Appendix D: Qualitative survey of ethical issues arising from the research.

The extensive equipment involved in the PDU: the CCTV cameras, wiring and recording equipment: were extremely obvious to other people. If I were to wear the PDU device without concealing it, I would become a focus of attention or spectacle in transit space, which would change the way I was perceived by passers-by. I envisioned other commuters encircling me and at best, waving to the cameras for example, or at worst, reporting me to the authorities. Both responses would impede and distort my efforts to capture my experiences as an ordinary commuter in transit space. The solution was to carefully conceal the PDU so I could wear it without causing attention. I therefore decided to investigate the ethical issues arising from the position to conceal the cameras during my recordings in public space.

The ethical investigation was conducted in a qualitative survey of artists, gallerists and curators over the first two years of this research project. Recorded interviews were conducted with 8 artists, 6 gallerist/curators. Interviews involved a one-hour discussion with each of the participants using the following discussion guideline. The open-ended questions were as follows:

1. What does the concept of ethics mean to you?
2. How do you relate your ethical ideas to art?
3. Have you ever received a complaint about any artwork or exhibition concerning ethics?
4. Are you aware of any laws or standards about ethics in artistic works?
5. Who bears the responsibility for the ethics in artistic works? How?
6. If a subject in an artistic work were to complain about their representation in a work, how would you respond?
7. Does the involvement of the artist as the subject in the work have any bearing on your consideration of the ethical issues?
8. Does the location of the artistic work have any bearing on your consideration of the ethical issues?
9. Do you consider any ethical issues about the representation of passers-by in these artistic works?
10. Have you created or exhibited artistic works that incorporate passers-by?
11. Do you consider ethical issues when creating/ selecting/ exhibiting/ selling artworks?
12. Do you know anyone else who has ever received a complaint about any artwork concerning ethics?

The responses to the survey showed that the concealment of the PDU device in my recordings in public spaces, and the inclusion of passers-by in the artworks were not cause for ethical concern. The justifications for this conclusion were twofold. Firstly, the respondents argued that artists are entitled to record passers-by in public spaces because of the prevalence of image capturing in modern society, with surveillance (such as security footage) and personal (holiday snaps, social photo-taking) image-capture part of the modern social fabric. Secondly, respondents strongly believed that ethical conduct in art practice is wholly concerned with the artist’s intention for the work. If the intention of the work was to capture an image (such as a street
scene) and a passer-by became an incidental part of that image, there was no ethical concern. As long as the intention was to capture the scene as opposed to the individual, most respondents considered the ethical issues were negligible. An overview of the participants and their responses to these questions is provided in the table of responses. Summaries of the combined responses are detailed below.

1. What does the concept of ethics mean to you?
Most interviewees considered ethics to be, in some form, a code of behaviour relating to one’s explicit or implicit responsibilities to other people. Examples range from honouring business contracts, to engendering trust between different stakeholders in the art community (artist-gallerist-curator-buyer), to not harming others.

2. How do you relate your ethical ideas to art?
When applying ethics to art respondents frequently brought up issues of trust and honesty, both in terms of interpersonal interactions (pertaining to conduct between individuals in the art world, or in business transactions) and content issues (such as honesty and truth in the messages of works and representations made about works/artists). Some responses also looked to the repercussions of an artwork, to its socio-political context or its educational qualities.

3. Have you ever received a complaint about any artwork or exhibition concerning ethics?
Eight respondents had received a complaint at least once, the other six had not. Of the eight positive responses, only one was in relation to a passer-by. Other causes for complaint related to ownership, display, censorship and content deemed ‘offensive’.

4. Do you know anyone else who has ever received a complaint about any artwork concerning ethics?
Most respondents answered in the affirmative. There were myriad causes for complaint cited, but a common theme was subject matter that was either considered offensive or was dealt with in a manner that offended some people. Other causes pertained to contract and business issues such as pricing, forgeries and payments. No cited examples related to bystanders or to the representation of passers-by.

