



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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BY ELECTRONIC AND FIRST CLASS MAIL

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June 27, 2007

Julianne Cho
Assistant Commissioner
Mayor's Office of Film, Theatre & Broadcasting
1697 Broadway
New York, N.Y. 10019

Re: Proposed Film Permit Rules

Dear Ms. Cho:

On behalf of the New York Civil Liberties Union, I write to provide comments on the proposed film permit rules published in the May 25, 2007 City Record. As I assume you are aware, the proposed rules were prompted by a federal lawsuit brought by the NYCLU in *Sharma v. City of New York*. That case, which we filed on behalf of an independent filmmaker who had been denied a film permit by the MOFTB for use of a hand-held video camera, challenged the lack of written film-permit rules, the scope of the unwritten permit scheme, and the insurance obligations imposed by the MOFTB.

Because we had extensive negotiations with the City about these proposed rules, we are quite familiar with them. And for the most part, we believe they are reasonable. In particular the rules, as compared to prior MOFTB practices, are notable for generally exempting from the permit scheme those using hand-held cameras, for exempting from the scheme photography or filming at protests and demonstrations, and for eliminating onerous insurance requirements.

Nonetheless, we strongly object to one provision that would require government permits for and invite police intervention into a large amount of casual photography. We also object to a provision governing the use of single tripsods. Our objections are as follows:

1. The requirement that two or more people using only a hand-held camera obtain a film permit to photograph or film in a single location for more than 30 minutes is unreasonable, unlawful, and unenforceable- Proposed section 9-01(b)(1)(ii) would require an MOFTB permit for anyone using only a hand-held camera if the photography or filming "involv[ed] an interaction among two or more people at a single site for thirty or more minutes."¹ If adopted, this provision would sweep into the MOFTB permit scheme large numbers of people,

¹Section 9-01(b)(2)(i) creates an express exception for such photography or filming that lasts less than 30 minutes.

particularly tourists, who congregate in public places throughout New York City and casually photograph or videotape.

To take just one example, New York has many venues -- like Times Square, Rockefeller Center, or Ground Zero -- where large numbers of people routinely congregate for more than half an hour and photograph or film. Similarly, there are numerous locations where members of the public, in groups of two or more, simply stand in line for more than 30 minutes on public sidewalks seeking to gain entry into tourist locations or other attractions. We see absolutely no reason why, for instance, a family visiting Ground Zero or standing in line outside the Empire State Building for half an hour should be required to obtain a permit from the MOFTB to snap casual photographs or to use a camcorder.

More to the point, perhaps, we are unaware of any legitimate interest the City would have in requiring permits in such circumstances. Indeed, we believe the government's interest in such circumstances is so insubstantial as to render the proposed permit requirement unconstitutional. And the fact that a person in these circumstances would also be subject to the proposed insurance requirements of section 9-03 simply adds to the unlawful burden of the proposed scheme.

In addition to being unreasonable and unlawful, we believe this proposal creates insurmountable enforcement problems. As an initial matter, we suspect the New York City Police Department will have little interest in issuing summons to or even arresting tourists who happen to be snapping casual photographs in a location for more than half an hour. Even assuming the NYPD were anxious to take this on, police officers would be put in the position of having to stand around monitoring tourists to determine whether the "thirty or more minutes" had elapsed to trigger the permit requirement and whether they had been photographing or filming within a 100-foot zone, which is how the proposed rules define a "single site."

The simple fact of the matter is that most people subject to this provision would never seek a permit (though, if they did, your office would be overwhelmed), and most of this activity would never result in enforcement action. Rather, if adopted, the scheme would be only occasionally and selectively enforced, which would just compound its unlawfulness.

In light of these considerations, we call on the MOFTB to eliminate entirely the requirement for a permit when a person is using only a hand-held camera, regardless of how long the person may be doing so.² To effect this, we propose eliminating all of section 9-01(b)(1)(ii) and all the language in section 9-02(b)(2)(i) after ". . . subdivision (a) of § 9-02" (starting with "provided that . . .").

2. The requirement that small groups using a single tripod for more than ten minutes obtain film permits is unreasonable, unlawful, and unenforceable- Proposed section 9-01(b)(1)(iii) would require an MOFTB permit for any person using a single tripod for photography or filming if it "involv[ed] an interaction among five or more people at a single site and the use of a single

²To the extent the City has concerns about prolonged photography of sensitive locations, the police of course are free to investigate such activity, regardless of any permit requirements.

tripod for ten or more minutes.”³ We believe that this provision would unnecessarily and unreasonably burden photography and filming.

We recognize that the placement of certain objects on public property can present concerns that would justify regulations and, in some circumstances, permit requirements. For instance, we have no doubt that the City can regulate and require permits for the placement of film-related electrical equipment on City sidewalks.

We do not believe, however, that the use of single tripods by small groups raises the sort of legitimate concerns that warrant a permit requirement. Given how common it is for tourists and other casual photographers to use tripods, we think the current proposal will extend the film-permit scheme to photography and filmmaking that implicates no meaningful governmental interests.

In addition, we believe that enforcement of this provision will prove to be very difficult. As with the handheld-camera rule, police officers will have to time the use of tripods, calculating whether ten minutes have elapsed, whether the groups has continued to be five or more, and whether the tripod use all took place within 100 feet. This all seems like an extremely poor use of police resources and again opens the door to selective and discriminatory enforcement.

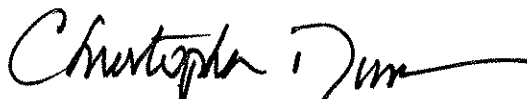
To the extent the City is worried about large groups blocking sidewalks or other public areas, enforcing the existing Penal Law provisions is the solution. We see no reason, however, to substantially burden First Amendment activity because it involves the use of a single tripod for more than ten minutes.

We therefore call on the MOFTB to eliminate entirely the restriction on the use of a single tripod. To effect this, we propose eliminating all of section 9-02(b)(1)(iii) and all the language in section 9-02(b)(2)(ii) after “. . . single tripod” (starting with “provided that . . .”).

* * *

If you or others have questions about our position, please feel free to contact me.

Sincerely,



Christopher Dunn

c: Assistant Corporation Counsel Mark Muschenheim
NYPD Deputy Commissioner for Legal Matters Andrew Schaffer

³Section 9-01(b)(2)(ii) creates an express exception for use of a single tripod for less than ten minutes by smaller groups.