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PHILIPP SCHWARZ

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PHILIPP SCHWARZ*

The Right to Privacy was introduced to shield individuals from unduly intrusions of their privacy. Taken at glance value, Street Photography might be construed to constitute such intrusion. However, First Amendment considerations must be read into the Right to Privacy. This article analyzes the tension between the freedom of artistic expression on the one hand and an individual's Right to Privacy on the other.

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I. Introduction

Both Street Photography and the Right to Privacy are products of technological innovation: the invention of instantaneous photography.

The first camera prototypes were expensive, bulky and relied on long exposures.[1] They were, thus, not adequate to capture moving images. Their size and their difficult usability made them hard to transport and operate. Consequently, early cameras were mainly used for portrait and landscape photography.[2]

With the introduction of smaller cameras with faster lenses in the late 19th century, the art form of Street Photography emerged.[3] Due to the cameras' improved usability, photographers were now able to take pictures anywhere, anytime and of anyone.[4] Quickly, photographers began to document day-to-day life. They were devoted to find beauty in the ordinary and to capture the «decisive moment» – as one of the great Street Photographers, HENRI CARTIER-BRESSON, put it.[5] Street Photographers were «continuously chasing after the eternal nowness of life itself in all its raw, unmediated energy.»[6] In order to catch those fugitive moments, they take pictures of unsuspecting strangers on the streets or other (public) places – making candid photography their use of trade.[7]

The introduction of small handheld cameras also prompted SAMUEL D. WARREN and LOUIS D. BRANDEIS to write their seminal article «The Right to Privacy». Therein, they raised their concern that this technological advance threatened an individual's privacy: «Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that 'what is whispered in the closet shall be proclaimed from the housetops.'»[8] To prevent this threat, the authors called for a change of law.[9] A newly defined Right to Privacy should be recognized, which offers individuals protection from unlawful invasions of privacy.

Taken at first glance, one might be tempted to construe such Right to Privacy to protect individuals from Street Photography. After all, Street Photographers take pictures without their subject's consent and the resulting image is not always flattering.[10]

At a closer look, however, one realizes that there is one important issue: Street Photography is a form of art. As such, it may constitute First Amendment Speech.[11] Any form

1 NEWHALL BEAUMONT, The History of Photography, 5th ed., New York 1988, p. 27.
2 Id.; SOLOVE DANIEL J., The Digital Person: Technology and Privacy in the Information Age, New York/ London 2004, p. 57.
3 NEWHALL (Fn. 1), p. 217; CARTIER-BRESSON HENRI, The Mind's Eye, New York 1999, p. 38; SOLOVE, (Fn. 2), p. 57; ROTHMAN JENNIFER E., The Right of Publicity: Privacy Reimagined for a Public World, Cambridge 2018, p. 13.
4 NEWHALL (Fn. 1), p. 218; SOLOVE (Fn. 2), p. 57; ROTHMAN (Fn. 3), p. 13.
5 CARTIER-BRESSON (Fn. 3), p. 33.
6 O'HAGAN SEAN, Why street photography is facing a moment of truth, in: The Guardian from Apr. 17, 2010.
7 WESTERBECK COLIN/MEYEROWITZ JOEL, Bystander: A history of Street Photography, 2nd ed., London 2018, p. 36.
8 WARREN SAMUEL D./BRANDEIS LOUIS D., The Right to Privacy, in: Harv. L. Rev. 1890/193, p. 4 et seq., p. 195.
9 Id.
10 See GILDEN BRUCE, Facing New York, Manchester 1992; WNYC Street Shots: Bruce Gilden, Youtube (May 15, 2008).
11 See Joseph Burstyn v. Wilson, 343 U.S. 495 (1952) (First decision accepting art to be protected under the first amendment); for a further

of direct or indirect prohibition of the artistic expression that is Street Photography might therefore be deemed unconstitutional.

In this paper, I will analyze the tension between the freedom of artistic expression on the one hand and an individual's Right to Privacy on the other. To this end, I will first define the Right to Privacy.[12] Second, I will discuss the relationship between the Right to Privacy and the First Amendment.[13] Third, I will apply the Right to Privacy to Street Photography.[14] Finally, I will analyze whether new technological innovations call for another change of law.[15]

This paper aims to analyze the Right to Privacy as stipulated in different States. A special focus will be drawn to the New York Right to Privacy, as most privacy cases originate from this jurisdiction. Historically, New York is deemed to be the center of Street Photography in the United States.

II. The Right to Privacy

With close to 130 years under its belt, the Right to Privacy is a comparatively young legal concept in the United States.[16] It is the fruit of the academic endeavors of WARREN and BRANDEIS, who coined the right in 1890 in one of the most cited and most famous legal articles entitled «The Right to Privacy».[17] Although acceptance of the proposed Right to Privacy was slow, over time it was recognized by most States either as a common law right or through State legislation.[18] 70 years after the Right to Privacy's first academic mention and upon abundant case law, efforts were made to concretize its field of application.[19]

A. Pioneers of the Right to Privacy: WARREN and BRANDEIS

WARREN and BRANDEIS' article was a direct reaction to technological advances and evolving business practices.[20] According to the authors, the dissipation of instantaneous photography and the rise of «yellow journalism» posed a threat to an individual's privacy.[21]

Accordingly, a need for the law to adapt itself to the new factual circumstances caused by technological innovation existed: «Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society».[22] The new right to be recognized was the Right to Privacy.[23]

The authors' aim was to establish whether, at the time, there existed a right, which would protect an individual's privacy.[24] To that end, the authors analyzed case law in which protection of an individual's privacy was granted. Such protection was imparted «on the basis of defamation, or the invasion of some property right, or a breach of confidence or an implied contract».[25] From this case law, the article derived the existence of a general principle: The Right to Privacy or «Right to be let alone».[26]

This Right to Privacy would be enforceable against anyone invading it.[27] It would not require a showing of actual monetary dam-

discussion of Art Speech see HAMILTON MARCI A., Art Speech, in: Vand. L. Rev. 1996/49, p. 73.

12 See infra II.

13 See infra II.

14 See infra II.

15 See infra V.

16 SINGLETON SOLVEIG, Privacy Versus the First Amendment: A Skeptical Approach, in: Fordham Intell. Prop. Media & Ent. L.J. 2000/11, p. 97 et seq., p. 99; GORMLEY KEN, One Hundred Years of Privacy, in: Wis. L. Rev. 1992, p. 1335 et seq., p. 1335.

