

proximity, permeability, integration values and delimiting boundaries on a physical, visual and territorial level.

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Privacy, photography, and the art defense

Sarah Parsons

Abstract

This article traces and analyzes fears about privacy that are generated by photography. When Eastman Kodak introduced their first handheld camera in 1884, they unwittingly ushered in a new era of public surveillance. In part, it was the new ubiquity of photographic technology that prompted Samuel Warren and Louis Brandeis to draft their now legendary Harvard Law Review article, 'The Right to Privacy' (1890). Anxieties have hardly abated around questions of who takes photographs, for what purposes, and in what contexts they circulate. This article examines tensions between these privacy concerns and the use of photography for social activism or artistic expression.

In early February 2009, Facebook quietly made a change to their terms of service stating that, even after a user had deleted their account, Facebook retained the rights to their content and could continue to circulate, display or otherwise use archived user information. After a blog post on *The Consumerist* website, major news outlets picked up the story and Facebook users started protest groups whose membership quickly numbered in the tens of thousands. Despite the huge commercial potential of the user information, including photographs, held in the Facebook archives, founder Mark Zuckerberg tried to quell the firestorm. He assured his users 'in reality, we wouldn't share your information in a way you wouldn't want'.¹ Voicing the disbelief shared by many users, Sasha Frere-Jones, the pop critic and staff writer for *The New Yorker* deleted his account, writing 'why would anyone trust a company with his or her personal information, especially when that company's explicit legal language claims eternal rights to exploit that information, and there is good reason to expect that they will?'²

Frere-Jones's question echoes widespread fears about our ability to define and control our own destinies in an interconnected world that seems to be steadily developing some of the more disturbing aspects of George Orwell's novel, *Nineteen Eighty-Four* (1949). We are frequently subject to visual surveillance through CCTV cameras, screenshots from which surface regularly to serve as evidence of people's movements and associations. Anyone subjected to 15 minutes of even unsolicited fame may find himself or herself hunted by paparazzi while editors and bloggers source old pictures of them from any person or institution willing to sell. Photographs are an important conduit of

1 Zuckerberg 2009.

2 Stelter 2009.

information and often serve as definitive evidence about people's actions and whereabouts. We have many reasons to be wary of the role photography plays in the digitally mediated, safety obsessed, and profit hungry twenty first century and the impact these photographic activities have on privacy. What interests me here is how those concerns are framed and at which photographic practices they are directed. Frere-Jones directs his suspicions at corporations, but would be unlikely to direct the same suspicions towards artists or journalists, even though those uses of photography may also be profitable and may invade the privacy of others.³

Roland Barthes remarked in *Camera Lucida* that 'the age of Photography corresponds precisely to the explosion of the private into the public, or rather into the creation of a new social value, which is the publicity of the private: the private is consumed as such, publicly.'⁴ Although it may often seem that photography has participated in the collapse of the distinction between public and private, what is so useful about Barthes's observation is that it retains the two crucial concepts of public and private, but offers a specific understanding of their relationship and of the role played by photography in mediating between them. In Barthes's analysis, private and public are not distinct spaces or aspects of self, but dialectical and shifting concepts. In one sense, what is private is what holds high value in the system of public consumption. In the genre of private pictures sold for public circulation, top dollar goes to nude pictures and illicit activities like drug use. More mundane family or school images of those accused of or victims of heinous crimes also hold great appeal. However, this interest in private moments is not just a matter of lurid curiosity. It also reflects a desire to see beyond our public performance of identity and to make an honest and intimate connection with others. The social value of these private images requires that the resulting photographs come to us through a narrative such as journalism or art that establishes both their authenticity and a justification as to why this private moment can and should be viewed publicly. These justifications or alibis shift over time and context, but examining them carefully can provide a unique perspective on the conception and limits of privacy.