5. Do you consider ethical issues when creating/ selecting/ exhibiting/ selling artworks?
Most respondents again replied positively. Obeying good and fair business practice was a commonly stated ethical concern, as was the message or merit of the artwork. Being aware of the possibilities of the work to offend the general public or the art world was also a stated concern, and the potential ramifications of the work itself (such as in Fiona Bowie’s example of artist Eduardo Kac’s genetic experiments).

6. Have you created or exhibited artistic works that incorporate passers-by?
Many respondents answered in the affirmative. Most positive answers were related to public performance or public studies, where engagement with passers-by was part of the work or was unable to be prevented. In her stated example, Fiona Bowie had passers-by sign release forms if their faces were clearly visible. In Thomas Schulter’s example, release forms and express consent were not considered necessary.
7. Do you consider any ethical issues about the representation of passers-by in these artistic works?
Most respondents answered in the negative, and the positive answers were in the frame of standard ethical principles, such as not causing harm or infringing on private lives. There were two principal justifications respondents provided for the representation of passers-by. First is the prevalence of image capturing in modern society, with surveillance (such as security footage) and personal (holiday snaps, social photo-taking) image-capture part of the modern social fabric. Second is the view that the intention of the work is crucial. A common response was that if the intention of the work was to capture an image (such as a street scene) and a passer-by became an incidental part of that image, there is no ethical concern. As long as the intention remains to capture the scene as opposed to the individual, most respondents considered the ethical issues to be minimal.

8. Does the location of the artistic work have any bearing on your consideration of the ethical issues?
Responses to this question were mixed. Many respondents answered in the negative. Some respondents answered in relation to cultural context, noting that different countries have different conceptions of what is offensive or valuable as art. In relation to public space, most respondents did not consider any ethical problems (except for the showing of possibly offensive works in public). Rupert Goldsworthy did note differences between different public spaces, such as between a street and a nudist beach.

9. Does the involvement of the artist as the subject in the work have any bearing on your consideration of the ethical issues?
Respondents answered generally in the negative. Some cited context as the determining issue, rather than the subject’s identity, when analysing the ethics of the work. Gerda Leopold noted that using the artist as subject can lead to fewer borders in artistic exploration.

10. If a subject in an artistic work were to complain about their representation in a work, how would you respond?
Most respondents would facilitate discussion between the aggrieved party and the artist in an attempt to explain the work, and thus (hopefully) get the individual to revoke their complaint. Some respondents would remove the complainant’s representation from the work if possible, and two (Andreas Schimanski and Volker Diehl) would take down the work if necessary. Conversely, several respondents said they would not take the work down or remove the image, and would only consider taking the work down if there was a legal claim or the image was a misrepresentation of the complainant.

11. Who bears the responsibility for the ethics in artistic works? How?
All respondents cited the artist as being either partially or wholly responsible. Respondents also included gallerists, curators, lawyers and owners as bearing partial responsibility, while some even extended that shared responsibility to include the entire art community.

