

New Frontiers of Stalking – Video Voyeurism

Imagine yourself alone in your bedroom. Your door is shut. Your curtains are drawn. From the corner of your eye, you notice what appears to be a tiny flaw in the picture displayed on the wall. You move closer to investigate only to discover the small speck on the painting is a microchip camera and microphone. Frightened, you call the police. You soon learn that the camera is connected to your estranged husband's VCR and he has been watching and listening to you for weeks.

This story is not a scene from a horror movie. This was the very real experience of a woman from New Jersey who found herself being stalked by her estranged husband, with whom she was still sharing her home. This case highlights a disturbing trend, where stalkers are finding ways to use new technology to monitor their victim's movements. This particular case shows the practice of video voyeurism, and refers to the use of small micro cameras to observe and monitor another person.

Voyeurism itself has been around for centuries and many states have had "Peeping Tom" laws for decades. Unfortunately, with the advent of new technology and affordable, easy to obtain, and increasingly harder to detect video surveillance equipment, voyeurism has taken on a new character. These easily obtainable tools provide stalkers with new methods of terrorizing their victims and observing their every move. Any person can visit their local electronic store or the internet and purchase this equipment at low cost. Since these cameras are surreptitiously used to video tape, the victims of this surveillance may often be unaware that they are being watched. This practice brings new challenges to the idea of personal privacy and what it means to be safe from view.

While the activities of stalking and video voyeurism seem related, it is still unclear as to what the exact relationship is between them. It is clear that stalkers are using this technology. What is not clear, however, is whether the use of this technology alone can be considered a form of stalking. Also, it is unclear in many states whether video voyeurism is even prohibited by law.

The questions about the relationship between video voyeurism and stalking and the legality of video

voyeurism are being considered and answered by states in many different ways. Some states have separate video voyeurism laws while others address this behavior within the context of their stalking statute. The Stalking Resource Center is interested in stalking and all related acts. Regardless of whether this is an act of stalking or a tool used by stalkers, one thing is clear: this technology exists and unsuspecting people are finding themselves victims.

In *H.E.S. v. J.C.S.*, 793 A.2d 780 (N.J. Ct. App. 2002), the New Jersey case referenced above, the woman had filed for and been granted a Final Restraining Order by the family division of the Superior Court. One of the court's reasons for granting this order was a finding that the husband's placement of the camera in his estranged wife's bedroom was an act of stalking. The court ruled that this was a sufficient basis upon which a final restraining order could be granted.

The husband appealed this decision on many grounds. First, he argued that there was insufficient evidence that he placed the camera in the bedroom. Then, he argued that even if he had placed the camera there, it was not stalking. He argued that because his wife was not aware of the camera, it could not have caused her fear, as required in the statute. Third, he argued that the mere placement of a camera could not constitute a "course of conduct" as required by the stalking statute.

The court found strong circumstantial evidence of the husband's responsibility for the placement of the camera. The court further found that it was irrelevant whether the target was aware of the conduct as it occurred or whether it was discovered after the fact. They ruled that based on the placement of the surveillance camera in her bedroom, any person who discovered such a surveillance device would reasonably feel fearful. Finally, the court reasoned that because the wife's behavior was monitored on numerous occasions, a course of conduct did exist. In light of the above arguments, the appeals court affirmed the lower court's grant of a final restraining order. This case was then appealed to the New Jersey State Supreme Court who heard oral arguments on the issues on November 7, 2002, and an opinion should be coming in the near future.

This case highlights new issues and concerns about the relationship between state stalking laws and the use of technology to stalk. As awareness of stalking increases and states test their stalking laws in court, many states are reexamining their current stalking laws, and trying to decide what behaviors they already cover and how they might be improved to criminalize video voyeurism behaviors and better protect stalking victims.

Some states have chosen to draft laws which specifically address the use of video cameras to secretly tape someone.¹ Other states have language within their stalking statutes that specifically mention surveillance as an act of stalking or harassment.²

Many of the states' statutes that directly address the use of video also include similar elements, such as secretly videotaping another without their consent, or intentional surveillance in a place where a person would have a reasonable expectation of privacy. States have labeled these statutes with various titles including, Unlawful Photographing, Voyeurism, Unauthorized Videotaping, Eavesdropping, Peeping or Spying, and Disorderly Conduct.³ As the titles of these statutes would suggest, states are using different legal theories to criminalize this behavior.

Based on the recent enactment of these statutes and the fact that the law cannot keep pace with the advances in technology, it is not yet clear whether the current laws alone will address the issues presented by emerging technology. One potential problem with some of these statutes is the inclusion of language requiring that the victim have a "reasonable expectation of privacy" in the place where he or she is being watched. When the taping occurs in a bathroom or in someone's home, this reasonable expectation of privacy will generally not be an issue. The expectation of privacy becomes less clear, however, when someone is in a public area such as a

shopping mall or a park. Many states struggle with this issue. Some states have chosen to eliminate the expectation of privacy language altogether. For instance, in Illinois it is now unlawful to videotape another without their consent in various places such as restrooms, tanning beds, changing rooms, hotel bedrooms and their homes.

Regardless of whether any particular state's stalking statute addresses video voyeurism, it is clear that this technology is being used by stalkers. Investigators and practitioners must be on the cutting edge of this and other new technologies so we can best protect stalking victims. The public needs to be better educated about this behavior so it can be detected and stopped. Video voyeurism is a serious and dangerous phenomenon, and one that appears to be increasing. If you or your community are currently working on these issues, or would like assistance with regard to this or any other stalking matter, please contact us by phone at 202-467-8700 or by e-mail at src@ncvc.org.

(Endnotes)

1 See, California, Cal. Penal Code § 647 (2002), Illinois, 720 ILCS §5/26-4 (2002), Kansas, K.S.A. §21-4001 (2001), Louisiana, La. R. S. §14:284 (2002), Ohio, ORC Ann. §2907.08 (2002), Tennessee, Tenn. Code Ann. §39-13-605 (2001), Virginia, Va. Code Ann. §18.2-130 (2002), Washington, Rev. Code Wash. §9A.44.115 (2002), Wisconsin, Wis. Stat. §942.08 (2001).

2 See, Arizona (A.R.S. §13-2921 (2001), Colorado (C.R.S. §18-9-111 (2001), Georgia (O.C.G.A. §16-5-90 (2001), Hawaii (HRS §711-1106.5 (2001) and South Carolina (S.C. Code Ann. §16-3-1700 (2001).

3 See, Tenn. Code Ann. §39-13-605 (2001), Ohio, Washington, Illinois, Kansas, K.S.A. §21-4001 (2001), Va. Code Ann. §18.2-130 (2002), La. R. S. §14:284 (2002), and California.

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