Although we often think of photography as a tool that has stripped us of privacy, it also helped to generate awareness and strengthen the concept. In large part, it was the ease and popularity of Eastman Kodak's first handheld camera in

3 Sasha Frere-Jones is not an activist, but has commented on the futility and oppressive function of censorship in his music column for the *New Yorker* and on his blog (www.sashafreerejones.com). His position that one should be suspect of corporations, but enable artists to work in an unfettered way is largely axiomatic for those in the culture industry.

4 Barthes 1980, 98.

1884 that prompted Samuel Warren and future United States Supreme Court justice Louis Brandeis to draft their legendary *Harvard Law Review* article entitled 'The Right to Privacy'. Although no such legal concept existed, Warren and Brandeis boldly argued in 1890 that privacy, or 'the right to be let alone,' was a natural extension of the rights established by the laws governing assault, slander, and libel, among others. This was a pressing matter for Warren and Brandeis because the right to be let alone was threatened by 'instantaneous photographs and newspaper enterprise' which invaded 'the sacred precincts of private and domestic life.'⁵ From 1839 until the late 1880s, photography was a laborious, carefully orchestrated, and usually commissioned activity that necessarily required the cooperation of the person(s) being photographed. Warren and Brandeis worried that 'since the latest advances in photographic art have rendered it possible to take pictures surreptitiously, the doctrines of contract and of trust are inadequate to support the required protection, and the law of tort must be resorted to.'⁶

Warren and Brandeis pointed to the recent case of the popular singer and actress Marion Manola who was photographed during a performance on Broadway. The role she was playing at the time required her to be wearing tights that exposed her legs. Her theatre manager had asked Manola to pose in tights for advertising purposes. When she refused, he hired a professional photographer to take a photograph from the audience during a performance. The loud sound and bright light of the photographer's primitive flash alerted Manola to the plan. She promptly sued for an injunction against the use of the photograph. In this case, the stage was her professional or public venue. Manola argued, and Warren and Brandeis agree, that to circulate images from this professional space in newspapers, on posters, or for sale in shops was to invade the domain of her private persona. Although Warren and Brandeis do not cover the case in great detail, legal scholar Dorothy Glancy cites contemporary newspaper accounts that suggest Manola was concerned about the effect on her young daughter for whom pictures of her mother displaying her legs and dressed like a man might be upsetting.⁷

While the fears expressed about protecting Manola's femininity seem anachronistic, we still share the same basic fear about reputations compromised by unwanted circulation of one's photographic likeness. Now, we are more likely to fear private images circulating in public spaces, like Facebook, that might devalue our reputation and worth as an employee or public figure rather

5 Warren and Brandeis 1890, 195.

6 Warren and Brandeis, 1890, 211.

7 Glancy 1990, 415.

than as a gendered subject. Just as there was good reason for Manola to be relatively undressed on the stage, there are many legal and reasonable activities that happen in private, such as sexual activity or inebriation, which can have serious social and financial ramifications if represented out of context and in public. Exactly what measures we use to determine our social value may change, but the feeling remains that some normal and legal aspects of our lives should not circulate without our consent.

