



# Society for Creative Anachronism Ltd (Australia)

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Meeting	AGM	Date	April 12 2019
Ref	2019.1	Paper	Live Streaming

## Live streaming at SCA events.

### Purpose

To solicit submissions from SCA membership within Australia regarding SCA Ltd policy on live streaming at SCA events.

### Background

The 'Crown-a-nation' Midwinter Crown Tournament and Coronation event held in 2014 was the first event (to the current Board's knowledge) where live streaming occurred in Lochac, organised by the college of St Andronicus, and it was streamed by more than 100 people online. Since then such instances of live streaming have occurred on an ad hoc basis with no set policy for review or approval, other than the necessary overlap which falls within the Social Media Policy (<http://sca.org.au/wp-content/uploads/2015/04/Social-Media-Policy-2015.pdf>).

On April 15 2018, the Board of SCA Ltd provided the following statement:

*"It is the position of the Board of SCA Ltd that no live streaming of video from any event be undertaken without the written consent of all participants in attendance at that event.*

*This includes the proposed live streaming of video from Rowany Festival.*

*While the Board supports the promotion of the SCA to the wider community, we believe that there are too many potential risks associated with the live streaming of events, such as the filming of minors without proper permission, the use of someone's image without their written consent, as well as the difficult nature of controlling the content of a live broadcast. These concerns apply to all events but especially at larger events such as Rowany Festival."*

This statement was made in response to discussions and requests for live streaming at Rowany Festival 2018, in conjunction with the Crown Tournament to be held at the same site.

At the 2018 AGM, questions were raised on this topic. The SCA Ltd Board acknowledged the complexity of the issue and undertook to engage in further review before formalising a policy.

### Current Situation

Current review of the issues related to a policy on Live Streaming has outlined the following points for consideration. Such a policy could range from simply translating legislative requirements into SCA context, through to going beyond that to impose additional restrictions on the basis of organisational risk mitigation and protection of members. At this point in the review, while work has been undertaken on multiple versions of a draft policy, a consensus within the SCA Ltd Board of Directors has not yet been reached. The SCA Ltd Board of Directors must maintain a generally

risk averse stance to the protection of the organisation, however in order to best represent the interest of the members, submissions from members are sought to inform this policy.

Any SCA Ltd policy is deemed to be additional to legislative requirements.

## Issues

### Photography and the law

These requirements tend to be state based, so should be confirmed with individual state laws. The factors related to whether a photo (or video recording) is legally taken relate to where the photo was taken, and the actual or intended use. A photo taken on public property, or property you own/control, is generally legal. If you are under contract with the owner/operator of a location (such as the ticket contract for a concert), legally the terms of that contract apply, which may include a prohibition of photo taking. A person has no copyright on their own image.

If an image is recorded with the intent of being used for a commercial purpose, a release form should be signed, however if it is not being recorded for commercial purpose, consent is not legally required.

Images may be legally published without permission if they are not:

- Defamatory;
- Indecent, offensive or demeaning;
- Used for a commercial purpose.

However, photographs must not be taken or published if an identifiable individual's identity falls under a court order (e.g. child custody protection order, witness protection). Practically, this can only be achieved by communication with the individuals being photographed (or their guardian, in the case of a minor).

### Public vs Private place

Legal requirements and expectations of privacy can differ dependent on whether it is a public or private space. While most event sites are privately owned, this does not mean that they are by definition a private space. Definitions and legislation are state based, so should be confirmed with individual state laws, however are similar across our various jurisdictions.

Section 8 of the Crimes Act 1900 (NSW) defines a 'public place' as:

*'...a vessel or vehicle only, or a room, or field, or place, ordinarily private, was at the time used for a public purpose, or as a place of common resort, or was open to the public on the payment of money or otherwise.'*

[http://www5.austlii.edu.au/au/legis/nsw/consol\\_act/ca190082/s8.html](http://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s8.html)

And in section 3 of the Summary Offences Act 1988 (NSW), a public place is:

*'(a) a place (whether or not covered by water), or (b) a part of premises, that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons, but does not include a school.'*

[http://www5.austlii.edu.au/au/legis/nsw/consol\\_act/soa1988189/s3.html](http://www5.austlii.edu.au/au/legis/nsw/consol_act/soa1988189/s3.html)

If an event held on private land is open to the public on the payment of money or other considerations, then it is a public place under these definitions - it would be reasonable to assume that most if not all SCA event would fall within these definitions of a public place. Arguably, a private campsite might be deemed a private place.