17 See infra II.A.

18 See infra II.B.

19 See infra II.C.

20 WARREN/BRANDEIS (Fn. 8), p. 195.

21 Id.; GORMLEY (Fn. 16), p. 1350–1354.

22 WARREN/BRANDEIS (Fn. 8), p. 195.

23 Id. p. 197.

24 Id.

25 PROSSER WILLIAM L., Privacy, in: Cal. L. Rev. 1960/48, p. 383 et seq., p. 384.

26 WARREN/BRANDEIS (Fn. 8), p. 195 and p. 213; PROSSER (Fn. 25), p. 384.

27 WARREN/BRANDEIS (Fn. 8), p. 213.

ages, but rather make actionable any injury to an individual's feelings. Accordingly, the personality of an individual took center-stage.[28] The right was based on the notion that everyone should be able to control «to what extent his thoughts, sentiments, and emotions, shall be communicated to others».[29]

Albeit formulated very broadly, WARREN and BRANDEIS conceded that the Right to Privacy would not be without any limits.[30] Among others, the article foresaw the inapplicability of the Right to Privacy to publications «of matter which is of public or general interest.»[31]

Finally, the article offered two remedies in case of a violation of the Right of Privacy: damages (as mentioned above not limited to monetary damages) and injunctive relief.[32] The authors, also, cautiously recommended the legislator to enact criminal offenses based on the violation of the Right to Privacy.[33]

B. The Right to Privacy's Road to Recognition

The Right to Privacy's further road to recognition was not an easy one.[34] While some State courts leniently accepted the existence of such a right, others explicitly rejected it. Most notably, the Right to Privacy was put to a test in the State of New York in *Roberson v. Rocherster Folding Box Co.*[35]

In this case, a flour company «made, printed, sold and circulated about 25'000 lithographic prints, photographs and likenesses of plaintiff» without her consent.[36] The plaintiff argued that the publication of her likeness caused her great humiliation, which eventually led to significant mental distress.[37] She sought injunctive relief and damages.[38]

The Supreme Court held that the plaintiff had a right to be let alone – or in other words: a Right to Privacy –, which had been violated by the circulation of the plaintiff's likeness.[39] The Appellate Division affirmed.[40]

The Court of Appeals, however, reversed.[41] It explicitly denied the existence of a Common Law Right to Privacy.[42] In its reasoning, the Court voiced its concern that the recognition of a Right to Privacy would «necessarily result, not only in a vast amount of litigation, but in litigation bordering upon the absurd».[43] The Court of Appeals, nevertheless, affirmed that the legislator could introduce a Right to Privacy – courts, however, could not.[44]

28 Id. p. 197–198.
29 Id. p. 198.
30 Id. p. 214.
31 Id.
32 Id. p. 219.
33 Id.
34 PROSSER (Fn. 25), p. 384–385.
35 Roberson v. Rochester Folding Box Co., 171 N.Y. 538 (N.Y. June 27, 1902).
36 Id. p. 542.
37 Id. p. 543.
38 Id.
39 Roberson v. Rochester Folding-Box Co., 32 Misc. 344, 347–348 65 N.Y.S. 1109 (1900).
40 Roberson v. Rochester Folding Box Co., 64 A.D. 30, 71 N.Y.S. 876 (1901).
41 Roberson v. Rochester Folding Box Co., 171 N.Y. 538 (N.Y. June 27, 1902).
42 Id. p. 556.
43 Id. p. 545 («for the right of privacy, once established as a legal doctrine, cannot be confined to the restraint of the publication of a likeness but must necessarily embrace as well the publication of a word-picture, a comment upon one's looks, conduct, domestic relations or habits. And were the right of privacy once legally asserted it would necessarily be held to include the same things if spoken instead of printed, for one, as well as the other, invades the right to be absolutely let alone. An insult would certainly be in violation of such a right and with many persons would more seriously would the feelings than would the publication of their picture. And so we might add to the list of things that are spoken and done day by day which seriously offend the sensibilities of good people to which the principle which the plaintiff seeks to have imbedded in the doctrine of the law would seem to apply.»)
44 Id. p. 545 («The legislative body could very well interfere and arbitrarily provide that no one should be permitted for his own selfish purpose to use the picture or the name of another for advertising purposes without his consent. In

The «perceived unfairness»[45] of the decision led to a vast public outcry.[46] The New York legislator reacted quickly and enacted a statutory Right to Privacy, which remains the prevailing law of New York and can be found in Civil Rights Law §§50–51.[47] Under Civil Rights Law §50, «[a] person, firm, or corporation that uses for advertising purposes, or purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.»[48] Civil Rights Law §51 provides the individual, whose name, portrait or picture has been used pursuant to Civil Rights Law §50, a cause of action to obtain injunctive relief and damages.[49]

Some States have followed the example of New York in declining to recognize a Common Law Right to Privacy and instead enacting a statutory right.[50] Others have recognized a Common Law Right to Privacy.[51] And even others have both recognized a Common Law Right to Privacy and enacted a statutory right.[52] One way or the other, the Right to Privacy has been recognized in nearly all States.[53] The breadth, scope of application, and definition of such right, however, vary sensibly between the different States.[54]

C. A Specification of the Right to Privacy

After 70 years of its first mention in WARREN and BRANDEIS' seminal article, WILLIAM R. PROSSER, in an attempt to concretize it, took stock of the Right to Privacy's application throughout the States.[55] He found that the Right of Privacy, in fact, comprised four prongs: (1) intrusion, (2) public disclosure of private facts, (3) false light in the public eye, and (4) appropriation of an individual's name or likeness for the benefit of the violator.[56]

PROSSER's analysis was well received and was ultimately translated into the Restatement (second) of Torts, published in 1965.[57] The Restatement recognized the four torts discovered by PROSSER and qualified them as follows:

1. Intrusion upon Seclusion

The tort based on intrusion is the «right to be let alone», in a narrow sense.[58] Accordingly, a person is liable for intrusion under two conditions: First, the person must physically or otherwise intrude upon the solitude or

such, event no embarrassment would result to the general body of the law, for the rule would be applicable only to cases provided for by the statute. The courts, however, being without authority to legislate, are required to decide cases upon principle, and so are necessarily embarrassed by precedents created by an extreme, and, therefore, unjustifiable application of an old principle.»)