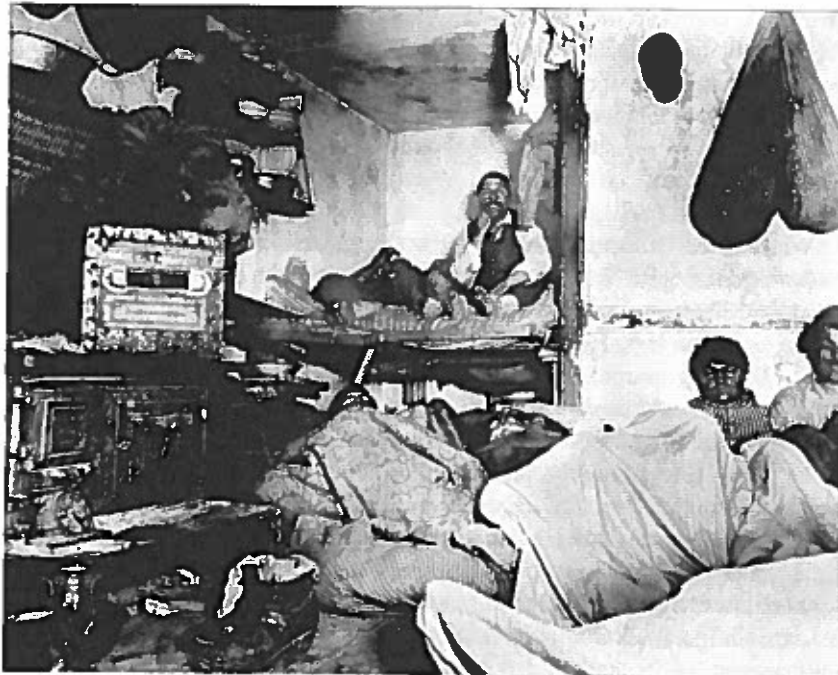


Fig. 1: Jacob Riis, *Five cents a spot*, c. 1890 - unauthorized immigration lodgings in a Bayard Steet tenement [New York] www.loc.gov/pictures/resource/cph.3a18572/ (Courtesy of the Library of Congress, Prints & Photographs Division, Miscellaneous Items Collection, LC-USZ62-16348)

While Marion Manola sang on Broadway, urban reformer Jacob Riis was also hard at work fifty blocks south documenting living and working conditions in the slums of New York. He was so intrigued by the possibility of using the camera as a tool of social change that he purchased his own equipment in 1888. Riis became notorious for bursting into tenement houses in New York City to capture the miserable conditions in which new immigrant workers were living

(Fig. 1). Interestingly, his innovative use of camera flash technology meant that his photographs often revealed more than the inhabitants themselves could see of their squalor. Riis used these images as slide in public lectures and they appeared in magazine articles and in his book, *How the Other Half Lives* (1890). The privacy of these subjects was little discussed. Commentators like Warren and Brandeis were concerned with subjects like Manola who had something to lose when their privacy was violated. Riis's radically disempowered subjects had much more to gain than to lose from his efforts, but, even so, New York law soon protected the right to publish 'newsworthy' photographs even if they might violate the privacy of the subjects. The legal position of social documentary or instrumental photography has remained solid, but its moral and ethical position is more ambivalent.

By the 1930s, government agencies were using photography as a research tool and to curry support for their initiatives. The Farm Security Administration commissioned a team of photographers to document the effect of the economic depression and drought in the southwestern US dustbowl. Images like Dorothea Lange's iconic 'Migrant Mother' (1936) were designed to secure public support for costly relief efforts (Fig. 2). The photographs struck a cord with the public and filled newspapers and magazines for years to come. Decades later, Florence Thompson famously complained of the shame of being universally recognized as the poor and broken mother in Lange picture. Her pain, Thompson said, was compounded by her belief that Lange had benefited financially from the massive success of her image while Thompson did not. In fact, all the FSA photographs were the property of the US government. Lange made no more money from that image than she did off any others for this project, but Thompson's understanding of the public arena as a marketplace in which images circulate as commodities is certainly understandable. Thompson's specific objections came long after Lange's death and gave her no opportunity to respond, but in recollecting the day the photograph was made, Lange wrote that Thomson was cooperative because on some level she understood the photograph could help her and those sharing her plight during the dustbowl and depression.

For Riis and Lange, the social value of the private lent authenticity to their efforts. The success of these efforts required that these 'authentic scenes' be consumed publicly. The photographs need to be discussed and acted upon in order to justify their production and circulation. But, for Thompson, the value of her image and its public consumption take on literal, economic resonance. In her view, her likeness became a commodity that circulated in the public marketplace without benefit to her. Although Lange and Thompson were both referencing ethical issues raised by the same photograph, they focused on different moments in the process. In a sense, they are talking about distinct aspects of photography.