12. Are you aware of any laws or standards about ethics in artistic works?
Ten of the fourteen respondents were aware of some laws/standards, ranging from “Thou Shalt Not Kill” (Milovan Markovic) to unwritten rules surrounding general conduct in the art world. Issues of legality were commonly represented in the answers, particularly in relation to payments, contracts, privacy and copyright.
<table>
<thead>
<tr>
<th>Question</th>
<th>Alexandra Saheb Gallerist</th>
<th>Andreas Schimanski Artist</th>
<th>Ann Noel Artist</th>
<th>Fiona Bowie Artist</th>
<th>Gerda Leopold Artist</th>
<th>Julie Prezewowsky Gallerist</th>
<th>Milovan Markovic Artist</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1. What does the concept of ethics mean to you?</td>
<td>Trust between gallery and artist.</td>
<td>How people relate to each other and to their actions.</td>
<td>A code of behaviour.</td>
<td>Not causing harm to others.</td>
<td>N/A</td>
<td>A certain quality or standard of behaviour.</td>
<td>As distinct from morality, it is consciousness of context.</td>
</tr>
<tr>
<td>Q2. How do you relate your ethical ideas to art?</td>
<td>Freedom to develop ideas.</td>
<td>Asking the right questions.</td>
<td>Not cheating, plagiarising or lying.</td>
<td>Something to consider, but not to prevent exploration.</td>
<td>N/A</td>
<td>As a gallerist, respect artists' rights, with mutual trust and honesty.</td>
<td>Be conscious about social and political context.</td>
</tr>
<tr>
<td>Q3. Have you ever received a complaint about any artwork or exhibition concerning ethics?</td>
<td>Yes, during an exhibition. Issue arose over disputed ownership.</td>
<td>Yes, people felt violated about exposure of nudity.</td>
<td>No.</td>
<td>Once, in relation to a passer-by reneging on a contract allowing their image to be displayed.</td>
<td>No.</td>
<td>No. But it is important to inform people about context.</td>
<td>Yes, from a feminist critique of an all-male portrait exhibition.</td>
</tr>
<tr>
<td>Q4. Do you know anyone else who has ever received a complaint about any artwork concerning ethics?</td>
<td>No.</td>
<td>Yes, regarding the use of homeless people as subjects.</td>
<td>Yes, regarding forgeries.</td>
<td>No, regarding content.</td>
<td>Eduardo Kac, genetic manipulation of animals and bacteria.</td>
<td>Yes, regarding perceived religious heresy and intention to hurt.</td>
<td>Regarding prices and selling, yes.</td>
</tr>
<tr>
<td>Q5. Do you consider ethical issues when selecting, selling or exhibiting artworks?</td>
<td>In relation to trust and interpersonal issues.</td>
<td>Yes, regarding the effect of the artwork on others.</td>
<td>Try to avoid offending people.</td>
<td>Yes, considering possible repercussions of bacterium produced.</td>
<td>No.</td>
<td>Prefer to show artwork with strong messages. Otherwise, no.</td>
<td>Yes, every time.</td>
</tr>
<tr>
<td>Q6. Have you created or exhibited artistic works that incorporate passers-by?</td>
<td>No.</td>
<td>Yes, in a public study.</td>
<td>No.</td>
<td>Yes, when faces were clearly visible, they signed releases.</td>
<td>Yes, where people couldn’t have been stopped from walking by.</td>
<td>No, it has never been an issue.</td>
<td>Yes, with public performances and works.</td>
</tr>
<tr>
<td>Q7. Do you consider any ethical issues about the representation of passers-by in these artistic works?</td>
<td>No. In ordinary life, we are filmed everywhere.</td>
<td>If somebody’s in the background, no.</td>
<td>Only if it is in a private, compromising position.</td>
<td>Not really. Do unto others.</td>
<td>No.</td>
<td>Not unless someone gets hurt.</td>
<td>If in the street, or the passer-by is not the focus of the piece, it’s ok.</td>
</tr>
<tr>
<td>Q8. Does the location of the artistic work have any bearing on your consideration of the ethical issues?</td>
<td>Depends on context.</td>
<td>No.</td>
<td>Respect for culture.</td>
<td>If it can lead to exploitation, yes.</td>
<td>Yes, because in foreign countries codes of behaviour are less well understood.</td>
<td>In public spaces, no.</td>
<td>Only in relation to showing in a public space.</td>
</tr>
<tr>
<td>Q9. Does the involvement of the artist as the subject in the work have any bearing on your consideration of the ethical issues?</td>
<td>N/A</td>
<td>Have to be sensitive regarding the subject’s feelings.</td>
<td>No.</td>
<td>Yes, due to the effect one work had upon a highly paranoid individual.</td>
<td>There are fewer borders.</td>
<td>Depends on whether it is in a public or private context.</td>
<td>No.</td>
</tr>
<tr>
<td>Q10. If a subject in an artistic work were to complain about their representation in a work, how would you respond?</td>
<td>Unless it were a mis-representation, no.</td>
<td>Apologise, then attempt to negotiate, then take the work down.</td>
<td>You can remove their representation from the whole artwork.</td>
<td>No, if it is simply the public being part of the work.</td>
<td>Delete their representation if possible.</td>
<td>Facilitate discussion between artist and subject.</td>
<td>N/A</td>
</tr>
<tr>
<td>Q11. Who bears the responsibility for the ethics in artistic works? How?</td>
<td>All elements of the artistic system/ economy bear some responsibility.</td>
<td>Artist for the production, owner for its use.</td>
<td>The artist.</td>
<td>The artist.</td>
<td>The artist.</td>
<td>Depends on context.</td>
<td>Depends on the context of where it is shown.</td>
</tr>
<tr>
<td>Q12. Are you aware of any laws or standards about ethics in artistic works?</td>
<td>Trust is the key issue.</td>