45 Foster v. Svenson, 128 A.D.3d 150, 155 (2015).

46 Id.; PROSSER (Fn. 25), p. 385.

47 Laws of the State of New York, 126th Sess., Ch. 132 (1903). The constitutionality of this law was upheld by the New York Court of Appeals in Rhodes v. Sperry & Hutchinson Co., 85 N.E. 1097 (N.Y. 1908); PROSSER (Fn. 25), p. 385.

48 NY CLS Civ R § 50.

49 NY CLS Civ R § 51.

50 See 25 Personal Injury – Actions, Defenses, Damages § 120.01 (2019): Alaska, Massachusetts, Nebraska, North Dakota, Oklahoma, Puerto Rico, Rhode Island, Utah, Virginia, Washington.

51 See: Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, West Virginia.

52 See Id.: California, West Virginia.

53 See Id.

54 For a comprehensive compilation of the different characteristics of the Right to Privacy in the different States visit the «Right of Publicity Roadmap» Website, run by Jennifer E. Rothman, Professor of Law at Loyola Law School, Los Angeles.

55 PROSSER (Fn. 25), p. 388 et seq.

56 Id. p. 389.

57 Restat. 2d of Torts, § 652A; 25 Personal Injury – Actions, Defenses, Damages § 120.01 (2019).

58 25 Personal Injury – Actions, Defenses, Damages § 120.01 (2019).

seclusion of another's private affairs. Second, the intrusion must be highly offensive to a reasonable person.[59]

2. Appropriation of Name or Likeness

A person is liable for appropriation of the name or likeness of another individual, when the appropriation is made for her own use or benefit.[60] Most commonly, the appropriation targeted by this tort is of commercial nature.[61] The New York statutory Right to Privacy, for instance, only applies, when the appropriation is made for advertising purposes or for the purposes of trade.[62]

3. Publicity Given to Private Life

Liability for publicity given to private life requires first, that the publication would be highly offensive to a reasonable person and, second, that the matter publicized is of no legitimate concern to the public.[63] As will be shown below, the second condition greatly opens the door to First Amendment considerations.[64]

4. Publicity Placing Person in False Light

A person is liable for placing another individual in a false light by publication. This requires, on the one hand, that the false light would be highly offensive to a reasonable person and, on the other hand, that «the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed».[65]

Among all States, the tort of intrusion and the tort of appropriation are the most widespread.[66] Some States recognize all four prongs of the Right to Privacy, whereas others only recognize some of them. New York, for instance, only recognizes commercial appropriation.[67]

III. The Right to Privacy and the First Amendment

When WARREN and BRANDEIS conceived the Right to Privacy in 1890, they took into account First Amendment implications.[68] Accordingly, they excluded the applicability of the Right to Privacy from any publication of matters of public or general interest.[69] Case law and statutory law has taken those First Amendment implications into account and widely recognized an exemption for newsworthy publications and publications of public concern.[70] Over time, this Exemption has been broadened to apply to art.[71]

A. The Newsworthy and Public Concern Exemption

As presented above, the defense against a Right to Privacy claim – that the publication was made to inform the public about matters of legitimate concern – was recognized even back in WARREN and BRANDEIS' seminal article.[72]

The defense of newsworthiness and/or public concern has since been recognized with regard to the tort of publicity given to private life[73] and the tort of false light invasion

59 Restat. 2d of Torts, § 652B.

60 Restat. 2d of Torts, § 652C.

61 See 25 Personal Injury – Actions, Defenses, Damages § 120.04 (2019).

62 NY CLS Civ R §§ 50,51.

63 Restat. 2d of Torts, § 652D.

64 Id. cmt on b; 25 Personal Injury – Actions, Defenses, Damages § 120.02 (2019).

65 Restat. 2d of Torts, § 652E.

66 See 25 Personal Injury – Actions, Defenses, Damages § 120.01 (2019).

67 NY CLS Civ R §§ 50,51.

68 SINGLETON (Fn. 16), p. 105.

69 WARREN/BRANDEIS (Fn. 8), p. 214 et seqq. («There are persons who may reasonably claim as a right, protection from the notoriety entailed by being made the victims of journalistic enterprise. There are others who, in varying degrees, have renounced the right to live their lives screened from public observation.»)

70 See infra IV.A.

71 See infra II.

72 25 Personal Injury – Actions, Defenses, Damages § 120.02 (2019).

73 See Smith v. Doss, 251 Ala. 250, 37 So. 2d 118 (1948); Reed v. Real Detective Publ'g Co., 63

of privacy.[74] For the purposes of this paper, most importantly, it has also been recognized regarding the commercial appropriation of an individual's name or likeness:

The New York Right of Privacy prohibits the use of an individual's likeness for trade or advertisement purposes.[75] Taken literally, this would forbid newspapers from using individuals' names or likenesses in their articles because newspapers obviously serve a commercial purpose.[76] Courts have, however, read the First Amendment into New York's Right of Privacy and construed a critical exemption.

In *Arrington v. New York Times Co.*, the plaintiff sought damages and injunctive relief for the non-consensual use of her photograph in connection with an article entitled «The Black Middle Class: Making It».[77] The Plaintiff perceived the article to be «insulting, degrading, distorting and disparaging», causing her mental distress.[78] The Court denied the relief sought. It rejected a «narrow reading» of the New York Right of Privacy.[79] The terms purposes of «advertising» or «trade» do not cover publications relating to the dissemination of newsworthy or public concern matters.[80]

The route taken by the Court of Appeals in *Arrington v. New York Times Co.* has been confirmed in several subsequent decisions.[81] Accordingly, the New York Right of Privacy does not apply to newsworthy and public concern matters. The dissipation of news does not fulfill purposes of trade or advertisement in the sense of the privacy statute.

