



**The Journal of Robotics,
Artificial Intelligence & Law**

Editor's Note: *RAIL* Potpourri
Steven A. Meyerowitz

"I Have No Strings . . ." Key Legal Issues Relating to Wireless Charging Technology
Paul Keller and Susana Medeiros

The Use of Drones in Creative Industries: Tech Versus Artistry
Elaine D. Solomon

What to Do about the South Philly Peeping "Tommy"?
James J. Quinlan

Patenting Artificial Intelligence: Issues of Obviousness, Inventorship, and Patent Eligibility
Susan Y. Tull and Paula E. Miller

Enhancing Contract Playbooks with Interactive Intelligence—Part I
Marc Lauritsen

Everything Is Not *Terminator*: The Search and Seizure of AI Devices and Programs Under the Fourth Amendment
John Frank Weaver

- 281 Editor’s Note: *RAIL* Potpourri**
Steven A. Meyerowitz
- 285 “I Have No Strings . . .” Key Legal Issues Relating to Wireless Charging Technology**
Paul Keller and Susana Medeiros
- 295 The Use of Drones in Creative Industries: Tech Versus Artistry**
Elaine D. Solomon
- 305 What to Do about the South Philly Peeping “Tommy”?**
James J. Quinlan
- 313 Patenting Artificial Intelligence: Issues of Obviousness, Inventorship, and Patent Eligibility**
Susan Y. Tull and Paula E. Miller
- 327 Enhancing Contract Playbooks with Interactive Intelligence—Part I**
Marc Lauritsen
- 341 Everything Is Not *Terminator*: The Search and Seizure of AI Devices and Programs Under the Fourth Amendment**
John Frank Weaver

EDITOR-IN-CHIEF

Steven A. Meyerowitz

President, Meyerowitz Communications Inc.

EDITOR

Victoria Prussen Spears

Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

Miranda Cole

Partner, Covington & Burling LLP

Kathryn DeBord

Partner & Chief Innovation Officer, Bryan Cave LLP

Melody Drummond Hansen

Partner, O'Melveny & Myers LLP

Paul Keller

Partner, Norton Rose Fulbright US LLP

Garry G. Mathiason

Shareholder, Littler Mendelson P.C.

Elaine D. Solomon

Partner, Blank Rome LLP

Linda J. Thayer

Partner, Finnegan, Henderson, Farabow, Garrett & Dunner LLP

Mercedes K. Tunstall

Partner, Pillsbury Winthrop Shaw Pittman LLP

Edward J. Walters

Chief Executive Officer, Fastcase Inc.

John Frank Weaver

Attorney, McLane Middleton, Professional Association

THE JOURNAL OF ROBOTICS, ARTIFICIAL INTELLIGENCE & LAW (ISSN 2575-5633 (print) /ISSN 2575-5617 (online) at \$495.00 annually is published six times per year by Full Court Press, a Fastcase, Inc., imprint. Copyright 2018 Fastcase, Inc. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact Fastcase, Inc., 711 D St. NW, Suite 200, Washington, D.C. 20004, 202.999.4777 (phone), 202.521.3462 (fax), or email customer service at support@fastcase.com.

Publishing Staff

Publisher: Morgan Morrisette Wright

Journal Designer: Sharon D. Ray

Cover Art Design: Juan Bustamante

Cite this publication as:

The Journal of Robotics, Artificial Intelligence & Law (Fastcase)

This publication is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Copyright © 2018 Full Court Press, an imprint of Fastcase, Inc.

All Rights Reserved.

A Full Court Press, Fastcase, Inc., Publication

Editorial Office

711 D St. NW, Suite 200, Washington, D.C. 20004

<https://www.fastcase.com/>

POSTMASTER: Send address changes to THE JOURNAL OF ROBOTICS, ARTIFICIAL INTELLIGENCE & LAW, 711 D St. NW, Suite 200, Washington, D.C. 20004.

Articles and Submissions

Direct editorial inquires and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc.,
26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@
meyerowitzcommunications.com, 646.539.8300.

Material for publication is welcomed—articles, decisions, or other items of interest to attorneys and law firms, in-house counsel, corporate compliance officers, government agencies and their counsel, senior business executives, scientists, engineers, and anyone interested in the law governing artificial intelligence and robotics. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the Editorial Content appearing in these volumes or reprint permission, please call:

Morgan Morrisette Wright, Publisher, Full Court Press at mwright@fastcase.com
or at 202.999.4878

For questions or Sales and Customer Service:

Customer Service
Available 8am–8pm Eastern Time
866.773.2782 (phone)
support@fastcase.com (email)

Sales
202.999.4777 (phone)
sales@fastcase.com (email)
ISSN 2575-5633 (print)
ISSN 2575-5617 (online)

What to Do about the South Philly Peeping “Tommy”?

