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The Participants

Academic guiding text



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Abstract

While universities increasingly offer institutional support for academic filmmaking, in the specific case of ethics this support can sometimes become an impediment to creativity. The requirement to follow comprehensive university ethical procedures - which are usually developed with great care and attention to the needs of researchers but with little or no focus on creative practice research - might stymie the artistic practice of filmmakers. My video *The Participants: a reflection on the ethics of smartphone filmmaking as research* aims to offer a provocation intended to challenge university practitioner-researchers to consider the ethics of their practice, but also, at the same time, a provocation to university ethics protocols and procedures. Specifically, the film seeks to encourage the viewer to reflect on the ways in which filmmaker researchers working in public places might better consider the ethical issues raised by their practice, especially when subsequently employing (and manipulating) footage of individuals who have not given their consent to be filmed. For *The Participants* I used an iPhone 11 to capture video images of tourists videoing with their smartphones at Grand Central Station, New York.

Keywords: Ethics, filmmaking, smartphones, documentary, creative practice

Guiding text

While universities increasingly offer institutional support for academic filmmaking, in the specific case of ethics this support can sometimes become an impediment to creativity. The requirement to follow comprehensive university ethical procedures - which are usually developed with little or no focus on creative practice research - can stymie the artistic practice of filmmakers. My video *The Participants: a reflection on the ethics of smartphone filmmaking as research* aims to offer a provocation intended to challenge university practitioner-researchers to consider the ethics of the practice, but also a provocation to university ethics protocols and procedures. Specifically, the film seeks to encourage the viewer to reflect on the ways in which filmmaker researchers working in public places might better consider the ethical issues raised by their practice, es-

pecially when subsequently employing (and manipulating) footage of individuals who have not given their consent to be filmed.

For *The Participants* I used an iPhone 11 to capture video images of tourists videoing with their smartphones at Grand Central Station, New York (a major US tourist landmark). In the station I noticed what Timan and Albrechtslund term ‘the recently ubiquitous presence of smartphones’ (Timan and Albrechtslund 2015, 854). I was creatively inspired to video people videoing with their smartphones. On that day (8 October 2022), in that moment, at Grand Central Station, these participants were not aware of my aims for my footage, and I was not aware of their aims for theirs. At that stage, I had no intention of sharing my footage or developing it into a research video. I was merely inspired to video.

The Participants features an initial onscreen citation: “Every time a film is shot, privacy is violated.” (Rouch 2003, 88). The film offers several more onscreen citations from key writers on filmmaking ethics. It draws on Calvin Pryluck’s important, lasting work on ethics and filmmaking. For example, the video cites Pryluck’s comment: “While one can argue about whether we can even know what really happens, inevitably in filming actuality, moments are recorded that the people being photographed might not wish to make widely public.” (Pryluck 1976, 256). *The Participants* also cites the work of Brian Winston (2000, 158), who writes about four points to consider for “ethical risks” when documentary filming:

- What sort of person is being filmed? (That is, how well-known or public a personality?)
- How socially deviant is the action being filmed?
- How public or private is the location of the action?
- How widely will the final documentary be seen?

Jay Ruby also acknowledges the filmmaker’s responsibility towards their participants (1988). But several other writers consider it to be impossible to inform potential participants completely about all risks involved in participating (see Becker 1988, Gross et al. 1988, Katz and Milstein Katz 1988, Nichols 1991, Pryluck 1976, Rosenthal 1988, Winston 1995, 2000). Michael Renov explores the tensions inherent in the “pitting of ethics against epistemology” (Renov 2004, 161). In bringing together ethics and epistemology,

Renov appears to recognise the fact that these are usually considered to be two distinct philosophical domains, and that ethics can sometimes be seen as constraining epistemic activity. In the specific case of filmmaker researchers, ethical concerns might be a brake on creativity. Other writers engage with the issues raised by participants in films being unable to consent to their participation. For example, Garnet C. Butchart argues that “Because one cannot fully predict the reception of the final picture and therefore the degree to which participants will look favorably on their involvement, the only truth to be disclosed is the presence of the camera.” (Butchart 2006, 444)

Timan and Albrechtslund helpfully argue, ‘Once the record-button is pressed, one is in some form or another participating in surveillance by recording a human activity of that night out. Once material is shared, it becomes researchable and indexable by many other actors.’ (Timan and Albrechtslund 2015, 856) I hope my video might contribute to existing research on the experience and influence of smartphone technology on public spaces, by reflecting thoughtfully on tensions between ethical concerns surveillance and the freedom to create (see Castells et al., 2007, Green 2002, Katz and Aarkus 2002).

My manipulation of the raw footage — and my specific employment of slow-motion footage and freeze frames at moments when participants on the station concourse notice me filming them — are designed to be provocative. It is hoped that these moments might facilitate a critical consideration of the ethical dilemmas of documentary filmmaking, and, in particular, of the limitations of participant consent. If the reaction of participants to being filmed depends on their nature of the relationship between filmmaker and subjects and on the degree to which they have been genuinely involved in the filmmaking process, then I would argue that my participants were no more aware of being filmed on the station on 8 October 2022 than I was. But I accept that the aestheticization of these images through the formal devices of slow-motion and freeze frame, and the sharing of this video online in an academic journal, certainly raise ethical questions.

I did not seek legal advice on making this video. However, on researching the legal ramifications of filming the public in the US, I discovered that filming people in public without intent to use the

footage for commercial use is generally legal in every state in the US, including New York. The Grand Central Station website currently (January 2024) states:

Anyone is free to take pictures or video with a handheld consumer camera inside Grand Central Terminal. However if you will be using professional equipment, like a tripod, light, or stabilizer, or if you will be using the content for commercial purposes, you must complete this Permit process to file a Grand Central Terminal Still Photography/Film Permit Application. The Film Office issues permits to productions filming on location in the City of New York and provides free police assistance, free parking privileges and access to most exterior locations free of charge. Not all filming activity requires a permit. (<https://grandcentralterminal.com/filming-photography/>)

There is no legal protection where there is no reasonable expectation of privacy. Filming people in the US is a matter of state law, not federal law. But to date, no state has successfully made a law that makes the practice of filming the public illegal without immediately facing First Amendment free expression challenges. The only prohibitions that appear to be in place for filming the public in the US occurs where people have a legal “expectation of privacy” (dressing rooms, bathrooms, locker rooms, etc.).

Through undertaking this research, my overall position on the ethics of filming people without their consent — especially with a smartphone — has come to chime with Alan Rosenthal’s point as articulated as follows (and cited in my video): “the essence of the question is how filmmakers should treat people in films so as to avoid exploiting them and causing them to have unnecessary suffering” (Rosenthal 1988, 245). Similarly, I agree with the academic filmmaker Catherine Gough-Brady (2022), who has recently made a sensible argument about her own research practice: “As a documentarian, my ethical focus was on those on the other side of my lens, and I adhered to that adage of ‘do no harm’ that Patricia Aufderheide, Peter Jaszi, and Mridu Chandra found is common among documentary filmmakers (2009).” But I repeat that the purpose of my video is less to demonstrate these ethical positions than to offer

a provocation to university practitioner-researchers to consider the ethics of the practice, and to university ethics committees to consider the agility of their protocols with regard to the actual conditions and uncertainties of creative projects.

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