

March 19, 2013

Senate Committee on Judiciary  
Oregon State Capitol  
900 Court St. NE, Room 331  
Salem, OR 97301

Dear Chair Prozanski and Senators of the Senate Judiciary Committee,

I am writing you in regard to Senate Bill 71 that addresses the use of unmanned aircraft systems (UASs) in Oregon. The use of UASs involves numerous issues in regard to privacy, property rights, law enforcement and private use. I am only providing testimony addressing the use of UASs by private entities.

UASs have many positive uses not only for recreational and hobby interests but potentially for business purposes. They have possible applications in agriculture, media, forestry, real estate and many other Oregon industries. I would like to provide feedback on the proposed legislation in order to help with the process of developing reasonable regulations to help foster the development of this technology.

I am most concerned about Section 5 regarding strict liability for injury to persons or property. The bill does not address situations in which a third party intentionally or negligently interferes with the flight of a UAS. Here are two examples:

1. A third party shoots or otherwise interferes with the flight of a UAS. The UAS subsequently crashes and injures someone or causes damage. The pilot would be strictly liable for the injuries or damages sustained though it was the direct result of actions made by a third party.
2. A property owner shoots or otherwise interferes with the flight of a UAS that is flying over public property or public right of way. The UAS then falls onto the property of the property owner and causes damage and/or injury. The proposed law not only holds the pilot strictly liable for the damage, but allows the property owner to sue for treble damages despite causing the incident.

Strict liability is a very strong tool. It is used in instances such as dangerous animals (ORS 609.115 and 609.329) and oil spills (ORS 466.640). In those cases there are exceptions that mitigate strict liability based on causation. I ask that the committee entertain similar language as an amendment. I would further ask the committee to consider criminalizing behavior that intentionally interferes with the lawful flight of a private UAS and results in injury or damage to property.

Much of the controversy involving UASs involve privacy rights and mirrors the controversies surrounding cell phone cameras in the early 2000's. Ultimately Congress passed 18 USC 1801, the video voyeurism law. This law addressed the issue without regard to the technology used. The law criminalized the capture of images of a private area of an individual without their consent in a place where they had a reasonable expectation of privacy. ORS 163.700 mirrors this statute.

I encourage the Senate Judiciary Committee to consider legislation that is similarly technology neutral. In essence, the behavior should be punished and not the method in which it was done. I do feel that from a public policy perspective that singling out UASs for enhanced penalties based on the mode by which the law is broken would not be in the best interest of Oregonians.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Kenji Sugahara', with a long horizontal line extending to the right.


Kenji Sugahara  
PO Box 5773  
Salem, OR 97304

PHONES (/CATEGORY/PHONES) privacy (/tag/privacy/)

# New Phones Raise Privacy Fears

By [Carla Thornton](#) (/author/Carla-Thornton/) PCW Print

Dec 4, 2003 1:00 AM

 You've just flipped the bird at a driver who splashed you with mud. A rude moment soon forgotten by anyone who saw it, right? Maybe not, if one of those witnesses has a cell phone with a digital camera.

Long a staple overseas, "cam phones" arrived here in 2002, promising sleek and cheap--under \$100--fun with a voyeuristic twist. And they're taking off: 7 million of 72 million cell phones shipped in the U.S. have cameras; by 2007, 51 million out of over 110 million will have them, predicts research firm IDC.

The same size as regular cell phones, cam phones can snap photos while users appear to make calls. Candid shots can be e-mailed to friends or sent to sites that have automated "moblogging" (mobile blogging) such as Buzznet.com, Fotolog.net, and Textamerica.com, and there viewed worldwide in seconds. That means every faux pas, and even more private moments (in locker rooms or store dressing areas, say), can become fodder for public consumption.

## Privacy Violation or Harmless Fun?

Gary Dann had no plans to become a poster child for privacy battles. However, after he used his cam phone to capture a fellow shopper yelling at a cashier and posted the snap on the Net, the *New York Times* called to ask if he thought what he did was wrong.

Dann, who has since been interviewed by other media, says he did not invade anyone's privacy. If a person acts like a jerk in public, "what's the difference if you have a camera phone or a regular camera to take a picture?"

For now, the law agrees. By going out in public, people surrender some privacy; a cam phone's immediacy alone does not violate privacy laws, says Daniel Solove, a law professor specializing in privacy law. So users are unlikely to be sued for taking shots like Dann's. But there are limits.

Some courts recognize an invasion of privacy if one's reputation is hurt or a photo causes severe embarrassment, says Solove, but such shots must be very offensive and not legitimate news--someone in an adult bookstore, for example.