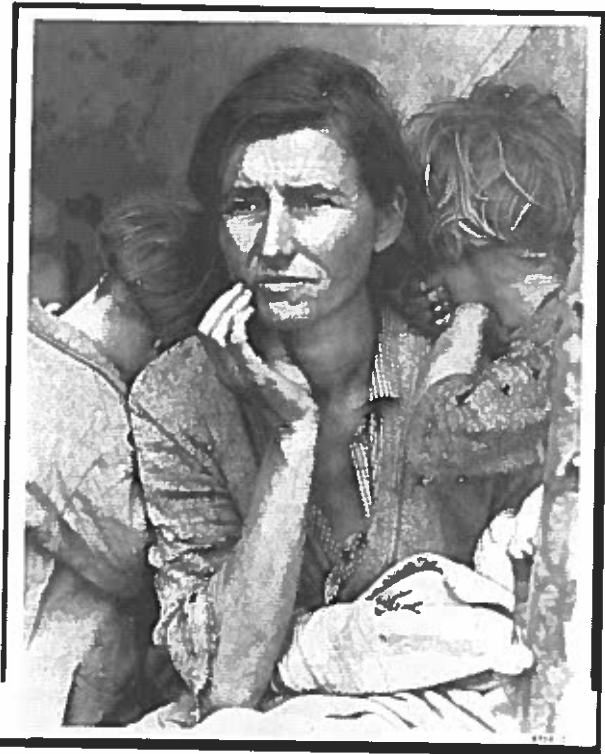


Fig. 2: Dorothea Lange's *Migrant Mother*, 1936 (Courtesy of the Library of Congress, Prints & Photographs Division, FSA/OWI Collection, LC-USF34-009058-C)

It is important to consider the distinction between the privacy issues raised in the moment of taking a photograph (which was what Lange describes) and the act of circulating it (which was Thompson's focus). In the age of cell phone cameras and instant communication, this distinction may seem to have collapsed into one moment, but in ethical terms this distinction is an important one to analyze carefully and Nan Goldin's work produced many decades later provides a useful case study in this regard.

Few of Nan Goldin's photographic subjects seem as reluctant as Florence Thompson, but the reception of Goldin's work is shaped by the complex history of social documentary photography. Goldin's subjects seem variously coy, enamored by the attention, indifferent, or too drunk or drugged out to notice. *The Ballad of Sexual Dependency*, Goldin's most famous work, is a collection of very intimate snapshots made among her friends and lovers from the late 1970s

through the mid 1980s (Fig. 3). Goldin has described the camera as an extension of herself, a tool she has used since her difficult adolescence as a way of interacting with the world and of trying to hold on to people and moments, which often proved to be all-too-fleeting for her. The photographs are both intimate in subject matter and in style. They feature her circle of friends using drugs, having all types of sex, crying, sleeping, and participating in other normally private activities usually in cramped and grungy settings.