B. Application of this Exemption to Art

The newsworthy and public concern exemption has been applied to other forms of First Amendment speech.[82] Notably, it has also been applied to art speech. As such literary[83] and theatrical works, motion pictures[84], and other publications that serve the purpose to entertain[85] fell in the ambit of the exception.[86] Works of art in general are held to fall outside the reach of the Right to Privacy:

In *Altbach v. Kulon,*[87] the plaintiff, a town Justice and a Lawyer, raised a privacy claim against an artist, who had depicted him as a devil with horns and a tail.[88] The artist had printed this caricature alongside a photograph of the plaintiff on flyers to promote

Ariz. 294, 162 P.2d 133 (1945); Metter v. Los Angeles Examiner, 35 Cal. App. 2d 304, 95 P.2d 491 (1939); Barbieri v. News-Journal Co., 56 Del. 67, 189 A.2d 773 (1963); Cason v. Baskin, 155 Fla. 198, 20 So. 2d 243 (1945); Aquino v. Bulletin Co., 190 Pa. Super. 528, 154 A.2d 422 (1959).

74 See e.g. New York Times v. Sullivan, 376 U.S. 254 (1964); Time, Inc v. Hill, 385 U.S. 374 (1967).

75 NY CLS Civ R §§ 50,51.

76 Foster v. Svenson, 128 A.D.3d 150, 155 (2015).

77 Arrington v. New York Times Co., 55 N.Y.2d 433, 437 (1982).

78 Id.

79 Id. p. 440.

80 Id. («Moreover, this narrow reading of the statutory provisions has not been without sensitivity to the potentially competing nature of the values the Legislature, on the one hand, served by protecting against the invasion of privacy for purposes of 'advertising' or 'trade' and, on the other, the values our State and Federal Constitutions bespeak in the area of free speech and free press.»)

81 See e.g. Howell v. New York Post Co., 81 NY2d 115 (1993); Finger v. Omni Publs. Intl., 77 NY2d 138, 141–142 (1990).

82 See 25 Personal Injury – Actions, Defenses, Damages § 120.02 (2019) («The privilege of the press to publish and the right of the public to be informed of matters of legitimate concern is much broader than comparable privileges in the law of defamation. Matters that are educational, entertaining, and even colorful and amusing, are encompassed within this newsworthiness defense, as are matters about which public curiosity is persistent, such as crime, arrests, marriages, divorces, accidents and accidental deaths, and similar occurrences.»)

83 See e.g. University of Notre Dame du Lac v. Twentieth Century-Fox Film Corp., 15 N.Y.2d 940 (1965).

84 See e.g. id.

85 See e.g. Gautier v. Pro-Football, Inc., 304 N.Y. 354 (1952).

86 Foster v. Svenson, 128 A.D.3d 150, 156, (2015).

87 Altbach v. Kulon, 302 A.D.2d 655 (2003).

88 Id. p. 655–656.

the opening of his atelier.[89] The Court concluded that the artwork as such (i.e. the caricature) and its publication constitute art speech, are protected by the First Amendment and thus are exempted from the Right to Privacy.[90] It noted that «the photograph's use can readily be viewed as ancillary to a protected artistic expression because it 'prove[s] [the] worth and illustrate[s] [the] content' of the painting exhibited at defendant's gallery […]».[91]

In *Hoepker v. Kruger,*[92] a photo entitled «Charlotte As Seen by Thomas» by the famous German Photographer Thomas Hoepker, depicting Charlotte Dabney holding a magnifying glass, became the object of both a copyright infringement and a Right to Privacy action.[93] The defendant, Barbara Kruger, had created a collage out of Hoepker's work: «To create her work (the 'Kruger Composite'), Kruger cropped and enlarged Hoepker's photographic image, transferred it to silkscreen and, in her characteristic style, superimposed three large red blocks containing words that can be read together as, «It's a small world but not if you have to clean it.»[94] Kruger later on sold the piece to a museum, used it on accessories such as t-shirts and post-cards, and extensively used it to advertise her work (for instance on Billboards).[95]

Plaintiff Dabney saw her Right to Privacy invaded. The court had to balance the Right to Privacy against the First Amendment.[96] It decided quite clearly in favor of the First Amendment: «the Kruger Composite should be shielded from Dabney's right of privacy claim by the First Amendment. The Kruger Composite itself is pure First Amendment speech in the form of artistic expression […] and deserves full protection, even against Dabney's statutorily-protected privacy interests.»[97]

To sum up, courts have extended the newsworthy and public concern exemption to art speech, granting it full protection under the First Amendment. Accordingly, the use of an individual's private information, name, or likeness for the purposes of newsworthy or artistic expression is excluded from the prohibition of the Right to Privacy.

IV. Application to Street Photography

The taking of unauthorized photos in public places, whether the photographs qualify as Street Photography or not and thus whether the photograph is protected by the First Amendment or not, does generally not constitute an invasion of privacy.[98] Courts seem to uphold the maxim that there exists no

89 Id. p. 655.

90 Id. p. 658.

91 Altbach v. Kulon, 302 A.D.2d 655, 658 (2003) with further references: Groden v. Random House, Inc., 61 F.3d 1045, 1049, quoting Booth v. Curtis Publ. Co., 15 A.D.2d 343, 349, 223 N.Y.S.2d 737, affd 11 NY2d 907, 182 N.E.2d 812, 228 N.Y.S.2d 468; see New York Mag., Div. of Primedia Mags., Inc. v. Metropolitan Tr. Auth., 987 F. Supp. 254, 267, affd. in part, vacated in part 136 F.3d 123, cert denied 525 US 824, 142 L. Ed. 2d 53, 119 S. Ct. 68; accord Hoepker v. Kruger, supra at 351.

92 Hoepker v. Kruger, 200 F. Supp. 2d 340 (2002).

93 For the purpose of this paper only the privacy action will be analyzed.

94 Hoepker v. Kruger, 200 F. Supp. 2d 340, 342 (2002).

95 Id. p. 342–344.

96 Id. («The advertising and trade limitation in New York's privacy statutes was crafted with the First Amendment in mind. Through Sections 50 and 51, the New York legislature sought to protect a person's right to be free from unwarranted intrusions into his or her privacy, while at the same time protecting the quintessential American right to freedom of expression.»).