## Legal right to privacy/Privacy Principles

Within Australian law there is no prescriptive “right to privacy”, however the Australian Privacy Principles (APPs) outline how most Australian private/not-for-profit organisations must handle personal information which includes photographs and videos where a person’s identity can be ascertained. If the individual’s religious belief or ethnic/racial origin can be ascertained, then this information is considered sensitive information. (Full list of information that is considered sensitive can be found here: <https://www.oaic.gov.au/privacy-law/privacy-act/australian-privacy-principles> )

These Privacy Principles apply only to organisations, and not to individuals acting in a personal capacity.

While the SCA Ltd currently falls below the turnover for which the Privacy Act is enforced, the SCA Ltd Board has historically committed to compliance, and as such there is an obligation to do so. Under these principles, the SCA Ltd organisation, or anyone acting on behalf of the organisation, may only collect images of identifiable individuals if it “reasonably necessary for one of [the SCA Ltd]’s functions or activities.”

Under the Privacy Principles, if the SCA Ltd is collecting photos/videos, the following points apply:

- Consent is required if the image records sensitive information about the individual, otherwise it is not required.
- Individuals must have the option of not being identified.
- The organisation must take reasonable steps to ensure that individuals are aware it is being collected, and for what purpose it will be used, and how they can get access to it later.

## Minors

The filming, broadcast and publication of minors is legislated in all Australian jurisdictions, primarily in relation to the sharing of child exploitation material online. While the thought of filming children playing medieval games, fighting boffer tournaments or generally “being kids” in an SCA context plays well with many there are serious concerns around consent and control of the footage once streamed.

Even with clearly marked and/or communicated zones of live streaming, there is the possibility children old enough to play unsupervised may inadvertently be filmed without parental consent or knowledge. While like for adults, mundane law does not require consent for the filming of minors in public spaces, the recording of minors is likely to be seen as of greater sensitivity- and appropriately so. Any system of marking an area for live streaming should be made clear and sufficient that parents and guardians were able to explain to their children that they were not to be within said area.

Further considerations must be made where the location of children subject to protection orders or similar situations where said children have been removed from one or more parents and placed into care is concerned. Unwittingly providing the location of a child to an estranged and potentially dangerous parent or other person subject to an order is an offence in and of itself, that being aiding and abetting the breach of an order. While an argument could be made that said breach was unintentional it would still have the potential to rebound badly on the public perception of the SCA’s child protection policies and the general safety and welfare of children within the group.

## Accidental publishing of a tragedy

Across the broad spectrum of SCA activities, one of the most photographed and recorded is combat activities. Like any sporting activity, injuries can and do happen. These vary from the inconsequential through to the very serious. Within any review of photography and recording, and especially one of live streaming, it must be considered that the recording of a tragedy involving the death or very serious injury to a participant (while statistically very rare) during the activity is a possibility.

Without measures in place to delay the broadcast of the live streaming footage, it would be possible that such an incident would go out live onto the wider internet. Aside from the moral and ethical questions raised, this also opens the SCA to issues of liability for trauma, seizure of footage and equipment for evidentiary purposes and potential lawsuits by external parties.

The SCA Ltd Board is not currently aware of accessible streaming technology which allows the delay of broadcast. Should such an accessible technology exist or be developed in the future, it would go a long way to mitigating this risk, as it allows the “decision point”, where the individual responsible can deem the content no longer suitable for broadcast.

This risk does not exist as substantially with the publication of more traditional video recording, as the decision to publish is made informed by the content recorded - though there isn't anything in any current policy to limit the publication of such content after the event.

## Event attendance

The demand for live streaming has been most notable amongst the membership for live streaming of important combat related activities, especially Crown tournaments. While combat is just one element within the activities of the SCA, the importance placed on these tournaments in particular raise its interest level to members across the Kingdom. There is no inherent right amongst members not in attendance to watch such an activity, however the argument has been made that live streaming provides less-abled or members in financial hardship a way to partake in some small way of the most important events of the Kingdom calendar.

## Consent and revocation of consent

While legally consent for recording is only required for recordings used for commercial purposes, within the context of SCA events, a policy requiring consent to be given could be considered to increase the protection of the interests of members. Details of activities, timing and location of the live streaming activities could be advertised in advance of the event, and made available at sign-in and/or within housekeeping announcements by the Steward.