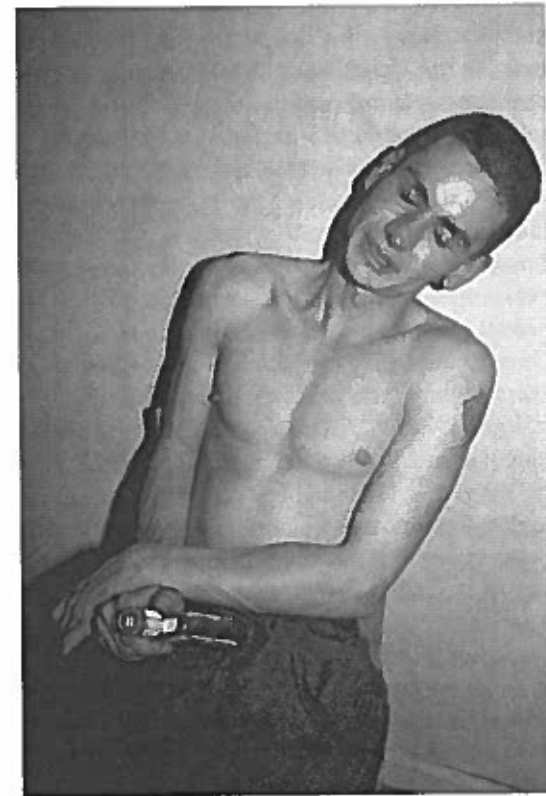


Fig. 3: Nan Goldin's *Mark Dirt*, 1981, Cibachrome photograph, 24 x 20 inches (© Nan Goldin, Courtesy Matthew Marks Gallery)

Critic Arthur Danto perceptively observed 'she found ways of reinventing the snapshot, not in the sense that her pictures look like something taken by a point-and-shoot camera but because there is some internal bond between

photographer and subject. Her photographs celebrate that bond.⁸ Even though we do not know the subjects in Goldin's snapshots, her photographs retain their poignancy; they are so raw and so abundant that they enable us to feel we are in that world. At the same time, her subjects do not seem to care if we are looking or not. Their intimacy is often surprising, but it does not feel explicitly performative. It is this intense poignancy that enable Goldin's images to function across wider and wider audiences, albeit to function differently. Her first exhibition venue was Tin Pan Alley, the bar where she worked and where some of the images were taken. She describes her friends as a family and the first screenings of the slide show proceeded like watching family movies or slide shows, with an audience who interject with recollections and for whom the images have wider, shared meanings and narratives. The relationship of private moments to their public consumption is mediated by the shared experiences of the group. Fueled by the success of her nightclub showings, Goldin began to submit the project to small film festivals where it was received by audiences not so different from the range of writers, musicians, and artists she portrays in the photographs. They may not have been actual people viewers knew, but they are types posing in places, roles, and poses that seemed familiar. As Goldin gained notoriety in the art world, the venue for the 800 image, 45 minute slide show shifted from an intimate space akin to the space of production to very public and different spaces of consumption, such as the Whitney Museum in New York and high-end commercial galleries. Over time, framed exhibition prints were added and, in 1986, Aperture published a book version featuring 125 photographs from the series.

Inside and outside the art world, Goldin began to face criticisms for exposing private spaces or moments considered inappropriate for public consumption and circulating photographs of private subjects who may not have been fully able to give their consent. Goldin has long insisted that her work is not voyeuristic because 'voyeurism is closing the windows and spying, so my photography has nothing to do with that.'⁹ Instead, Goldin's images are an open love letter — 'and I am not happy unless my friends love them also.'¹⁰ But is loving them privately not different from loving them publicly? Is the openness her friends showed in taking the picture, perhaps reveling in their time with a close friend, not distinct from the distance implied in the decision to publish or exhibit them widely and for many decades to come? Some of her subjects are dead and others may have lived lives that are not easily reconciled with

8 Danto 1996.

9 Soulez 2010.

10 Soulez 2010.

documents of their youth of free love and drug use. Goldin withheld images that her friends did not want included, but for many viewers the ethical issues raised by her work and its display foreshadow some of the anxieties around digital social media.