97 Id. p. 350.

98 Taking unauthorized photographs as invasion of privacy, 86 A.L.R.3d 374 («Where the picture is taken on the public streets, or in a public place such as a courtroom or a sporting event, the courts have refused to consider the taking as an invasion of privacy. This has been true even though the photographer continuously followed the plaintiff causing her emotional distress.»; «Taking pictures of a person in public places does not seem to violate that person's right to privacy even though it is without his consent and may disturb him.»).

privacy in public places.[99] Or as PROSSER noted quite succinctly: «On the public street, or in any other public place, the plaintiff has no right to be alone, and it is no invasion of his privacy to do no more than follow him about. Neither is it such an invasion to take his photograph in such a place, since this amounts to nothing more than making a record, not differing essentially from a full written description, of a public sight which anyone present would be free to see.»[100] The Restatement (second) on Torts upholds this position.[101]

One case particularly exhibits the liberal approach courts have taken. In *Galella v. Onassis*[102] a paparazzo followed John F. Kennedy's widow, Jacqueline Kennedy Onassis, and her children, harassed them and obstructed their daily commutes to take photographs of them. The court did grant Onassis injunctive relief against the photographer.[103] He was not allowed to step closer than 30ft to her.[104] He was, however, not enjoined from taking further photographs.[105]

In the case that a photograph is not taken in the public space, but rather in a private one, like a home or a hospital bed, courts tend to affirm an invasion of privacy.[106] Taken at face value, location seems to be a crucial factor. While photographs taken in public spaces seem not to invade the Right to Privacy, photographs taken in an individual's privacy or seclusion generally do.

The act of taking unauthorized photographs in public spaces does, as a result, not seem to be actionable under privacy laws. As an art form, Street Photography additionally enjoys protection from the First Amendment, which could add another – thicker – layer of protection against Right to Privacy claims.

The subsequent publication of the photograph in exhibitions and the sale of prints could, however, implicate considerations of commercial appropriation. The First Amendment could, again, shield the publication from Right to Privacy claims.

Two cases from New York, which explicitly dealt with Street Photography, illustrate the interplay between the Right to Privacy and the First Amendment: *Nussenzweig v. diCorcia*[107] and *Foster v. Svenson.*[108] After having established that in both cases the photographs in question did not invade the plaintiff's privacy because of First Amendment considerations, I will analyze whether there are any limits to the First Amendment exemption.[109]

99 ZERONDA NANCY D., Street Shootings: Covert Photography and Public Privacy, in: Vand. L. Rev. 63/2010, p. 1131 et seq., p. 1139.

100 PROSSER (Fn. 25), p. 391–392.

101 Restat. 2d of Torts, § 652B cmt c. («Nor is there liability for observing him or even taking his photograph while he is walking on the public highway, since he is not then in seclusion, and his appearance is public and open to the public eye.»).

102 Galella v. Onassis, 487 F.2d 986 (1973).

103 Id. p. 999.

104 Id. («Galella thus may be enjoined from (a) entering the children's schools or play areas; (b) engaging in action calculated or reasonably foreseen to place the children's safety or well-being in jeopardy, or which would threaten or create physical injury; (c) taking any action which could reasonably be foreseen to harass, alarm, or frighten the children; and (d) from approaching within thirty (30) feet of the children.»).

105 Id. p. 999 («As modified, the relief granted fully allows Galella the opportunity to photograph and report on Mrs. Onassis' public activities. Any prior restraint on news gathering is miniscule and fully supported by the findings.»).

106 Taking unauthorized photographs as invasion of privacy, 86 A.L.R.3d 374 («When a picture is taken of a plaintiff while he is in the privacy of his home, or in a hospital bed, the taking of the picture may be considered an intrusion into the plaintiff's privacy just as eavesdropping or looking into his upstairs windows with binoculars are considered an invasion of his privacy.»); see e.g. Rawls v. Conde Nast Publications, Inc., 446 F2d 313 (1971); Dietemann v. Time, Inc., 449 F2d 245 (1971); Barber v. Time, Inc., 348 Mo 1199 (1942).

107 See infra II.

108 See infra II.

109 See infra II.

A. Nussenzweig v. DiCorcia[110]

Philip-Lorca diCorcia, the defendant in this case, is a famous American photographer, whose work has been exhibited among others in the Museum of Modern Art, the Whitney Musem of Art and the Museo National Centrio de Arte Reina Sofia.[111]

For his series entitled «HEADS» he took photographs of passers-by at Times Square.[112] He did not ask any of his subjects for consent.[113] One of the photographs taken portrayed the plaintiff, Erno Nussenzweig.[114] This photograph was later on exhibited at the Pace Gallery.[115] A catalog, which featured the photograph of the plaintiff, was produced and circulated to advertise the exhibition, which received both local and national media coverage.[116] Finally, ten prints of the photograph portraying the plaintiff were sold for a price between $20'000 and $30'000 apiece.[117]

The plaintiff is an Orthodox Hasidic Jew and a member of the Klausenberg sect.[118] Accordingly, he submitted that the commercial use of his photograph not only violated the New York privacy statute but also his religion, namely the second commandment, prohibition against graven images.[119]

The New York Supreme Court analyzed the existing exemptions from the Right to Privacy and concluded that both matters that are newsworthy and artistic uses of photographs fall outside the scope of the Right to Privacy.[120] The court, moreover, concluded that the photograph at issue constituted art.[121] It reasoned its decision by emphasizing DiCorcia's standing in the artistic community and the creative process that lead to the series.[122]

By qualifying the photograph as art, the Court concluded that its use, which solely consisted of advertising the exhibition and selling the photograph, was exempted from the New York privacy statute.[123]

The Appellate Division affirmed the New York Supreme Court's decision for formal reasons.[124] In a concurring opinion, Justices Tom and Malone noted that «the inclusion of the photograph in a catalog sold in connection with an exhibition of the artist's work does not render its use commercial» and, citing *Bery v. City of New York*,[125] «paintings, photographs, prints and sculptures […] always communicate some idea or concept to those who view it, and as such are entitled to full First Amendment protection.»[126]

B. Foster v. Svenson

Foster v. Svenson bears much factual resemblance to *Nussenzweig v. diCorcia*. Arne Svenson, a famous photographer, had created a

110 Nussenzweig v. DiCorcia, 2006 NYLJ LEXIS 1123 (N.Y. Sup. Ct. February 16, 2006) affd Nussenzweig v. DiCorcia, 38 A.D.3d 339, (2007).