<td>Standards of open communication.</td>
<td>Unwritten laws regarding ownership and plagiarism.</td>
<td>Regarding relationships between artist and curator.</td>
<td>No.</td>
<td>N/A</td>
<td>Thou shalt not kill.</td>
</tr>
<tr>
<td>Question</td>
<td>Rupert Goldsworthy Curator</td>
<td>Satch Hoyt Curator</td>
<td>Scott Budzinsky Curator</td>
<td>Suzi Webster Curator</td>
<td>Thomas Schulte Gallerist</td>
<td>Ulrich Gebauer Gallerist</td>
<td>Volker Diehl Gallerist</td>
</tr>
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</tr>
<tr>
<td>Q1. What does the concept of ethics mean to you?</td>
<td>Behaviour that is somehow fair, correct and aware of particular social interrelations.</td>
<td>A group of standards to adhere to or not adhere to.</td>
<td>Associated with law and standards of behaviour.</td>
<td>A moral code concerning rights and responsibilities.</td>
<td>The value and message of the work, as well as business practice.</td>
<td>A codex of human behaviours.</td>
<td>N/A</td>
</tr>
<tr>
<td>Q2. How do you relate your ethical ideas to art?</td>
<td>Respect others' rights and ideas, both in terms of copyright and business.</td>
<td>With the African Diaspora, certain socio-political principles.</td>
<td>Relationships between artists, gallerists, curators etc.</td>
<td>It's important that people are able to choose whether to engage in an artwork or not.</td>
<td>The educational possibilities of art, as well as relations in the art community.</td>
<td>“The business of art is something you need to handle.”</td>
<td>Content</td>
</tr>
<tr>
<td>Q3. Have you ever received a complaint about any artwork or exhibition concerning ethics?</td>
<td>Yes, regarding a curatorial choice the artist didn't like.</td>
<td>Yes, with censorship of work in China.</td>
<td>No.</td>
<td>No.</td>
<td>Yes.</td>
<td>Yes.</td>
<td>Yes, regarding mistaken bestiality in a work.</td>
</tr>
<tr>
<td>Q4. Do you know anyone else who has ever received a complaint about any artwork concerning ethics?</td>
<td>Yes, regarding business dealings and payments between galleries and artists.</td>
<td>N/A</td>
<td>Yes, regarding perceived offensive material and regarding pricing.</td>
<td>Yes, regarding perceived exploitation of homeless subjects.</td>
<td>Works that are considered immoral, yes.</td>
<td>Yes, “but mostly it’s completely stupid” and due to insecurity.</td>
<td>In the 60s and 70s, not really any more.</td>
</tr>
<tr>
<td>Q5. Do you consider ethical issues when creating/ selecting/ exhibiting/ selling artworks?</td>
<td>Yes.</td>
<td>Yes.</td>
<td>Yes, regarding supporting the artists financially through good sales.</td>
<td>No, not really.</td>
<td>Yes, regarding the educational properties of the work, as well as on price of artworks.</td>
<td>Yes, upon the value of the art and the conduct of the sale.</td>
<td>No. Authentication is more important.</td>
</tr>
<tr>
<td>Q6. Have you created or exhibited artistic works that incorporate passers-by?</td>
<td>Yes.</td>
<td>Yes, collecting soundscapes of public areas with a hidden microphone.</td>
<td>Yes, in public spaces.</td>
<td>If the passer-by’s identity was not known, images were only incidental or for short periods.</td>
<td>Don’t see any problems.</td>
<td>Yes.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Q7. Do you consider any ethical issues about the representation of passers-by in these artistic works?</td>
<td>There haven't been any provocative representations.</td>
<td>Yes.</td>
<td>No.</td>
<td>Due to the context, they were choosing to participate.</td>
<td>Yes. The intention of the work is important.</td>
<td>“If it doesn’t hurt a private freedom”, no.</td>
<td>Yes, respect people's feelings.</td>
</tr>
<tr>
<td>Q8. Does the location of the artistic work have any bearing on your consideration of the ethical issues?</td>
<td>Yes, there is a difference between a street and a nudist beach.</td>
<td>No.</td>
<td>Depends on what the artist is saying with the work, not on where it is made.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Yes, considering censorship in China or the Middle East.</td>
</tr>
<tr>
<td>Q9. Does the involvement of the artist as the subject in the work have any bearing on your consideration of the ethical issues?</td>
<td>The context is what matters.</td>
<td>No.</td>
<td>Not if it is on the artist’s own volition.</td>
<td>No.</td>
<td>N/A</td>
<td>If a passer-by is included incidentally, there is no problem.</td>
<td>No.</td>
</tr>
<tr>
<td>Q10. If a subject in an artistic work were to complain about their representation in a work, how would you respond?</td>
<td>If it’s just an incidental passer-by, give them a print of the work, if necessary sit them down with the artist.</td>
<td>Would take it out.</td>
<td>If there are no legal issues, there is a right to show the work.</td>
<td>Would take it out.</td>
<td>Explain the reasons behind the work, if necessary get them in contact with the artist.</td>
<td>Protect the artist, engage a lawyer.</td>
<td>Try to explain it as an artwork, take it down if necessary.</td>
</tr>
<tr>
<td>Q11. Who bears the responsibility for the ethics in artistic works? How?</td>
<td>Rarely is it the subject, more commonly the artist or gallerist.</td>
<td>The artist.</td>
<td>The lawyers, and the art community as a whole.</td>
<td>Everybody.</td>
<td>Both artist and gallerist.</td>
<td>Everyone.</td>
<td>The artist</td>
</tr>
</tbody>
</table>
Deutsche Bahn AG
Konzernmarketing und Kommunikation
Medienbetreuung Film/Fernsehen
Caroline-Michaelis-Str. 5-11
10115 Berlin