In responding to her critics, Goldin outlines her justification for exhibiting and publishing her work. Interestingly, she does not anchor her justification in artistic freedom (although her supporters have). Instead, she articulates the acceptable conditions under which she feels she can circulate photographs created in private spaces and out of private relationships. In stark contrast to the objectivity Riis and Lange claimed for their documentary photographs, Goldin and her supporters have insisted on the subjective, testimonial function of her work in both private and public terms. In documenting the New York counterculture of the 1970s and, later, the devastating effects of AIDS in the 1980s, she captured the pain and abuse as well as fluid constructions of gender and sexuality. Scholar Jay Prosser argues 'the shift to testimony suggests a number of things: that something legal rests on the production of photographic evidence (testis means 'witness'); and that it has a more psychoanalytic valence. Indeed testimony best evokes the crossing of the private with the public, the way in which history wreaks psychic effects and vice versa.'¹¹ This claim to testimony is intriguing because it is so generalized and relies on an otherwise dubious claim within the world of contemporary art: that photographs can relay some essential truths about the world. Goldin emerged on the heels of media artists like Cindy Sherman whose work battled against the idea that photographs could offer anything more than believable and often ideological fictions especially about sex and gender. Although Goldin may share the idea that sex and gender are performative, her photographic activity hangs onto a notion of truth and indexicality more akin to the work of Riis and Lange than Sherman. The affective and political power of the *Ballad* is grounded in the understanding that the people, activities and identities pictured are not fictional. As Goldin said 'the only thing I have left is my integrity, you know — and it's not fake.'¹² The *Ballad* functions as testimony and its social value comes, in part at least, from Barthes's notion of value of 'the publicity of the private.'

In Goldin's work, the social value and market value are closely aligned. Goldin's pictures offered a raw and originally aesthetic both in formal terms such as lighting and composition and in subject matter. In the 1980s, she was not just pulling back a curtain into an unseen space, but she was exposing an edgy and even taboo space. For Goldin, the fact that she was picturing and thus

11 Prosser 2002, 341.

12 Walden 1999.

normalizing transvestites and drug addicts was exactly the point. However, the possible political function of these images necessarily shifts as they move from one context to another. Tin Pan Alley slide shows may have provided a context in which Goldin's images could function as testimony or truth-telling, but it is harder for the work to still be read politically as testimony while on sale for thousands of dollars at chic New York gallery Matthew Marks. Once these photographs enter the marketplace, they necessarily enter a different and powerful discourse which is more likely to recast them as lurid commodities of what critic Claire Bishop has called 'trash-glamour' aesthetic (as Goldin's celebrity grew and her style became widely copied, she was accused of glamorizing 'heroin chic').

Goldin herself seems well aware that the line between art and commerce has pivotal importance for the way her work is understood. In 2002, she proudly said 'I never took pictures of people doing heroin to sell clothes ... I find that really reprehensible and evil.'¹³ (Since then, she has done quite a bit of work in fashion and commercial photography including a luxuriously coloured slide show for the *New York Times* in 2008 featuring rail-thin celebrities dressed in haute couture and posed in lonely, faded baroque rooms.¹⁴) After her image of two young girls playing naked entitled 'Klara And Edda Belly-Dancing' (1998) was confiscated in England, Goldin felt the need to defend her work: 'I knew pimps and prostitutes, and I knew friends who entered the sex trade to make money to do their art. So I was familiar with the world of pornography, and I always found it distressing and based on contempt. To me, pornography is all about money. That's the difference between pornography and art.'¹⁵ The lines between art and its cousins: porn, entertainment, journalism, advertising, and commerce have moral and legal ramifications particularly in relation to privacy. It is not hard to understand why artists insist on their clarity, but, as a legal case involving Goldin's friend and fellow photographer Philip-Lorca diCorcia's suggests, these distinctions seem increasingly tenuous and largely discursive.

In the US, it is legal to take pictures in public spaces even without the knowledge or agreement of the subject, within certain often-debated limits. Generally, if the act of photographing is not excessively intrusive to personal space (harassment) and the person is not photographed in a private space from the vantage place of public space, then the image is not a violation of privacy. In these cases, the law makes a clear distinction between the act of taking the photograph and of circulating it. Images taken in public are fair game, but, if

¹³ Garratt 2002.

¹⁴ Goldin and DelViscio 2008.

¹⁵ Chrisafis 2008, 23.

they are to be used for trade, advertising, or commercial purposes, they are subject to the agreement of the person or persons pictured who might request compensation in exchange for use of their likeness. But, what is the extent of 'commercial' use? Does artistic freedom of expression transfer over into 'commerce' when the image is exhibited and sold in a commercial gallery?

