

Flashmobbing and the Law

✘ Following the flashmob on Multrees Walk last week we asked one of Scotland's leading firms of solicitors to offer their views on the legality of the flashmob.

Thomas Murdock of Edinburgh Solicitors, Tods Murray LLP, writes:-

“Flashmobbing is the school of fish to the shark of the law. Just as the seemingly impenetrable ball of sardines appears to dwarf and confuse its many-toothed enemy in a sinuous watery dance, on closer inspection, individuals are vulnerable to being picked off. So taking part in a flashmob may appear a safe activity, but is still subject to predatory esoteric extrapolations of current law. So before you head out fishing for trouble, here's something to get your teeth into.

What is flashmobbing? It could be considered the modern-day version of what mid-century Pop Artists Jim Dine and Claes Oldenberg might have termed as a 'happening'. It's the nebulous practice of suddenly descending en masse on a specified target, usually doing something rather unusual and then dispersing. Polymorphously dancing, stripping off for a street artist, photographing a particular person or place, singing, jumping, shouting, chanting, it is mostly facilitated by dedicated internet sites or chatrooms, and often under the banner of protest or exercising civil liberties.

Cynics contend the flashmob has become the canny marketing ploy du jour. In May this year a Bangra flashmob danced on Broadcasting House in an attempt to save the BBC Asian Network. Another included a 4,000 strong flashmob dance at Victoria Station in London, where bemused commuters grappled with their skinny lattes to make sense of the event. More locally, a group of photographers descended on Multrees Walk in Edinburgh this month to exercise their right to take

pictures in a public place. Our earlier article about that event is [here](#). Is it art or is it protest? It's certainly a strange fish.

Before you dive in, there are some legal implications you should be aware of. Although nothing specifically prohibits the flashmob, the actions taken may draw the attention of the eyes of the law. What are you getting involved in? Do you know anyone else attending and who the event organiser is? Are you attending privately or in some representative capacity? Flashmobs are variously overt, audacious or perhaps even offensive, and at other times discrete or unnoticeable, other than between those involved silently sharing a wry smile or nod of acknowledgment. Will it be a peaceful demonstration or will you become embroiled in a protest?

If you're flashmobbing with your camera, be careful who you take a picture of. The Counter-Terrorism Act 2008 contains a provision in section 76 that it is an offence to elicit, publish or communicate information about a member of the armed forces, a member of any intelligence service or a police constable. That applies to taking photos or recording video. So be very wary about hanging around a certain well-known building at Vauxhall Cross with your 15 megapixel out.

Privacy must be borne in mind. Although there is no single act in UK legislation that enshrines privacy, various human rights treaties recognise privacy. Article 8 of the European Convention on Human Rights articulates privacy by enshrining the right to "private and family life". This has been used successfully by the likes of JK Rowling in protecting her family from gaze of the zoom lens. Similarly, if you exact a pattern of flashmobbing on a specific individual, The Criminal Justice and Licensing (Scotland) Act 2010 dictates that you could be guilty of the offence of stalking. Various other scenarios could include being charged with the common-law offence of breach of the peace, assault (whether verbal or physical), or obstruction.

You may be small fry, but you can still get into deep water.”

Thomas Murdock works with the Media and Entertainment team at Tods Murray where the head of department Richard Findlay is a keen photographer himself. Findlay wrote about the perils of this hobby in an article for The Firm magazine entitled “Life Through a Lens, Keeping Clear of a Life Sentence” which you can read [here](#).

Over the last 25 years, Findlay has built up a reputation in the field of entertainment law and is still widely acknowledged as having a leading practice in Scotland in this area being active in film and TV, theatre, publishing and music.