Permit for Filming on DB AG Grounds and Property

<table>
<thead>
<tr>
<th>DB AG Employee</th>
<th>Tel Fax</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kurt Bingen</td>
<td>+49(0)30 297-58224 49(0)30 297-58229</td>
<td>24th January 08</td>
</tr>
</tbody>
</table>

Producer, Agreement with the above property
of Trevor Morgan, 22th January

We confirm your application pursuant to the following conditions:

- **a)** Film: X
- **b)** Radio / Photo

Production Subject: research project “Appropriating Space – Place in Transit”

| Location: Trains of the S-Bahn Berlin and Station | Personnel assigned by producer: Trevor Morgan |

This permit is issued in the interests of the camera team’s safety and to ensure smooth operations by DB AG. It refers solely to the above location at the above time and for the above personnel assigned by the producer. The permit also serves as authorisation/identification on location. The producer or his staff are obliged to report to the DB AG contact on location and to present this permit of their own accord.

The safety and uninterrupted performance of DB AG operations must not be impaired. The producer and his staff must ensure compliance with this requirement. In particular, the producer and his staff are aware that they are not permitted to enter any railway premises which are not freely accessible to DB AG customers, or alternatively that they may do so only when accompanied by DB AG employees and pursuant to a prior agreement. The same applies to entering and using rolling stock and trains.

The producer and his staff are obliged to follow the instructions and requests of the responsible DB AG employees or any third parties authorised by DB AG. For reasons of operating safety and to safeguard due and proper operations, DB AG shall be entitled to demand the restriction or – if restriction is insufficient – the discontinuation of the permitted activities and to cancel this permit. In such cases, the producer shall not be entitled to file any claims whatsoever against DB AG.

This permit refers only to filming on the above production subject. Any marketing of the article beyond the scope of the above film project shall require the consent of DB AG. This shall not affect the depicted persons’ copyright protection of their own images.

