

Penn State Law eLibrary

Books Faculty Works

2007

Wiretapping and Eavesdropping: Surveillance in the Internet Age, 3rd ed.

Anne T. McKenna Penn State Law, atm19@psu.edu

Clifford S. Fishman
The Catholic University of America

Follow this and additional works at: http://elibrary.law.psu.edu/fac books

Part of the Computer Law Commons, Constitutional Law Commons, Criminal Law Commons, Criminal Procedure Commons, Evidence Commons, and the Fourth Amendment Commons

Recommended Citation

McKenna, Anne T. and Fishman, Clifford S., "Wiretapping and Eavesdropping: Surveillance in the Internet Age, 3rd ed." (2007). *Books.* 23.

http://elibrary.law.psu.edu/fac_books/23

This Book is brought to you for free and open access by the Faculty Works at Penn State Law eLibrary. It has been accepted for inclusion in Books by an authorized administrator of Penn State Law eLibrary. For more information, please contact ram6023@psu.edu.

Wiretapping & Eavesdropping: Surveillance in the Internet Age

THIRD EDITION

by

Clifford S. Fishman

of the District of Columbia and Maryland Bars
Professor of Law
The Columbus School of Law
The Catholic University of America

and

Anne T. McKenna

of the District of Columbia and Maryland Bars
(State and Federal)

Visiting Assistant Professor of Law The Pennsylvania State University

Volume 2



Volume 3

CHAPTER 21. INTERNET TECHNOLOGY AND CYBERCRIME: AN OVERVIEW

§ 21:16 Civil actions arising from Internet crimes [New]

CHAPTER 22. COMPUTERS, THE INTERNET AND THE FOURTH AMENDMENT

- § 22:5.50 The Fourth Amendment: IP addresses and blogger identities [New]
- § 22:9 Trial and authentication issues [New]
- § 22:10 What constitutes a "computer" [New]
- § 22:11 Social media and reasonable expectation of privacy [New]

CHAPTER 23. SEARCHING COMPUTERS: WARRANT EXCEPTIONS

§ 23:25 Internet postings; Internet access; share software [New]

CHAPTER 25. FEDERAL COMPUTER LEGISLATION

§ 25:27 The Cyber Intelligence Sharing and Protection Act of 2013 [Retitled]

CHAPTER 26. COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C.A. § 1030

- § 26:3.10 Venue under CFAA, 18 U.S.C.A § 1030 [New]
- § 26:5.50 CFAA—Anti-hacker statute or employer-employee regulation? [New]
- § 26:10 CFAA and criminal case issues [New]

CHAPTER 27. STATE COMPUTER AND INTERNET LEGISLATION

INTERNET EEGISEMITON		
§ 27:12	Alabama—Unmanned Aircraft Vehicles (UAVs or Drones) / Retitled /	
§ 27:22	Alaska—Unmanned Aircraft Surveillance [Retitled]	
§ 27:30	Arizona—Unmanned Aircraft Surveillance [Retitled]	
§ 27:38	Arkansas—Unmanned Aircraft Surveillance	
3 = 15	[Retitled]	
§ 27:49	California—Unmanned Aircraft Surveillance [Retitled]	
§ 27:58	Colorado—Unmanned Aircraft Surveillance [Retitled]	
§ 27:67	Connecticut—Unmanned Aircraft Surveillance [Retitled]	
§ 27:75	Delaware—Unmanned Aircraft Surveillance [Retitled]	
§ 27:82	Florida—Unmanned Aircraft Surveillance [Retitled]	
§ 27:88	Georgia—Unmanned Aircraft Surveillance [Retitled]	
§ 27:94	Hawaii—Unmanned Aircraft Surveillance [Retitled]	
§ 27:101	Idaho—Unmanned Aircraft Surveillance [Retitled]	
§ 27:112	Illinois—Unmanned Aircraft Surveillance [Retitled]	
§ 27:121	Indiana—Unmanned Aircraft Surveillance [Retitled]	
§ 27:128	Iowa—Unmanned Aircraft Surveillance [Retitled]	
§ 27:135	Kansas—Unmanned Aircraft Surveillance [Retitled]	
§ 27:142	Kentucky—Unmanned Aircraft Surveillance [Retitled]	
§ 27:153	Louisiana—Unmanned Aircraft Surveillance [Retitled]	
§ 27:161	Maine—Unmanned Aircraft Surveillance [Retitled]	
§ 27:168	Maryland—Unmanned Aircraft Surveillance [Retitled]	
§ 27:173	Massachusetts—Unmanned Aircraft Surveillance [Retitled]	
§ 27:182	Michigan—Unmanned Aircraft Surveillance [Retitled]	
§ 27:192	Minnesota—Unmanned Aircraft Surveillance [Retitled]	
§ 27:199	Mississippi—Unmanned Aircraft Surveillance [Retitled]	
§ 27:207	Missouri—Unmanned Aircraft Surveillance [Retitled]	
§ 27:213	Montana—Unmanned Aircraft Surveillance [Retitled]	
§ 27:220	Nebraska—Unmanned Aircraft Surveillance [Retitled]	
§ 27:229	Nevada—Unmanned Aircraft Surveillance [Retitled]	
§ 27:237	New Hampshire—Unmanned Aircraft Surveillance [Retitled]	
§ 27:246	New Jersey—Unmanned Aircraft Surveillance [Retitled]	