In 1999, diCorcia began a project called 'Heads' in Times Square, New York City. His goal was to take pictures of passersby who did not know they were being photographed in order to capture their authentic private selves as they move about in public. He set up his camera and tripod out of sight and hung strobe lights on scaffolding overhead and exhibited a carefully edited and luxuriously printed collection of the resulting images at the famed Pace/MacGill gallery in Chelsea. The Gallery also published a catalogue in 2001. In 2006, the subject of 'Heads 3' sued diCorcia and the Pace/MacGill gallery arguing breach of privacy. Ermo Nussenzweig is an Orthodox Jew and argued that the reproduction and sale of his image violated his religion's prohibition against graven images. The case hinged largely on a challenge to the notion that art cannot also be commerce. As Nussenzweig argued, 10 copies of his photograph were sold for \$20,000-\$30,000 each with further sales from the catalogue and thus the image was produced for commercial purposes. The courts rejected his claims, in part because the statute of limitations had expired and the court did not accept Nussenzweig's argument that he did not look at graven images and the mainstream press and thus could not have known about the photograph until it was pointed out to him years later. The judge concluded, 'the possibility of such a photograph is simply the price every person must be prepared to pay for a society in which information and opinion freely flow.'¹⁶ However, the court also spoke clearly to the issue of artistic freedom and to the separation of art and commerce.

Manhattan state Supreme Court Justice Judith J. Gische ruled that New York courts have 'recognized that art can be sold, at least in limited editions, and still retain its artistic character (...) [F]irst [A]mendment protection of art is not limited to only starving artists.' Gische cited mostly circumstantial and material evidence of diCorcia's reputation as a photographic artist in the international artistic community by the fact of his representation and exhibition by a major New York gallery, that his exhibition was reviewed by every newspaper and art magazine of record in the US and beyond, and that his photographs are owned by major museums the world over. For an artist whose work has not yet been recognized, this is a difficult standard. There are many examples of now celebrated artists who were utterly ignored or even shunned in

¹⁶ Nussenzweig v DiCorcia 2006.

their day. Van Gogh is a classic example, but there are more recent examples in American photography. A major solo exhibition will open this year at the San Francisco Museum of Modern Art and the Guggenheim Museum featuring the work of American photographer Francesca Woodman. When she killed herself in 1981 she had no gallery representation and no public profile as an artist. She was 22 years old. On the other hand, Gische's definition of an artist would soundly cover Annie Liebovitz. Liebovitz had a major museum exhibition and gallery representation long before she began to exhibit artsy family snapshots along with her slick commercial celebrity portraits. Even soft porn fashion photographer Terry Richardson, who has been roundly accused of sexually harassing and exploiting his models, currently has an exhibition on at a New York gallery and recently had a wildly successful book launch at the New Museum of Contemporary Art in New York.¹⁷ Photography is a marketable skill and almost all photographers do commissioned commercial work as well as work for galleries or other forms of exhibition. Over time, work originally produced for commercial purposes has entered the museum and the art historical canon so distinguishing the two is difficult and often futile.

On the issue of artistic merit, Gische acknowledged that this determination can also be difficult, but that in this case the 'defendants have prima facie shown that the photograph is 'art'. This is not a subjective determination, and cannot be based upon the personal preferences of either party or the court.' Gische nodded to artistic process and intention, but this would be harder to prove without diCorcia's stature in the art world: 'With respect to the HEADS project, diCorcia has described the creative process he used to shoot, edit and finally select the photographs, ultimately used.' She concluded 'Mr. Nussenzweig may have been entitled to if not privacy then ownership and compensation for his likeness, this was rendered moot by the claim of art, of transformation of the subject by the artist.' The actual production of the image is almost automatic so when Gische argues that diCorcia transformed Mr. Nussenzweig through his art she seems to suggest that the art resides in diCorcia's decisions to edit, blow up, and circulate the images as part of a set.