The producer is aware that he enters DB AG property at his own risk. On utilising this permit, the producer waives all claims for damages to his property and indemnifies DB AG from all third-party claims for damages incurred in connection with the permitted activity. The producer further undertakes to indemnify DB AG from all statutory claims for personal injury or property damage filed by persons involved in the permitted activity on behalf of the producer. This shall not apply to damage caused by intent or gross negligence on the part of DB AG. The foregoing shall not affect the provisions of Section 1 German Liability Act [HGB].

If the above permit refers to the location of a company belonging to the Deutsche Bahn AG Group, the above provisions shall apply accordingly.

The film material may only be used for the project specified above.

Berlin, 24th January 2007

Deutsche Bahn AG

i. V. (Schierbaum) i. V. (Bingel)
Appendix D: Legal and Ethical Issues: Extracts from conversation with attorney Dr. Michael Kummermehr, 02-11-2013

Extracts from a conversation with the attorney Dr. Michael Kummermehr, Partner, Wegner Ullrich Müller Helle in Berlin, Germany, in November 2013. The conversation was conducted in preparation for a special recording of Head_X Commuter Space II, in which the artist and the legal expert discussed ethical issues arising from the use of concealed cameras in the artwork.

Dr Michael Kummermehr’s practice concentrates on the distribution, licensing, competition, IT and IP law, including the law governing new media. His clients are involved in the Internet, e-commerce, media, entertainment and arts sectors. He was an attorney with the US law firm WilmerHale in Washington DC and Berlin, before joining Wegner Ullrich Müller-Helle as a partner in May 2008. Dr Kummermehr is a member of the Law Society, the Association for Industrial Property and Copyrights (GRUR), the German Society for Law and Computer Sciences (DGRI) and the International Technology Law Association, and is active in tribunals as an arbitrator and party representative for the German Institution of Arbitration and the Chinese European Arbitration Center.

Dr Kummermehr said:

“I give you my opinion as a lawyer, but from an artistic perspective, I see this artwork as one of the purest forms of art imitating life, because it’s documenting reality by means of a specific technology to capture a de facto three-dimensional image of actual street life. This artistic technique of course raises certain legal - I would not say issues - but certainly leading questions we should discuss. Mostly it’s about the rights of the people being recognised a little from their likeness in the video”.

“The likeness of people is legally protected by the basic laws of our constitution (the likeness and optical image of one’s face and the recognisability that this is part of this person’s personality which constitutes their identity). The state cannot infringe on one’s personality rights. It cannot use somebody’s name without any purpose or without consent. There’s also a protection at what we call the civil law level between individuals, between civilians, between the infringements of different civil parties, which makes sure the courts also protect your personality against others”.

“There is a potential infringement of such rights, when there's no justification. Acts affecting somebody’s personality rights by, for instance, filming and publicising one’s image, can be done by a civilian like you, even if you’re operating in public space. They can also be done by the state when it installs CCTV cameras, but the motivation to do that, to do that particular act which affects somebody’s personality rights is different. The state usually has a legal justification because it needs one, maybe anti-terrorists or anti-criminal, public safety, traffic safety, stuff like that”.

“If you walk around with your device to produce art, you may also affect the rights of the people you are filming and which can be recognised by your audience or when you show the work on the Internet or make it freely available to a non-specified audience. Your motivation is not one of public safety obviously, or statistics or another government task. You do it for the sake of art. So the interesting question arises: how can those two legal values, art on the one hand, and personality rights of third parties, of other civilians on the other hand, how do they interact on a legal level? In Germany, both of those legal values are protected by the constitution.”
“If somebody who appears in your video says, ‘Ah, that’s me’ - obviously you could act pursuant to the principle of notice and say, ‘If you have an issue with it, I will take it down.’ But if that person says, ‘Wait a minute, notice and take down is not how we do it. Who says when you do your tour with your device a second time; you will again meet and film me? So it’s possible that they have a right to stop you doing it in the future, by seeking an injunction’.

“If you produce a movie in a Deutsche Bahn railway station that shows graffiti on trains, Deutsche Bahn could try to make an injunction against the distributors of such a film by saying, ‘Even if you buy a ticket to go on the train, you made the movie on our premises, so we can make an injunction against you’. So you need to get permission to actually film, which you did”.

