



What the law says about a stranger taking a photo of your child without permission

ABC Radio Brisbane By Patrick Williams

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Imagine this — you're at home and in the backyard with your children. You notice a nearby neighbour begin to snap photographs of your kids.

Naturally you're concerned, so you call police to see what can be done only to be told that it's legal provided no-one photographed is naked.

That's what happened to one Brisbane woman this past week. Her brother told ABC News:

"My sister's kids were working in the backyard yesterday doing lawns. Their neighbours began taking photos of the boys. This upset my sister.

"She called Policelink and was told it is legal provided no-one is naked. I can't understand how this can be legal."

Creepy, yes. But legally, there's no law being broken.

The topic of photography and privacy was discussed on Focus with Emma Griffiths on ABC Brisbane Radio on Monday morning.

Kylie Pappalardo, a lecturer at Queensland University of Technology's School of Law specialising in intellectual property law, said there was very little that could be done in this situation.

"It's an interesting situation in Australia, we don't have any personal privacy rights," Dr Pappalardo said.

"We have data privacy rights, there's a privacy act that governs what companies can collect about say your financial information or health information. But there's no right to say 'This is my privacy, do not take a photo of me'.

"In the case of the neighbour or someone on the street taking a photograph, as long as they're not physically trespassing on your land, there's not really any law that would come into play there to prevent that.

"Unless, as police say ... it's getting into questionable territory ... there are very strict laws around child exploitation which is another story.

"But photographs where no-one is compromised in that way, so long as somebody is not physically trespassing, there's very little you can do to stop them taking a photo of them."

Do you need permission to take someone's photo in a public space?

No.

This question was brought up on ABC Brisbane's Facebook page this week after it shared a photograph of an unknown couple sitting down and kissing at Woody Point Jetty, north of Brisbane.

ABC published the photo online and on its social media channels.

One comment stood out:

"The photographer, ABC, and Facebook are breaking privacy laws of this couple! Did you ask this couple if it is OK to show their faces on Facebook?"

It wasn't the only one. There were dozens of comments from people raising concerns.

But Dr Pappalardo said photography without permission in public is fair game.

"If it's a public place, you're free to take whatever photos you like," she said.

"When I say you can take a photo of whoever you like in general, I'm talking about the most innocent of situations when you're just snapping a photo at the park."

Dr Pappalardo said just because it's outdoors, doesn't mean it's public space.

"South Bank for example is owned and managed by the South Bank Corporation, a lot of it is private property but it feels public," she said.

"But if it's a true public place, then you're free to take photos."

If someone takes a photo of another person with their camera, who owns that image?

The photographer.

"The general rule is the photographer owns the image, that falls under copyright law," Dr Pappalardo said.

"The photographer is the person that has the rights. The subject, the people in the photo, do not generally have any legal rights."

Dr Pappalardo said copyright is a form of monopoly.

"It says no one aside from the owner can do all these things with the photograph unless you get their permission," she said.

"The reason we give those monopolies is to encourage people to be creative.

"The idea behind it is if something might take a long time to create, it'd take years of your time and money to be trained, and if someone can come and copy what you've done without having to invest time or money, you might be disincentivised from creating, so we give you a limited monopoly over your own stuff for that reason."

The photographer, having ownership of that photo, can then publish it wherever they like.

"The copyright owner controls publishing right as well. If you are the person who has taken the photo ... you are free to publish it wherever you like," Dr Pappalardo said.

Are there ethical issues with taking photographs in public?

"It depends on a whole heap of things," Dr Hugh Breakey, president of the Australian Association for Professional and Applied Ethics, says.

"You have different ethical issues that arise with each sort of step that they [photographer] can take," Dr Breakey said.

"You've got the initial step to take the photograph, and there could be ethical issues that apply to that like privacy and copyright.

"You might have issues of private property and contract.

"Then there's a whole series of other decisions that can happen in train, in terms of what are you going to do with that photo?

"If you're going to post it online that's another step, and it might be that taking a photo is totally innocuous ... but putting it online raises a few ethical red flags."

Another question raised — how are you making the photo identifiable?

"If you put it online and it's really you and your mate that can be seen, and everyone else in background is fuzzy that's one thing," Dr Breakey said.

"Whereas if you take a photo of your kid and it's at a sports day and there's a bunch of other kids there and you just name your kid and the high school they go to, is that making the other kids in that potentially identifiable?

"Next step on is mentioning, 'Here's my kid and his friend playing and she came second' and that becomes the next step on.

"As well as all ethical issues to do with copyright, privacy, and private property and so on, you've got different decision nodes you can work your way through ... where as taking a photo might be OK, putting it online might be OK, but the way you frame it and the way you provide information about it might be the thing that gets people to say, 'Hang on, now I feel like I've been wronged here in what you've done'."

Can drones be used to photograph private property?

It depends, according to Dr Pappalardo.

"With private property you have rights not just to your land, but a certain amount of airspace and underground," she said.

"The rule is generally you own up into the land space enough that you can prevent people interfering with your reasonable enjoyment of your land.

"So you don't own all the way up into space to stop satellites or planes, but normally the situation in regular property law is a neighbour's tree hanging over your airspace on your land.

"But if someone is flying a drone over your land and it's interfering with your enjoyment and it's in your airspace, that can still be a trespass."

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