111 Nussenzweig v. DiCorcia, 2006 NYLJ LEXIS 1123, 5 (N.Y. Sup. Ct. February 16, 2006).

112 Id. p. 6.

113 Id.

114 Id.

115 Id. p. 7.

116 Id.

117 Id. p. 8.

118 Id.

119 Id.

120 Nussenzweig v. DiCorcia, 2006 NYLJ LEXIS 1123, 15–16 (N.Y. Sup. Ct. February 16, 2006) («In recent years, some New York courts have addressed the issue whether an artistic use of an image is a use exempted from action under New York States Privacy Laws. Altbach v. Kulon, 302 AD2d 655 (3rd dept. 2003); Simeonov v. Tiegs, 159 Misc2d 54 (NY Civ Ct 1993); Hoepker v. Kruger, 200 FSupp2d 340 (SDNY 2002). They have consistently found art to be constitutionally protected free speech, that is so exempt. This court agrees.»).

121 Id. p. 17.

122 Id.

123 Id. p. 20.

124 Nussenzweig v. DiCorcia, 38 A.D.3d 339, 340 (2007) («We agree with Justice Tom's opinion, for the reasons stated therein, insofar as he concludes that the statute of limitations bars the action.»).

125 Bery v. City of New York, 97 F3d 689, 696 (1996).

126 Nussenzweig v. DiCorcia, 38 A.D.3d 339, 347 (2007).

series entitled «The Neighbors» in which he photographed – as the title suggests – his neighbors in New York City without asking them for consent.[127] As DiCorcia's work, Svenson's series was exhibited both in New York and Los Angeles and received broad media attention.[128] The twist: unlike DiCorcia, Svenson did not take his photographs on the public street.[129] Instead, he shot into the apartments of his neighbors with a telephoto camera lens.[130]

Despite trying to conceal his subject's identity, the plaintiffs recognized that their children were portrayed in one of the pieces entitled «No. 12».[131] This very photograph was subsequently aired on national television, in print and electronic media and on Facebook to advertise the upcoming exhibitions.[132] The plaintiffs brought an action for invasion of privacy pursuant to the New York privacy statute.

The Appellate Division conducted a thorough analysis of the origin of the Right to Privacy, the evolution of the newsworthy and public concern exemption and its application to art speech.[133] It went on to conclude that Svenson's work constituted art and therefore fell outside the scope of the Right to Privacy. [134]

The instant case begs the question, whether its outcome would have been different, if New York would recognize the privacy tort of intrusion or the tort for giving publicity to private life. Under the former, «electronic or other monitoring of private conversations by eavesdropping, bugging, or wiretapping» is prohibited.[135] This prohibition could be extended to the taking of photographs. Under the latter, as already mentioned above, pictures taken in the privacy of one's home can constitute invasions of privacy.[136]

However, the argument that location matters could be raised. The high building density in New York City could warrant a different standard than in more rural areas. Consequently, the very notion of the privacy of one's home could be attenuated. Would a tenant expose himself to the public by not using drapes and would he thereby waive his Right to Privacy?

C. Are there any Limits?

Reading these two decisions, the First Amendment exemption appears to be borderless and to having practically eroded the Right to Privacy. After all, neither one's religious beliefs (which are also constitutionally protected) nor the sanctity of one's home seem to be able to shield individuals from invasions of privacy under the umbrella of the First Amendment.

127 Foster v. Svenson, 128 A.D.3d 150, 152 (2015).

128 Id.

129 Id.

130 Id.

131 Id. p. 153.

132 Id. p. 154.

133 Id. p. 154–157.

134 Id. p. 158 («In this case, we are constrained to concur with the views expressed in Altbach, Hoepker, and Nussenzweig's concurrence: works of art fall outside the prohibitions of the privacy statute under the newsworthy and public concerns exemption. As indicated, under this exemption, the press is given broad leeway. This is because the informational value of the ideas conveyed by the art work is seen as a matter of public interest. We recognize that the public, as a whole, has an equally strong interest in the dissemination of images, aesthetic values and symbols contained in the art work. In our view, artistic expression in the form of art work must therefore be given the same leeway extended to the press under the newsworthy and public concern exemption to the statutory tort of invasion of privacy.»).

135 25 Personal Injury – Actions, Defenses, Damages § 120.05 (2019).

136 Taking unauthorized photographs as invasion of privacy, 86 A.L.R.3d 374 («When a picture is taken of a plaintiff while he is in the privacy of his home, or in a hospital bed, the taking of the picture may be considered an intrusion into the plaintiff's privacy just as eavesdropping or looking into his upstairs windows with binoculars are considered an invasion of his privacy.»); see e.g. Rawls v. Conde Nast Publications, Inc. (1971, CA5 Fla) 446 F2d 313; Dietemann v. Time, Inc. (1971, CA9 Cal) 449 F2d 245; Barber v. Time, Inc. (1942) 348 Mo 1199, 159 SW2d 291.

The New York Supreme Court Appellate Division, however, reassures us that «despite its breadth, the exception is not without limits. To give absolute protection to all expressive works would be to eliminate the statutory right of privacy.»[137]

Reviewing the case law, three possible counter-defenses could be raised to defeat the Art Speech exemption: (1.) the publication does not constitute art, (2.) the artistic use of the photograph is only incidental to its commercial use, and (3.) the photographs were obtained by outrageous behavior.

1. Publication does not Constitute Art

In entertaining this counter-defense, the difficult question about what legally constitutes art would have to be answered in the negative.[138] Different States have adopted different standards to determine what constitutes art. Californian courts adopt the transformative test, according to which only transformative art enjoys protection under the First Amendment.[139] Other states apply the art speech exemption only to the original fine art work, but not to reproductions.[140] New York's legal definition, on the other hand, is broad: «*In Hoepker v. Kruger*, the court recognized that art can be sold, at least in limited editions, and still retain its artistic character. This analysis recognizes that first amendment protection of art is not limited to only starving artists.»[141]

2. Artistic Use only Incidental to its Commercial Use

Under New York Privacy Law the Art Speech exemption does not apply if the use is only incidental to its commercial use. If a photograph appears to be used to express one's artistic vision, but in fact advertises the sale of commercial goods, the exemption would not apply.[142] «[S]uch advertisement in disguise is commercial use deserving no protection from the privacy statute».[143] The field of application of this counter-defense is, of course, very narrow and would, in any event, not affect artists pursuing truly artistic purposes.

