

Two Steps Behind

The Law Struggles to Keep Pace with Advancing Technology

By KATHERINE E. McCARTHY

While not a new development, it is clear that the law can rarely keep up with rapidly changing technology.

Increased surveillance technology, a host of mobile applications (including a popular rideshare app, Uber), GPS technology, and spyware, just to name a few, all present significant legal issues that most of us have never considered.

In this article, we'll discuss this new technology and what it could mean for employees, business owners, the general public, and municipalities.

Body Cameras

In the wake of civilian unrest in places like Ferguson and Baltimore, there has been an outpouring of support for police departments to adopt the use of body cameras. In theory, body cameras appear to be a great idea, and technology is available to implement the practice. Recording a police officer's interaction with a civilian not only helps protect the civilian and hold police officers accountable for their actions, but also helps to protect the police officer against false claims of misconduct.

So what's the problem? There are several, not the least of which is the financial strain on cities and towns. Next, audio-recording individuals without their consent can run afoul of the Commonwealth's wiretap statute. Violation of the wiretap statute is a crime.

There are also privacy concerns. Members of the public may be inadvertently recorded, and those recordings could be disseminated under public-record-disclosure laws. Some additional issues to consider include whether a police officer is required to turn off the camera when interviewing a victim or witness of a crime, and, if not, what is the result if a police officer receives private medical information related to a suspect or victim? Is the video recording of such information a potential violation of medical privacy laws?

Still more issues are presented once video is recorded on a body camera. Like any other evidence used in a legal proceeding, the footage must be stored in such a manner that the chain of custody is not disturbed. If the chain of custody is in some way tainted, the admissibility of the evidence gathered on a

body camera may be excluded from a legal proceeding, thus eliminating the purpose of the camera. Storing daily video footage is very costly and requires specific procedures and practices, many of which are cost-prohibitive.

It is clear that the law as it stands today does not adequately address the issues presented by the use of body cameras. Legislation

als advertising on the website. While this is seemingly a win/win for both parties, liability is a serious concern. It is unlikely that a homeowner's insurance policy would cover intermittent renters. Even most renter's policies would not cover such a scenario. Like Uber, there is an absence of regulation that would exist for other similar services, such as



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is pending, but it will be some time before the stage is set for the proper, and legal, implementation of this practice.

Rideshare and Homeshare Services

Another hot topic in the realm of law and technology is the soaring popularity of the rideshare company Uber. Uber is a mobile application (commonly referred to as an 'app') that allows consumers to request a ride from drivers who use their own vehicles. The request is made via the Uber app and sent to Uber drivers located in the same geographical area as the consumer. Uber is growing in popularity at such a rate that taxi drivers and even some cities and towns are seeking to limit or even eliminate its presence.

To many of us, Uber seems to have come upon the scene without any forewarning. So it is perhaps not surprising that regulations have not yet been passed which address rideshare businesses. Again, the law has not caught up with technology. This leaves cities, towns, and the courts with little guidance as to how to treat these newly evolving businesses.

Airbnb is another popular service that allows customers to rent an entire house, apartment, or room from private individu-

hotels, inns, and bed and breakfasts.

By taking advantage of our ability to quickly and efficiently communicate with individuals all over the world, enterprising homeowners may be putting themselves at financial and legal risk they never considered.

Spyware

Yet more issues are presented by the use of technology to surreptitiously monitor someone's online activity. Commonly referred to as spyware, it is not infrequent in the realm of domestic relations for a spouse to use this technology to monitor the other spouse's online activity. Unfortunately, using spyware in this manner could run afoul of Massachusetts privacy and wiretap laws, despite the fact that this technology can be purchased from many large retailers.

Undiscerning customers rarely consider such ramifications when purchasing software that is available at their local retail store. Because ignorance of the law is not a defense, individuals who misuse this software expose themselves to potential liability.

Keeping up with technology is no easy task. It seems every day there is a new app or gadget that seemingly nullifies all technology that came before. Therefore, it should come as no surprise that the law has a difficult time

keeping up with changes in technology. The consequence is that cities, towns, and private individuals do not always know what is permitted under the law and what is not when it comes to evolving technologies.

The issue transcends every area of the law, from domestic relations to employment to

civil rights. While the Legislature and courts continue their efforts to keep up with technology, that large gaps will inevitably remain. Caution, however, dictates that consumers at least educate themselves on the potential impact of the use of often-unregulated technology. ■

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