Other cam phone uses are clearly illegal. In Japan, people have been arrested for taking photos up women's skirts (which is also illegal in parts of the U.S.), and shopkeepers are cracking down on digital shoplifting--photographing pages from books and magazines without paying for them.

Chicago is now considering laws to ban cam phones from certain places, such as locker rooms. If serious problems arise, other cities may also.

For now, most rules are ad hoc. Government offices (particularly courtrooms), some corporations, and health clubs like 24-Hour Fitness have instituted their own bans, while moblogging communities self-police, with owners responding to user complaints if something extreme shows up.

Eventually, cam phones may be automatically disabled when owners enter sensitive places, like hospitals or banks. Iceberg Systems' Safe Haven, a hardware/software product due late in 2004, can do just that, if cell phone makers and concerned companies use it.

## Real Benefits

Not surprisingly, cam phone carriers prefer to focus on the devices' benefits, such as their crime-fighting potential: One user's shot led to the arrest of a suspected pedophile last summer, for example.

At Textamerica.com, cam phone users have become reporters, says founder Chris Hoar. In October his site received numerous shots of California's wildfires that the traditional media missed.

BBC Online has used cam phones to cover news events also. Professional use should grow, especially as quality rises: Carriers have 1.1-megapixel units now, and this fall a 2-megapixel Sharp will ship.

No matter what camera is used, it's never good form "to take anyone's picture without his or her knowledge or permission," says Dan Wilinsky, Sprint's director of media relations. (Sprint offers six cam phones, and its ads show people captured at unflattering moments; Wilinsky says the people shown in the ads know they're being photographed.)

Today, however, discretion is left to individual judgment.

**SECURITY (/CATEGORY/SECURITY)** [privacy \(/tag/privacy/\)](#)

# Law May Curb Cell Phone Camera Use

By [Mark S. Sullivan \(/author/Mark-S.-Sullivan/\)](#), PCWorld

Jul 23, 2004 11:00 AM

WASHINGTON -- Cell phone camera voyeurism will soon be a federal offense if the Video Voyeurism Prevention Act of 2004 continues its nearly unopposed march through Congress.

The bill, designed to protect people's privacy from prying camera phones, needs only to pass the House of Representatives and to be signed by the president to become law. While Congress didn't consider it before recessing this week, proponents say chances are good the bill could pass this year.

Still, cell phone manufacturers, while not actively opposing it, are quietly skeptical of laws that criminalize cell phone camera snooping.

## Privacy in Public

The Video Voyeurism Prevention Act prohibits photographing or videotaping a naked person without his or her consent in any place where there can be "a reasonable expectation of privacy." Punishment would include fines of up to \$100,000 or up to a year in prison, or both.

S.1301 was first introduced in 2000, two years before the first [cell phone cameras appeared \(/news/article/0.aid.104090.00.asp\)](#) in the United States. Its original language focused mainly on privacy infringements using hidden video cameras.

After cell phones with cameras [caught on here \(/news/article/0.aid.112576.00.asp\)](#) in 2002 and 2003, language was added specifically addressing their potential for privacy violations, and S.1301 then drew greater attention in Congress.

"Now that the bill includes cell phone cameras, there has been a lot more interest in it from the public, the media, and from lawmakers," says Tim Johnson, spokesperson for its sponsor, Rep. Michael Oxley (R-Ohio). "Lawmakers were asking us about cell phone cameras and whether they were covered in our bill."

The Senate passed the legislation unanimously in September. The House Judiciary Committee approved it with very little opposition in May.

## Industry Skeptical

Cell phone vendors say such a law may be hard to enforce at best, and may even be a deterrent to promising technology.

"I think it will just create a false sense of security," says Keith Nowak, Nokia media relations manager. "If somebody wants to do something illicit, they will always find a way to bypass the law."

Nowak and other vendors deny voyeurs are any more likely to snoop using a cell phone camera than using other technologies such as digital cameras. "At the end of the day, there is very little difference between a cell phone camera and a regular camera," Nowak says.

But Cedric Laurant, policy counsel of the advocacy group Electronic Privacy Information Center, says the opportunity differs.

"Most people don't carry digital cameras around with them," Laurant says. "With a cell phone camera there is more opportunity to take snapshots of interesting images, and unfortunately this can include images that can threaten privacy."

Voyeurs using cell phone cameras could easily pretend to be doing something else, like dialing or talking, while actually taking pictures, Laurant adds.

Nowak says any new law should not single out cell phone cameras, but should apply to "any technology that captures images." Oxley's bill, however, apparently proposes to do exactly that--in cases where images have been captured without consent in private places, it makes no distinction about the technology used to do so.