James J. Quinlan*

This article explores some issues associated with what to do about the modern-day version of Peeping Tom, an anonymous drone operator and a spying drone, within the framework of Pennsylvania privacy laws and federal regulations related to drones.

Approaching the December holiday season in 2017, consumer sales experts estimated that as many as three million small unmanned aircraft systems (“UAS” or “drones”) would be shipped to purchasers in 2017. Others have projected that there will be over seven million drones operating in the United States by 2020. As such, the chance that you will more regularly see a drone flying nearby is strong and increasing in probability with every passing day. However, seeing the same drone from the ground as opposed to hovering just outside of your bedroom window is a whole other experience, and one that may become more common as drone use proliferates. Recently, bloggers in South Philadelphia, Pennsylvania, who were confronted with this disconcerting reality, took to the internet to alert others and discuss options for how to handle this “Peeping Tom” problem—a centuries-old issue that is being closely monitored by regulators and lawmakers as it evolves into a potential, unique 21st-century problem.

One evening in August 2017, a South Philly neighbor posted a Facebook blog known as the “Bold and Breezy” about seeing a drone near her bedroom window, and another neighbor immediately posted that he heard, via police radio, that a complaint about the drone had been called into the police. A few months later, on a December evening, just after midnight, another neighbor posted “peeping drone back.” The late-night blogging banter followed with comments like:

“That’s so creepy. In so many ways. Checking if someone’s home and naked.”

“It was definitely flying close to houses.”

“Yikes.”

“Get a pan and knock it out of the sky.”

“Get yourself a Texas Flyswatter (see picture of aluminum trashcan lid) and go f*** that thing up, sugar!”

“They are opening a drone research facility (nearby) ... wonder if it’s theirs.”

“Isn’t that how SkyNet began? I hope people see the error of their ways soon, or at least before Judgment Day.”

From this modern “town talk” version of a local Peeping Tom being discussed through strokes on keyboards and smartphones, a number of legal issues were raised by these neighbors regarding what to do about the modern-day version of Peeping Tom (referred to in this article as “Peeping Tommy”), an anonymous drone operator and a spying drone. This article will explore some of those issues within the framework of Pennsylvania privacy laws and federal regulations related to drones.

Background on Tom

It is common knowledge that the U.S. legal system is largely based on principles of English Common Law. But when it comes to U.S.-based anti-voyeur and anti-invasion of privacy laws, sometimes referred to as “Peeping Tom Laws,” the derivative development of such laws takes on a double meaning given their ties to the 11th century, the Town of Coventry, England, the legendary mythical tale of Lady Godiva’s naked horseback ride of protest through that town, and an infamous tailor named “Tom.” As lore has it—and most scholars agree that this tale is heavy on lore and light on fact—Lady Godiva rode naked on her horse through Coventry to convince her husband, Lord Leofric III, to lessen the tax burden on the people of Coventry. Out of respect for Lady Godiva’s modesty and in appreciation of her gesture of support for them, the people of Coventry remained indoors with doors and shutters closed during this medieval version of political streaking—except for a tailor named Tom. Tom, overcome with lust and curiosity, peeked through a hole in a shutter for a peep at Lady Godiva in her

birthday suit, and was immediately blinded (or perhaps mortally punished) for his transgression.

Keeping Peeping Tom in Check

The behavior of Peeping Tom certainly made its way from Olde England to the New World and remains prominent in the U.S. conscience, which is reflected in our domestic laws today. Iconic movie scenes depicting characters, like George McFly in *Back to the Future* on a tree limb with binoculars and a more unsophisticated John “Bluto” Blutarisky of *Animal House* using a ladder, peering directly into the bedrooms of unsuspecting women, are viewed by some as humorous in the context of film, but represent what would be criminalized acts under today’s criminal law, with additional potential civil liabilities in most states.

The crux of Pennsylvania’s voyeurism laws focus on the reasonable expectation of privacy. For example, in Pennsylvania, it is a third-degree misdemeanor to view, photograph, electronically depict, film, or otherwise record another person without that person’s knowledge and consent while that person is in a state of full or partial nudity and is in a place where that person would have a reasonable expectation to privacy.¹ This statute, entitled “Invasion of Privacy,” also criminalizes viewing a person’s intimate parts—even if partially clothed (with undergarments)—assuming it is without their knowledge and in a place where privacy was expected. The statute upgrades the offense to a second degree misdemeanor for the commission of multiple peeping sessions.

In 2005, Pennsylvania updated its anti-Peeping Tom laws to address advances in technology, such as camera phones and hidden cameras, which allowed Peeping Toms to voyeur more surreptitiously. That same year, a guest at a sorority house at a small Pennsylvania college allegedly placed a secret camera inside a bathroom within the stuffing of a teddy bear and allegedly recorded images of the resident sorority members through a basement located VCR that was connected to the teddy bear’s secret camera. Invasion of Privacy charges were filed against the house guest, but were eventually dropped because no incriminating footage was discovered on the confiscated videotapes.