If consent has been given, the member could retain the right to withdraw consent at any time regardless of circumstance. What this might actually look like within the activities of the event would need to be considered - whether this means they leave the area of live streaming, or due to constraints of the event the live streaming is shut down and relocated so as to prevent that person being filmed.

There is the potential for some kind of litigious activity to be undertaken by a person so filmed however this would be a civil matter between the parties involved. There is potential for offences against the Surveillance Devices Act or its State equivalents or the Privacy Act however the chance of them being utilised is probably low.

## Intrusion of modern equipment

Many members dislike the intrusion of mundanity into their medieval experience and sufficiently complex equipment to provide good-quality live streaming footage and sound may be so - however increasingly the hardware in a modern smartphone may be deemed suitable. These factors also relate to non-live streaming photography and video recording. There are no current restrictions in this area, relying instead on the courtesy of members in limiting this intrusion.

## Known World approaches

To the Board's knowledge, there is no policy at Society or Kingdom level within the Known World relating to Live Streaming. The Society Social Media Policy (which does not under the SCA Ltd affiliation agreement apply in Australia) has no mention specifically of Live Streaming as of its 2018 update, and offers a somewhat dated (2013) tutorial for the best practice of live blogging an event via Facebook or similar mediums (<https://sca.org/docs/pdf/FacebookTipsheetLiveblogginganEvent.pdf>), with the suggestion of the inclusion of video - the assumption not being live video as it predated Facebook Live, if for no other reason.

However, there are impromptu live streams that occur at various large events in the central Kingdoms, notably at Pennsic and at some Kingdoms' Crown Tourneys. These have in most cases been streamed directly from mobile phone equipment, rather than professional set-ups, and are generally noted to be being provided by an individual, rather than on behalf of the organisation.

## Non live streamed photography and video recording

While live streaming increases the immediacy, and the perception of a lack of control, most of the factors related to live streaming are applicable to the recording and publication of any image. The SCA has no policies in this area, beyond the overarching principle that mundane law always comes first - and indeed, in most cases, the SCA does not need to have a policy where mundane law was sufficiently clear in a SCA context. Even considerations that might be seen as more specific to live streaming - such as the accidental filming of a tragedy - cannot be excluded as a factor for non live publication, unless such a policy be extended to cover any and all photography and videography.

## Options

Below are some of the broad options under current consideration, however these should not be seen as an exclusionary list. The Board welcomes alternative suggestions, as well as other factors not outlined in this paper that should be considered when formulating a policy.

1. A complete ban on live streaming at any SCA events held in Australia;
2. Allowing partial live streaming in restricted circumstances, with a blanket ban on the live streaming of any combat related activity, those being armoured combat, rapier, archery or equestrian;
3. Allowing live streaming of all activities with guidelines in place to allow members to make informed decisions regarding whether they wish to be filmed;
4. The extension of such a policy to cover photography and videography at SCA events more broadly;
5. Live streaming allowed with no controls beyond mundane law and the current social media policy.

## FOR INFORMATION ONLY

SCA Ltd Australia) requests submissions on the above to be sent to [secretary@sca.org.au](mailto:secretary@sca.org.au) by May 24. These submissions will be for internal SCA Ltd Board use only, and will be used to take the views and priorities of membership into account in the scoping of a draft policy on Live Streaming at SCA events. Commentary will then be received on the draft policy.

### Reference

<https://www.oaic.gov.au/privacy-law/privacy-act/australian-privacy-principles> <https://www.artslaw.com.au/info-sheets/info-sheet/filmmaking-with-a-smartphone-or-hidden-camera/>

[https://www.artslaw.com.au/images/uploads/Street\\_photographers\\_rights\\_2016.pdf](https://www.artslaw.com.au/images/uploads/Street_photographers_rights_2016.pdf)

<https://www.artslaw.com.au/info-sheets/info-sheet/filming-in-public-places/>

<https://www.sydneycriminallawyers.com.au/blog/what-does-the-law-say-about-filming-someone-without-their-consent/>

<https://www.smartsafe.org.au/legal-guides/legal-guide-surveillance-legislation-nsw>

<https://www.alrc.gov.au/publications/69.%20Particular%20Privacy%20Issues%20Affecting%20Children%20and%20Young%20People/taking-photographs-an>

<https://sarafhawkins.com/legal-live-streaming-in-public/?fbclid=IwAR1mjSm8XZAZo2RWNJmE1P-3a9Vpz389RCnZjIz-tBQNTmEJcoxsmYRLyw0>