I am not disagreeing with Gische's ruling and I agree that to have sided with Mr. Nussenzweig would have had a chilling effect not just on the future of photography, but on the freedom of communication in general. However, I do think the implications of this case require closer consideration. The legal discussions around diCorcia's images are grounded in a carefully mapped geography of public and private space. Both Mr. diCorcia and Mr. Nussenzweig were in public space when the photograph was made, but the production of the

¹⁷ Davis 2010.

image occurred through a process more akin to surveillance than traditional street photography in which the photographer is usually visible if not known to the subject. DiCorcia's practice is connected to the contemporary world of CCTV technology pervasive in many major cities, but it is not critical of this trend as much as it exploits the structure for artistic purposes. If we bristle at the commercial function of CCTV and its ability to capture and archive our movements, it is hard not to feel something for diCorcia's unwitting subjects. In its book catalogue form, the haunting headshot of Mr. Nussenzweig has now entered countless archives – such as museums and libraries across the world. Prints of 48 x 60 inches (1.2 x 1.5 m) hang on walls in as many as 10 offices, private homes and museums around the world, publicly prized for their poignant capture of the private self.

If we are to develop some kind of functional framework for thinking about photography and privacy, we need to acknowledge the complexity of the issue in historical and discursive terms. What we think of as public space is increasingly always/already a public marketplace that swallows up photographs that come to this space through the various discursive channels of advertising, social media, art, or activist efforts. If the end result of a photographic encounter is that recognizable images of people are circulated in public without their knowledge or consent, does it fundamentally matter to the person whose privacy has been violated whether that violation came at the hands of an artist, an activist, or Mark Zuckerberg?

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Social networking sites and privacy as contextual integrity

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Abstract

Recent advances in information and communication technology have given rise to new questions concerning the nature and scope of privacy. There are many possible theories of privacy by way of which these questions could be addressed. In this paper, we evaluate one of these theories, that is, the theory of privacy as contextual integrity, which has been developed especially by Helen Nissenbaum. We ask how the theory of privacy as contextual integrity works in the context of Internet's social networking sites. We have chosen to evaluate this theory because, as we show, it is more intuitive and explanatory than many of its rival theories of privacy. However, we claim that despite its explanatory power it is not as helpful as its advocates believe it to be in addressing normative questions, such as questions that concern justified claims to privacy in the context of social networking sites. Our argument for this claim is based on the notion of reasonability which Nissenbaum takes to be the condition of justified claims to privacy. According to this notion, a claim is reasonable, if it is based on some recognizable norm pertaining to a recognizable social context. Nissenbaum interprets social media as contexts that serve and extend familiar social contexts, such as the family and workplace. However, when it comes to social networking sites, people often have considerable difficulties in determining to which social contexts various pieces of information belong to. We claim that this is due to the novelty of social networking sites as media. Because of this we should not suppose that claims to privacy on social networking sites are easily derivable from traditional social contexts. Therefore we conclude that it is not reasonable to expect that users of these sites recognize each other interpretations of the context they are operating it. Thus the theory of contextual integrity is not much help in determining exactly what kinds of claims to privacy on social networking sites are justified.

The modern philosophical debate about the concept and scope of privacy dates at least to the end of the 19th century when two gentlemen, Samuel D. Warren and Louis D. Brandeis, called after a right to privacy after newspapers started reporting issues that they considered 'private'.¹ Recent advances of information and communication technology have given the old debate a new twist. Innovations such as social networking sites in Internet distinguish themselves from earlier forms of mass media in that the users of the media also produce most of its content. Coupled with the technical possibilities of the used software, the result is an interesting mix of free and restricted information flow between the users of the sites. Along with this development, new kinds of questions concerning legitimate spreading and using of information have arisen. This has resulted in a

¹ Warren and Brandeis 1890; Floridi 2005, 187; Tavani 2008, 135.