California Assemblywoman Sarah Reyes (D-Fresno) favors a technological solution to the privacy problems presented by cell phone cameras.

Instead of a ban, she urges state legislation requiring camera phones sold in California after 2008 to emit an audible noise or flash a light when users press the shutter.

But Nokia's Nowak is cold on that idea too: "All that would do is punish the 99 percent of people who have no intention of using their cell phone camera for anything malicious."

When he attended a wedding in Finland, he used his cell phone camera to take pictures and send them instantly to loved ones back in the states who couldn't attend. "If my phone [had] been beeping or flashing, there's no way I could have done that," he says.

### **A Nation of Voyeurs?**

Meanwhile, the popularity of cell phone cameras [continues to grow](#) ([/news/article/0.aid.116044.00.asp](#)).

"Most people have a cell phone, and when they upgrade, many of them will want to get this fun new feature," Laurant says.

Just under 9 million of the camera phones were shipped to the U.S. during 2003, says Alex Slawsby, an IDC mobile devices analyst. That number is expected to surpass 27 million in 2004, and reach 100 million in 2008.

Gartner Group analysts say that by 2006, 80 percent of the cell phones sold in the U.S. will be camera phones.

And the U.S. is a relative latecomer to use of cell phone cameras and the privacy concerns they raise. Around the world, people and governments are [considering the privacy threat](#) ([/news/article/0.aid.113632.00.asp](#)) wrought by the ubiquity of cell phone cameras. The gadgets are a voyeur's dream come true--pictures and even video can be shot "discreetly" and immediately emailed or uploaded to the Internet.

Some businesses, like health clubs Club One and 24-hour Fitness, have already banned cell phone cameras from their facilities. Chicago passed a city ordinance in March criminalizing cell phone camera voyeurism. In Japan, where the [technology caught on](#) ([/news/article/0.aid.67570.00.asp](#)) a year sooner than in the United States, cell phone cameras have been restricted in areas where people have an expectation of privacy.

Some states have now enacted electronic voyeurism privacy laws, but the criminal code is still evolving across the country to protect people from the increasingly intrusive view of tiny camera lenses.

### **Prying Lenses, Changing Laws**

The road toward a federal video voyeurism law began with two cases, one in Louisiana and one in Washington state; in both, video technology was used to violate privacy.

In the first case, Susan and Gary Wilson of Monroe, Louisiana discovered a neighbor had installed hidden cameras in the Wilsons' master bedroom and bathroom. To the Wilsons' surprise and dismay, Louisiana authorities said their neighbor's actions were not criminal offenses under state and federal law. After the Wilsons learned their

neighbor had similarly victimized others in the community, the couple urged their state representatives to change the law. On July 12, 1999, the Louisiana governor signed a bill making video voyeurism a felony.

The second case occurred in Washington state, where Richard Sorrells secretly aimed a video camera up a woman's skirt as she waited at an ice cream stand during a festival in 2000. The state Supreme Court ruled that filming up women's skirts, though "disgusting and reprehensible," wasn't actually against the law. It overturned the convictions of Sorrells and another man, Sean Glas, accused of taking photographs under women's skirts at a shopping mall.

In 2002, state lawmakers changed the law to give legal recourse to people whose privacy was violated in public. That was well in time to prosecute Jack Le Vu, the first known cell phone camera voyeur to be convicted in the U.S.

In July 2003, 20-year-old Vu was seen in a Seattle area Safeway using a cell phone camera to covertly snap pictures beneath the skirt of a woman shopping next to him. Court documents show that Vu, who later told police he had a panty fetish, managed to get five shots of the woman's underwear.

Under a newly revamped Washington privacy law, Vu was successfully prosecuted and later pleaded guilty to one count of voyeurism. He was sentenced to 60 days jail time and forced to register as a sex offender.

## Setting Precedents

The explosive popularity of cell phone cameras has brought into sharp relief a blind spot in state criminal codes through which "public" voyeurs (such as Sorrells and Glas) might escape punishment.

Unlike Washington and Louisiana, most states' criminal codes still do not protect a person's privacy while they are in public places. State privacy laws are primarily geared toward prosecuting "Peeping Toms" who spy on people in their homes, not in public places.

Oxley's Video Voyeurism Prevention Act would provide a remedy in the federal criminal code for exactly that problem, advocates say.

The bill also serves as model legislation for states that have not enacted their own laws, or for those that need to update existing laws in light of the rapid spread of camera technology, according to the bill's authors.

"Previous state laws did not prohibit activities like taking a picture up a woman's skirt, when the woman was in a public place," says Laurant of the Electronic Privacy Information Center. "This bill will specifically target that kind of activity, which should mean people will have more privacy."