“But assuming you didn’t get permission, what would stop the Saturn electronics store from issuing an injunction against you for trespassing without the owner’s general consent? Even if you would buy something and would act in accordance with the order of the house or the conditions to enter the premises, courts have held that an injunction can be held against you. But if you don’t ask for permission from Saturn, the question is, does Saturn have some kind of personality right which is also guaranteed under the constitution? The Federal Court of the Constitution has said the subject of personality rights can not only be natural persons but also legal entities. They would say, ‘Mr Morgan, you came here to make an art project, entering our house you did not eat ice cream and did not bring a dog. You even purchased something, and you did not infringe our house rules, but you made a movie in here, and you even did not tell our staff and our customers that you are making one. This is something you should not do and we are issuing an injunction against you.’ In principle they could try, they could ask their in-house lawyer, ‘Could we do something against Mr Morgan?’ They would not do it after they have watched your movie, but for instance if you go in there with your device, your defence would be, ‘I’m an artist, this is a piece of art, it’s constitutionally protected. You cannot keep me from showing the movie.’

“The question involves what prevails, art or personality rights? You might have heard of the high court case about Maxim Biller’s novel Esra. It was semi-autobiographical and of course there were characters in it that were shaped after actual people, and those people sued. Biller said, ‘it’s art’. The people said, ‘it affects our personality rights’. Then there is no easy answer. A court would say, ‘I have to consider both. I have to take into consideration both aspects.’ But there is no general rule that one legal value, like personality rights, would automatically be considered to be more important than the art.”

“Does the work put the individual in the foreground? Does it put it in the centre of the attention of the work? This video piece is objectively narrative, neutral, and there’s no focus on other people. It’s just Saturn because it’s on your path, but it could be any other department store. But legally it may affect certain rights of the people you see. You can even identify its Saturn. They could claim their right is affected by the fact that they are portrayed. Of course, Saturn is doing advertising and putting itself actively in the centre of attention because they are a commercial entity. But the people who just went out to buy a new pack of batteries, do they have to tolerate the treatment?”

“The likelihood of being recorded is also a consideration - this is an important aspect for the assessment. But even though technology and social behaviour is rapidly changing nowadays, laws are not. You can see that in the public discussion of whether our data protection law is still up-to-date in the days of Facebook, where so many people are voluntarily giving away pieces of their privacy in exchange for fame or prominence or something like that. We still have laws about the images of individuals, such that they cannot, as a principle, be publically shown unless there’s consent”. 
“I think, bottom line, your film is perfectly fine, even if there’s an infringement of personality rights because you publically show certain likenesses and images of people, you make it for one specific purpose: for the purpose of art, and you are very sensible, sensitive to the ethics of the recording process. You made the work about your journey, not about the intensive moments with the people around you and that would be a reason why you would have very good arguments in Court; an act of showing people on the train or on the street would not be considered a legally relevant infringement. But the legally interesting aspect is also part of the artwork, and I guess that’s why we are speaking to each other here.”

“What you could also do is, if somebody says, ‘I don’t want to be in the artwork,’ it does not destroy your artwork because you are not necessarily relying on an individual who is being shown; you just blur their face or something. It’s part of the process. You could even argue the artwork is not finished yet if somebody finds offence in it. The individual is not the central focus, so to blur or cut him out will not affect the artwork”.

“Before you made your first step out of the house you had a clear set of rules that you gave yourself and which you adhered to make the ethical approach of the work. You have a good reason for everything you did and know why you did it, and you had no motivations, no objectives of sensationalism or commercialism. You did not want to make anybody ridiculous, did not put anybody in the focus of your attention. There was the clear mission statement: walk through Berlin with the technical device and see what the technical device captures. That makes you ethical. It’s a tool to optimise what you’re doing in order to reach ethically correct work, where ethics is not as strict a concept as law.”

“You considered the aspect of concealed cameras and you weighed it, and said ‘the way I planned my journey will not lead to grave infringement of personality rights. The biggest compromise you make is, ‘Even if it’s concealed, they are not the centre of my focus, and if they had been likely become centre of my focus, I just would have taken them out of the focus and would have gone somewhere else.’ There are no peaks of attention.”