The U.S. government also entered the arena of criminally targeting Peeping Toms with enactment of 18 U.S.C. § 1801, entitled

“Video Voyeurism Act,” which was first passed in 2004. Similar to Pennsylvania law, this statute criminalizes anyone who, in the special maritime and territorial jurisdiction of the United States, has intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy. The statute provides penalties, including fines and up to one year in prison, and criminalizes the actions of a Peeping Tom in what would be considered a public space on federal property.

On the civil side, Pennsylvania, under its common law, has provided redress against Peeping Toms through the invasion of privacy tort for “Intrusion Upon Seclusion,” which consists of intentional interference, physical or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, but only if the intrusion is substantial and of a kind that would be highly offensive to the ordinary, reasonable person. Case law holds that the conduct must be of a sort that would tend to cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.

What to Do about the Son of Tom, Peeping Tommy, and the South Philly Drone

The Operator “Tommy” and his South Philly-based drone can be pursued under the same criminal and civil regulations of Pennsylvania law as Peeping Toms of old. For example, under, 18 P.S. § 7507.1, if “Tommy,” through the drone camera, viewed or photographed or recorded a neighbor in his or her bedroom (a place where they would have a reasonable expectation to privacy), while they were nude, partially nude, or perhaps wearing less than a fully opaque undergarment, Tommy could be prosecuted for a misdemeanor. Furthermore, the victim of Tommy’s peeping could bring a civil action against Tommy for Intrusion Upon Seclusion for intentionally interfering with the victim’s solitude or seclusion and their private affairs. Notably, recording someone while they were nude or partially nude in their bedroom could qualify as substantial and highly offensive under the law because it could lead to the humiliation of a person with reasonable sensibilities.

At present, there is no specific criminal statute under Pennsylvania state law that criminalizes the misuse of a drone—although drone-related bills have been proposed twice, without success,

in an effort to codify rules specifically for drone use in the skies above Pennsylvania. However, at least one municipality, the City of Philadelphia, has prosecuted a Pennsylvania resident for the illegal use of a drone. In 2016, a local college student was allegedly operating a drone off of the roof deck of a center city high-rise apartment above a large gathering of people present in the street for a political protest. According to the prosecution, in addition to violating a number of federal regulations, the defendant’s drone had a number of close calls with a police helicopter to the point that the helicopter had to deviate from its intended course to avoid a possible catastrophe. The Philadelphia district attorney charged the drone operator with state offenses for aggravated assault and simple assault (both as against the police pilots), as well as risking a catastrophe and endangering another relative to the crowd below. At a preliminary hearing, conducted under Pennsylvania law to determine if the prosecution has made out a *prime facie* case for trial, the testimony of the police helicopter pilot focused on the number of violations of Federal Aviation Administration (“FAA”) laws committed by the drone operator in addition to the likely catastrophic consequences of a collision with the drone above a busy Philadelphia street. The court ruled in favor of the prosecution and ordered the defendant to stand trial on the most serious charges. Ultimately, a conviction was secured through a plea agreement under which the drone operator avoided more serious felony-based charges by admitting to misdemeanor offenses.

The aforementioned “Tommy” *may* have also violated federal law during his South Philly flights. For example, Public Law 112-95, § 336, entitled “The Special Rule for Model Aircraft,” requires that a “model aircraft” (defined as an unmanned aircraft capable of sustained flight, flown within visual line of sight of the person operating it, for hobby or recreational purposes) be registered, flown only within line of sight of the operator, and flown in a manner that follows community-based safety guidelines. Furthermore, prior to flight, the drone operator is required to notify airport and air traffic control towers within five miles of the site of operation of her intention to fly a drone. Additionally, under CFR Title 14, Part 107 (B), recreational operators of drones cannot fly in a hazardous manner, cannot fly drones at night, and cannot interfere with airport operations, which include heliports. Therefore, if the drone was not registered, and/or if Tommy was hiding from plain view and lost line of sight with his drone while the drone conducted

the peeping operations, Tommy would have violated federal law. Further, Tommy's South Philly drone flights were at night, which is a violation for federal law, unless he had secured a waiver from the FAA. Finally, Tommy may not have notified nearby air traffic control for heliports of the intention to fly the drone nearby. As there are a few heliports in or within five miles of South Philadelphia, it would have been a violation of federal law for Tommy not to provide notice of the intention to fly the drone nearby.

