

Warning! Wearing Google Glass may cause legal headaches (part two)

by John F. O'Rourke and Patrick Soon

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In a few months, the world will enter a new age of “wearable technology” when Google Glass goes on sale to the general public for the first time. And some— like the bloggers at [stop the cyborgs.com](http://stoptheborgs.com)— fear that things may never be the same. This innovation promises countless benefits (as discussed in [part one](#)). However, there are also growing concerns that Google Glass may pose a threat to privacy, security, intellectual property and public safety if used irresponsibly ... or nefariously!

Concern #1: Sense of privacy

Imagine what it will be like being surrounded by strangers with high-tech surveillance equipment mounted on their heads. Since the device has no exterior “recording” indicator light – at least not on the presently available [Explorer model](#) – it is very difficult to tell when you, your family or your business is being recorded. This capability has understandably heightened public apprehension (some old-fashioned people would still prefer not to have their most embarrassing moments posted on YouTube). Wearers may therefore expect to encounter the occasional negative public reaction. [CNN](#), for example, has reported that a customer in a bakery in Florida angrily confronted two Google Glass users and told them they were being “very intrusive and invading his sense of privacy.” And some businesses, like the 5 Point Café in Seattle, are already posting warnings that customers are entering a “[No Google Glass Zone!](#)”

Concern #2: Security

The idea of ‘spyglasses’ has been around in novels and movies for decades, but James Bond never had a gadget like Google Glass. This is a high-tech device that can take a photograph of a classified document with the blink of an eye, record a conversation with the tap of a finger, or upload a recording of controlled technology with a whispered voice command. One particular app, dubbed [NameTag](#), allows a wearer to learn a person’s name and any information posted online about that person just by looking at them! Such facial recognition technology may be of real benefit to law enforcement, but it could also be abused by stalkers and identity thieves. And although this app will not be downloadable through official Google distribution channels, it will nevertheless be available directly from the developer.

Concern #3: Intellectual property

Google Glass will similarly make it more difficult to protect patents and copyrights from infringement. Wearers will be able to record and instantly upload diagrams, schematics or trade secrets. And by combining this device with [3-D printing](#) technology, Google Glass can effectively be used as a mobile scanner, which may enable users to reproduce an invention after viewing it a single time. With such powerful capabilities at their disposal, Glass wearers will likely be heavily scrutinized by some of the businesses they enter. A user in Ohio, for example, was pulled out of an AMC movie theater by Homeland Security agents and accused of piracy. After an hour of questioning, the man was ultimately released – but only after he allowed the agents to inspect his

headset to verify that nothing had been recorded. Companies wanting to protect trade secrets would do well to ban Google Glasses from sensitive areas.

Concern #4: Public safety

As if texting was not already distracting enough. Now Google Glass wearers will have an equivalent 25-inch LED screen constantly within their peripheral vision. A driver, a cyclist, or even a pedestrian that becomes absorbed in a video or message – and we can expect people to be absorbed as they try to read or watch the Google Glass screen – may become oblivious to their environment and pose a risk to their own safety, and the safety of others.

In October 2013, Cecilia Abadie became the first person to ostensibly be cited for ‘DWGG,’ Driving with Google Glass. The actual code that was allegedly violated was [California V.C. Sec. 27602](#), which forbids drivers from using video screens for entertainment or business purposes while the automobile is in motion; however, GPS devices, in-dash mapping displays, and rear-view camera monitors are exempt from this law. On the ticket, seen here, the California Highway Patrol officer wrote: “driving with monitor visible to driver (Google Glass).” Fortunately for Ms. Abadie, the court determined that the officer was unable to prove “beyond a reasonable doubt” that the device was turned on while she was driving, so the case was dismissed.

Novel legal issues

The above-mentioned incidents have already raised some interesting legal questions. For example, what if the man in the movie theater had refused to consent to a search? Would the authorities have nevertheless been able to seize the Google Glass eyewear and use any evidence it recovered? Or does the Fourth Amendment require that a warrant be issued to search such wearable technology? The U.S. Supreme Court may shed some light on this issue this spring when it hears [Riley v. California](#) and [United States v. Wurie](#). While these two cases deal with hand-held technology, they nevertheless involve mobile devices that can be used to store large amounts of personal information.

And if it is indeed legal to drive while wearing Google Glass – as long as it turned off – how will law enforcement ever be able to prove *beyond a reasonable doubt* that it was turned on? As noted above, there is presently no indicator light, so the only way to tell if someone is actively using Google Glass is to be standing close enough to see a tiny image illuminated in the crystalline display. Such visual confirmation will obviously be difficult, if not impossible, since a simple voice command can shut the device down before an officer approaches.

In the next few years, lawmakers will surely be watching the impact of Google Glass and considering new laws and regulations to deal with these new concerns and novel legal issues.

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