3. Photographs Obtained by Outrageous Behavior

Foster v. Svenson suggests that the First Amendment exemption may be defeated, when a photograph is obtained by outrageous behavior.[144] However, «[t]he Court of Appeals has set a high bar for what constitutes outrageous behavior in this context.»[145] Neither the trespassing on the grounds of a private psychiatric facility to take photographs[146], nor the taking of photographs into the individuals' homes constitutes such outrageous behavior.[147]

One wonders, what would constitute outrageous behavior. Take Merry Alpern's photographic series «Dirty Windows» for example: just like Arne Svenson, she took photographs into a neighboring house. However, the window, through which she photo-

137 Foster v. Svenson, 128 A.D.3d 150, 159 (2015).

138 Nussenzweig v. DiCorcia, 2006 NYLJ LEXIS 1123, 16 (N.Y. Sup. Ct. February 16, 2006) («Even while recognizing art as exempted from the reach of New York's Privacy laws, the problem of sorting out what may or may not legally be art remains a difficult one.»).

139 See e.g. Comedy II Publications, Inc. v. Gary Saderup, Inc., 25 Cal 4th 387 (2001); see also DOUGHERTY JAY F., All the World's Not a Stooge: The «Transformativeness» Test for Analyzing a First Amendment Defense to a Right of Publicity Claim Against Distribution of a Work of Art, in: Colum. J.L. & Arts 2003/27, p. 1 et seq.

140 See e.g. Martin Luther King, Jr. Center for Social Change, Inc. v. American Heritage Products, Inc., 250 GA 135 (1982).

141 Nussenzweig v. DiCorcia, 2006 NYLJ LEXIS 1123, 16 (N.Y. Sup. Ct. February 16, 2006).

142 See Beverley v. Choices Women's Med. Ctr., 78 NY2d 745 (1991); Stephano v. News Group Publs., 64 NY2d 174 (1984).

143 Foster v. Svenson, 128 A.D.3d 150, 159 (2015).

144 Id. p. 161–162.

145 Id. p. 161.

146 See Howell v. New York Post Co., 81 N.Y.2d 115, 126 (1993).

147 Foster v. Svenson, 128 A.D.3d 150, 164 (2015).

graphed, did not reveal a residential home, but rather an after-hours sex-club.[148] The photographs taken depict female and male genitalia, sexual acts and the use of drugs.[149] Would this series constitute outrageous behavior and therefore defeat the First Amendment exemption? Possibly.

All in all, the limits to the First Amendment exemption analyzed above appear to be rather toothless. Granting the involuntary subjects of Street Photographers real protection against potentially invasive behavior would, as a consequence, require a change of the law.

V. Need for a Change of Law?

While the courts in both decisions studied above have ultimately denied the claim for invasion of privacy, they appear to have done so rather reluctantly. In *Nussenzweig v. DiCorcia*, the New York Supreme Court noted that its decision «illustrate[s] the extent to which the constitutional exceptions to privacy will be upheld, notwithstanding that the speech or art may have unintended devastating consequences on the subject, or may even be repugnant. They are, as the Court of Appeals recognized in Arrington, the price every person must be prepared to pay for in a society in which information and opinion flow freely.»[150] The Appellate Division, in *Foster v. Svenson*, found even stronger words, qualifying Svenson's behavior as «disturbing» and «troubling».[151] Under current privacy laws it, however, seems that no recourse is to be had against it.

With the advent of even smaller and more powerful cameras integrated into smartphone devices and other technological innovations such as drones and facial recognition, the potential of invasive conduct has become even greater. Just as it was when WARREN and BRANDEIS pleaded for a change of law, it may be time once again for the law to adapt to the new technological reality. The Appellate Division, in *Foster v. Svenson,* seconds this proposition explicitly: «Needless to say, as illustrated by the troubling facts here, in these times of heightened threats to privacy posed by new and ever more invasive technologies, we call upon the legislature to revisit this important issue, as we are constrained to apply the law as it exists.»[152]

One way to address the ever-growing privacy concerns is to extend the applicability of the Right to Privacy to public places.[153] However, a look over the pond illustrates that an undifferentiated extension of the Right to Privacy to public places may yield unwanted outcomes.

A. New Technologies – A Need for Privacy in Public?

Recent technological advances have led to great threats to our privacy. On the one hand, the constant availability of high-resolution cameras (for example integrated in smartphones) has engendered highly disturbing practices such as up-skirt photography. The concept is self-explanatory: people take photos «up the skirts of or down the shirts of unsuspecting women» and subsequently share them on relevant websites.[154]

148 Merry Alpern, Artnet.

149 VERMARE PAULINE, Public, Private, Secret – Merr Alpern with Pauline Vermare, Interview from Dec 19, 2016.

150 Nussenzweig v. DiCorcia, 2006 NYLJ LEXIS 1123, 19-20 (N.Y. Sup. Ct. February 16, 2006).

151 Foster v. Svenson, 128 A.D.3d 150, 163 (2015). («In short, by publishing plaintiffs' photos as a work of art without further action toward plaintiffs, defendant's conduct, however disturbing it may be, cannot properly, under the current state of the law, be deemed so 'outrageous' that it went beyond decency and the protections of Civil Rights Law §§ 50 and 51. To be sure, by our holding here – finding no viable cause of action for violation of the statutory right to privacy under these facts – we do not, in any way, mean to give short shrift to plaintiffs' concerns. Undoubtedly, like plaintiffs, many people would be rightfully offended by the intrusive manner in which the photographs were taken in this case.»).

152 Foster v. Svenson, 128 A.D.3d 150, 163 (2015).

153 See infra V.A.

154 BEASLEY KRISTIN, Up-Skirt and Other Dirt: Why Cell Phone Cameras and Other Technolo-

On the other hand, the technological innovation of face recognition poses a great threat to our anonymity in public spaces; a photograph of a stranger might allow you to access the subject's personal information.[155]

Both up-skirt photography and face recognition force us to rethink privacy in public places. Under current privacy laws, once you avail yourself to the public, your forfeit your Right to Privacy.[156] Accordingly the Right to Privacy offers no remedy against either potential invasion.