Hypothetically, had Tommy's drone been operating over federal property, for example, flying near the VA hospital in Philadelphia, and Tommy had viewed and/or recorded images of an individual's private parts in their hospital room, Tommy could have been prosecuted federally under the Video Voyeurism Act. There is no information to suggest that this happened, but it is foreseeable that the Video Voyeurism Act could be utilized in the future to prosecute Peeping Tommies for their voyeuristic drone use over victims on federal lands.

In short, prospectively, Tommy's South Philly neighbors should report future suspicious drone flying to the authorities, including local law enforcement, the Federal Bureau of Investigation, and FAA and/or the U.S. Attorney for the Eastern District of Pennsylvania. If Tommy's identity is discovered, and a neighbor has reasonable belief that Tommy has actionably intruded upon their seclusion (viewing or recording them partially or fully nude), they should confer with an attorney about a civil action for invasion of privacy. Other common law remedies such as nuisance could be pursued as well. And, of course, now that we know that Peeping Tommies and their drones are abound, being more conscious to pull blinds and shutters fully closed when occupants are not fully clothed or engaging in private behavior—even when on upper floors of buildings—will prevent Tommy from peeping at all.

What Not to Do about Tommy

Do not attempt to bring down or shoot down Tommy's drone. Seriously—it is a federal offense punishable by heavy fines and jail time under 18 U.S.C § 32, entitled "Destruction of Aircraft or Aircraft Facility." The same is true of Tommy—if you potentially discovered him in the act of peeping by drone, it could be a federal offense to take Tommy down and thereby interfere with his

operation of the drone. The aim of this legislation is to protect the public welfare from resulting drone crashes.

The federal government has not yet prosecuted a drone operator for “drone slaying,” which is a phrase derived from the given nickname, “Drone Slayer,” of a man from Kentucky who used a shotgun to permanently ground a drone, which he suspected was peeping at his teenage daughter near the family pool. A Kentucky court actually absolved the Drone Slayer of criminal liability because it found that the man was justified, under state law, to protect his property from the invasion of privacy posed by the drone. That said, the FAA or an aggressive U.S. Attorney could, at any point, decide to send a message to drone slayers by pursuing and securing a federal conviction for the destruction of a flying drone—even one being operated by a Peeping Tommy. To date, there have been 13 cases of “interference with aircraft cases” related to drones being attacked, but the Department of Justice has not prosecuted anyone to date.

Beyond federal criminal law, someone who decides to attack a drone—for example, attempting to swat it out of the sky as suggested by one of the South Philly bloggers—could be held criminally liable under Pennsylvania state law for mischief. Specifically, under 18 P.S. § 3304, a person can be held criminally liable for a felony or misdemeanor for intentionally causing damage to tangible property at certain threshold monetary values. Again, there have been no such prosecutions under Pennsylvania law, but other states have considered charges relating to drone slaying acts.

Finally, a neighbor who takes the law into their own hands and destroys a suspected Peeping Tommy’s drone, could face civil action for destruction of property. Recently, in New Jersey, a drone operator sued his neighbor for the cost of a drone that the neighbor shot out of the sky. The court awarded damages in the amount of \$850—the replacement cost for the gunned-down drone. The factual summary of the case suggests that the drone operator was not spying on his neighbor, but rather was flying by the property during a legitimate commercial use of the drone.

Conclusion

Drones have the ability to inspire but also cause fear and anxiety, and stoke anger, depending on how and where they are flown. While we all generally enjoy viewing cutting-edge pictures that drones

can capture, and some enjoy the ability and thrill to fly remotely, none of us want to be spied on—especially in our bedrooms and especially when we are in private moments. The law in Pennsylvania clearly prohibits the latter. Federal law indirectly prohibits such activity if the drone’s operation otherwise runs afoul of FAA regulations or if the aerial voyeurism targets victims on federal property. Furthermore, civil actions are available for compensation for the wronged.

But to date, both the federal and Pennsylvania state government have been slow to investigate, pursue, and prosecute the misuse of drones. Admittedly, discovering the identity of a Peeping Tommy or even just a (non-voyeur) nighttime drone operator or a drone operator who flies above a concert, is not the easiest of tasks. Still, more could be done to encourage safe drone use and deter reckless and illegal drone flights in both Philadelphia and Pennsylvania. Specifically, local and federal law enforcement should start paying more attention to violations of their respective laws regarding drone use and/or misuse. Consistent investigation and prosecution of reported violations will send a message to all drone users to both learn and comply with the law while enjoying remote flight, and to the community at large, who will hopefully gain confidence that when they see a drone in flight, it is being flown safely, lawfully, and not with ill intent.

Notes

* James J. Quinlan is a partner at Blank Rome LLP concentrating his practice on complex tort litigation, with particular emphasis on matters arising from product liability, aviation, maritime, and other transportation accidents. He may be reached at quinlan@blankrome.com.

1. See 18 P.S. § 7507.