to get a model release in order to post or sell the picture?

That line is drawn depending on whether the use is informational or commercial.

Informational uses (sometimes referred to as "editorial") include photo exhibitions, sale of a photograph as fine art, sale of a photograph to a newspaper or magazine for news purposes, or posting on a website that has a separation between content and sponsorship or advertising.

Commercial use, which requires model releases, includes stock photography, some photo contests, and the use of a photo for advertising. Photos that defame or invade privacy require model releases no matter how they are used.

The laws regarding whether it is legal to take photographs without permission vary considerably from country to country.

As an example, in 2015, a civil code was published in Hungary that allows people to refuse to be photographed. Implied consent does apply. If a person does not actively object to being photographed, then it is legal to take their picture.

The privacy laws in France are among the strictest in the world. This is particularly difficult for street photographers because French judges have refused to define privacy in clear terms. In the 23 years since the privacy act was passed, the French people have essentially come to believe that photographs taken of them are **their** personal property.

This can lead to litigation if a photograph of an identifiable person, who did not give consent, is published in France.

The bottom line is, if you plan to travel, you should absolutely become familiar with the laws of the country that pertain to photography.

This [table from Wikipedia](#) will give you some starting guidelines.



Photograph by Diane Wehr

DOES THE CULTURE DICTATE THAT I ASK?

Within some countries in Africa, taking a picture without asking permission first is not a culturally accepted practice. This did not present an ethical dilemma for me when I visited there because I felt the subject of the photograph was also outside of boundaries.

For some cultures, the answer to whether you ask permission is an unqualified 'yes' – you must ask. Many times, the answer will be an unqualified 'no' – no photography is allowed.

In the United States, Old Order Amish Mennonites don't allow their pictures to be taken.

They believe that it breaks the first commandment that says, "Thou shalt not make any graven images."

A wider group of Amish feel that photographs of people are prideful and therefore sinful.

In addition, tourists often flock to Amish communities as a travel destination. Think about it: would you want people in your neighborhood constantly taking pictures of you?

Religious belief is not the only cultural barrier.

Buddhist temples in many Asian countries, but in particular within Japan, prohibit photography inside of a temple. Photography is considered disruptive to the serenity of the service. The issue is one of ceremonial respect rather than religious belief.

In some countries, such as Turkey, photography is generally welcomed. In other countries, particularly those in Africa, it is not welcomed, although, it is possible to get permission to take photos.

Sometimes there is an expectation of payment. This is true of the buskers in New Orleans and in certain cases in India.

On a final note, one night while traveling in India, I went out in a boat on the Ganges River to see the funeral pyres of Varanasi.

Our guide told us repeatedly, "No flash photography." One person in our group persisted. (That was amazing because, if nothing else, the little flash on his camera was not illuminating anything.)

Most likely this traveler did not know how to turn off the flash. That, however, was no excuse.

Using a flash in this case was rude and totally unacceptable. The bottom line is that, if you are asked not to take photographs or flash photographs, don't take them.



Photograph by Diane Wehr

DO MY PERSONAL VALUES REQUIRE THAT I ASK? IS IT ETHICAL?

Uncle Luigi (photo on the left) came up to me and introduced himself. We talked photography – you know, the old darkroom days. At his request, we did a little photography shoot. In this photo, he rather deliberately posed as a traditional wino. He was really trying to help me to get the picture that he thought I wanted, or perhaps he was trying to get a picture that depicted how he believed the world sees him.

Street photography, unlike many other photographic genres, requires that the photographer **develop an internal set of rules**.

For me, that means I do not take pictures of people on the fringes of society unless I ask for their permission.

Occasionally, I will take a picture and in the review process realize that the subject is coping poorly. I will delete it right

away so that there is no temptation to rationalize my actions.

I generally do not take pictures of children without asking, although sometimes the “moment of cuteness” sweeps over my good judgment. The picture of the child on the subway (page 4) was one such time.

Asking, by the way, can take many forms. In addition to verbal communication, a nod, a lifting of the camera, or simply using it in a conspicuous way that draws no objection constitutes a fair ask (in my opinion). These options can broaden the opportunities for taking pictures of children.

These are some other special considerations:

I respect the privacy of those mourning in a cemetery. I generally do not take pictures of street performers (mostly because they tend to be cliché photographs). It is not my intention to embarrass people.


Once, in Copenhagen, I was witness to some very drunk young people making a very dangerous decision to jump off of a bridge. There were bystanders trying to intervene, so I felt that I could record it without feeling an obligation to help.

In the end, I deleted all of the pictures in the series because I asked myself, “What if this was my child?”

I also try to concentrate on flattering pictures. I hope someone would do that for me.

Opportunities for street photographers are abound.

The problem is often too many pictures, not too few. The limitations that you choose to impose on yourself will not obstruct either the quantity or the quality of your work.

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HOW WILL MY PORTFOLIO CHANGE IF I ALWAYS ASK?

The street photography images that I most want to create are those beautiful, quirky, or poignant moments that happen spontaneously.

The elderly lady in this picture was waiting in the chaotic Easter Island Airport. Her body language, and facial expression, communicated exhaustion. Then, a family member came to her and her face softened in joy.

There are many sub-categories of street photography.

They include, but are not limited to, documentary; intrusive; raw; fine art; geometric; smart or intelligent; and portraiture, both candid and posed.

There is some disagreement within the photography community as to whether posed street photography belongs in the street photography category or whether it should have its own genre.

The photographers who choose to always ask for their subject's permission are usually taking posed street portraits; their work can be described as both documentary and fine art.

If you want to see significant, contemporary street portraiture, look at the work of [Diane Beals on her Instagram account](#). Her studies of people with Alzheimer's and people on the margins of society are done with empathy, and they always confer dignity to her subjects.

In my opinion, her work helps viewers to be more knowledgeable about the issues in these segments of society.

There are considerable advantages to not asking whether you can take a picture.

Well-known street photographer, Eric Kim, says of candid street portraiture, "It gives you a look into peoples' souls."

If you do not ask for permission to take pictures of street subjects, you will have more shooting opportunities. This will result in more output because you move and shoot, move and shoot.

My dearest hope is to always capture smart or intelligent street photography, which is those moments that cause a viewer to say, "How did you ever get that picture?"

Surely, that can only happen with tremendous, and varied, experience in taking street photography.

In these days of social media and communication, street photography is growing more popular.

It differs from other kinds of photography in both technical and aesthetic ways.

However, the most important difference is that it requires attention to both legal and ethical issues that revolve around the question, "To ask or not to ask."

No matter how you choose to answer that question for yourself, you will find moments of discomfort. The silver lining is that either choice will ultimately build your confidence as a photographer and as a person.

Self-Check Quiz:

- 1.) True or False: It is always legal, in the United States, to take a picture of a stranger without asking them.
- 2.) True or False: You need to get a model's release if you expect to make money from the sale of a photograph in which they are depicted.
- 3.) Why should you check the laws of another country regarding photography laws before you visit?
- 4.) If you plan on creating street photographs, what ethical issues should you consider?
- 5.) What is an advantage of choosing not to ask permission when you are taking street photography?

About the Author



Diane Wehr is an amateur photographer and author with a particular interest in street and travel photography. She travels far and wide with her Olympus Mirrorless camera.

Flickr: <https://www.flickr.com/photos/albirder/>

Instagram: <https://www.instagram.com/dianewehr/>

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