While in the case of up-skirt photography States and the Federal legislator have enacted up-skirt laws, which criminalize the taking of up-skirt photographs, academics uphold the need for an extension of the Right to Privacy to the Public Sphere.[157] The same holds true with regard to face recognition.[158]

An extension of privacy to the public sphere appears to be desirable, especially with regard to up-skirt photography. Any case law or legislation attempting to extend the Right to Privacy to the public sphere must nevertheless strike a reasonable balance with the First Amendment and in particular with Art Speech. An undifferentiated or borderless extension might otherwise make the practice of Street Photography impossible and, consequently, raise doubts about its constitutionality.

B. A Look over the Pond

Both Austria[159] and Germany[160] recognize a personality right of an individual to its own image. In Austria, the publication of a photograph of an individual, even without his or her consent, is only legal if it does not violate the «legitimate interests» of said individual.[161] The language is purposefully vague and broad in order to allow the courts to analyze the publications on a case-by-case basis.[162] Over time, the Austrian Supreme Court has discerned four categories of cases which violate the «legitimate interests» of the individual depicted: (a) derogatory depictions;[163] (b) depictions violating the private life of the depicted;[164] (c) use for advertising purposes;[165] and (d) when the text accompanying the picture is derogatory.[166]

Those categories are not conclusive. Furthermore, the «legitimate interests test» constitutes only the first test which is applied to determine whether the publication of a photograph was lawful or not. Once a possible violation of «legitimate interests» has been determined, the courts undertake a balancing of interest.[167] The depicted's «legitimate interests» are balanced with the freedom of the press or the freedom of artistic expression.[168] Again, the language is broad and vague in order to allow the courts to conduct a case-by-case analysis.

gies Require a New Approach to Protecting Personal Privacy in Public Places, in: S. Ill. U. L. J. 2006/31, p. 69 et seq., 82 (2006).

155 CUADOR, From Street Photography to Face Recognition: Distinguishing between the Right to be Seen and the Right to be Recognized, in: Nova L. Rev. 2017/41, p. 237 et seq., p. 238.

156 Id. («Jurisprudence revolving around the topic of invasion of privacy in public spaces generally recognizes that, under most circumstances, one who reveals himself in public does not hold a reasonable expectation of privacy.»).

157 BEASLEY (Fn. 154), p. 90 et seqq; LUM, Don't Smile, Your Image Has Just Been Recorded on a Camera-Phone: The Need For Privacy in the Public Sphere, in: Hawaii L. Rev. 2005/27, p. 377 et seq., p. 407.

158 CUADOR (Fn. 155), p. 238.

159 § 78 UrhG.

160 §§ 22 et seq KUG.

161 § 78 UrhG; KODEK ANNELIESE, § 78 UrhG, para. 29, in: KUCSKO GUIDO/HANDIG CHRISTIAN (ed.), urheber.recht2, Vienna 2019.

162 Id.

163 See OGH 28.1.1997, 4 Ob 2372/96i (The plaintiff's picture was published in a news article, in which he was accused of being responsible for social regression).

164 § 78 UrhG; KODEK (Fn. 161), at para. 39 (such as photographs depicting the health, the sexuality, or family life of the depicted).

165 Id. at para. 43; see eg OGH 3.4.1990, 4 Ob 16/90.

166 § 78 UrhG; KODEK (Fn. 161), at para. 47.

167 RIS-Justiz RS0077898; § 78 UrhG; KODEK (Fn. 161), at para. 69.

168 Id.

Similarly, in Germany, photographs may only be published if the subject gives its consent.[169] However, multiple exceptions exist. Consent is not required in the following cases: (a) if the individual is not the main subject of the photograph;[170] (b) if the photograph is taken at a demonstration, parade or other public event;[171] or (c) if the publication serves the purpose of furthering the expression of art.[172] These exceptions are, however, not applicable, if the publication violates the «legitimate interests» of the depicted.[173] German law uses the same broad language as Austrian law and therefore allows courts to conduct case-by-case analysis.

This case-by-case approach may yield unpredicted and unfavorable results. In a case before the Regional Court Berlin, renowned photographer Espen Eichhöfer had taken a picture of a lady in a leopard coat carrying shopping bags near the «Bahnhof Zoo».[174] The photograph was exhibited by the gallery C/O Berlin.[175] However, not in its showroom but rather on pegboards spread across the city.[176] The lady sued for violation of her personality right to her own image.[177]

The Court concluded that the publication of the photograph violated the plaintiff's personality right.[178] It reasoned, that an individual's private sphere does not only extend to location but also to activities.[179] The plaintiff may very well have been on a public street while her photograph was taken, however she was conducting purely private business.[180] Such private conduct in public forms part of an individual's private sphere and may not be invaded – not even by art.[181]

The Regional Court in Berlin has, thereby, broadly extended an individual's privacy to the public sphere. The decision remains very controversial and is, by some, hailed as the «end of Street Photography in Germany».[182] It appears that the undifferentiated extension of the Right to Privacy to the public sphere may, in fact, not be the best solution to the problem presented.

VI. Conclusion

The Right to Privacy is the result of a call for a change of law caused by technological innovation. While it is still a relatively young legal concept, it appears that it is in fact outdated. New technologies present even greater threats to an individual's privacy. It may, therefore, very well be time for another change of law, which broadens its applicability.

Any legislative effort to expand the Right to Privacy's scope of application must nevertheless strike a reasonable balance between an individual's privacy and the First Amendment. An undistinguished expansion could render certain forms of art, such as Street Photography, illegal.

The illegality of Street Photography would not only make a very interesting and compelling form of art vanish. It would also deprive the general public of valuable and important visual historic evidence, which documents day-to-day life in a certain period of time. As a result, a broad and undistinguished expansion of the Right to Privacy is all but desirable and should definitely be avoided.

169 § 22 KUG.
170 § 23 (1) (2) KUG (Landscape pictures which feature individuals are, for instance, not prohibited from publication).
171 § 23 (1) (3) KUG.
172 § 23 (1) (4) KUG.
173 § 23 (2) KUG.
174 LG Berlin, Urteil vom 03.06.2014 – 27 O 56/14.
175 Id.
176 Id.
177 Id.
178 Id.
179 Id.
180 Id.
181 Id.
182 DIEZ GEORG, Boom, gelöscht, verschwunden, in: Der Spiegel from Oct. 20, 2014; KALKREUTH ULF, Das Ende der künstlerischen Straßenfotografie?, in: Das Erste from Dec. 12, 2014.