§ 27:255	New Mexico—Unmanned Aircraft Surveillance [Retitled]
§ 27:267	New York—Unmanned Aircraft Surveillance [Retitled]
§ 27:276	North Carolina—Unmanned Aircraft Surveillance [Retitled]
§ 27:285	North Dakota—Unmanned Aircraft Surveillance [Retitled]
§ 27:293	Ohio—Unmanned Aircraft Surveillance [Retitled]
§ 27:303	Oklahoma—Unmanned Aircraft Surveillance [Retitled]
§ 27:309	Oregon—Unmanned Aircraft Surveillance [Retitled]
§ 27:317	Pennsylvania—Unmanned Aircraft Surveillance [Retitled]
§ 27:327	Rhone Island—Unmanned Aircraft Surveillance [Retitled]
§ 27:334	South Carolina—Unmanned Aircraft Surveillance [Retitled]
§ 27:342	South Dakota—Unmanned Aircraft Surveillance [Retitled]
§ 27:352	Tennessee—Unmanned Aircraft Surveillance [Retitled]
§ 27:364	Texas—Unmanned Aircraft Surveillance [Retitled]
§ 27:373	Utah—Unmanned Aircraft Surveillance [Retitled]
§ 27:378.50	Vermont—Unmanned Aircraft Surveillance [New]
§ 27:386	Virginia—Unmanned Aircraft Surveillance [Retitled]
§ 27:394	Washington—Unmanned Aircraft Surveillance [Retitled]
§ 27:401	West Virginia—Unmanned Aircraft Surveillance [Retitled]
§ 27:407	Wisconsin—Unmanned Aircraft Surveillance [Retitled]
§ 27:413	Wyoming—Unmanned Aircraft Surveillance [Retitled]

CHAPTER 28. CELLULAR PHONES: TECHNOLOGY, INVESTIGATION AND TRACKING

 $\S~28:4$ Cell phone as tracking device: overview; vocabulary [New] $\S~28:5$ The statutory scheme: 18 U.S.C.A. $\S~2703(d)$ in context [New] $\S~28:6$ Does obtaining cell site location information from a telecommunications service provider constitute a Fourth Amendment "search"? [New] $\S~28:6.10$ Is it a search?—Traditional Fourth Amendment doctrine [New] $\S~28:6.20$ Is it a search?—U.S. v. Jones; California v. Riley [New]

Table of New and Retitled Sections

_	
§ 28:7	HCSLI: federal case law [Retitled]
§ 28:7.50	State law [New]
§ 28:7.60	HCSLI: The issues, in brief [New]
§ 28:7.70	HCSLI: evaluation [New]
§ 28:8	"Tower dumps" [New]
§ 28:9	Prospective CSLI [New]
§ 28:30	Introduction $[New]$
§ 28:31	Seizing an arrestee's cell phone [New]
§ 28:32	Pre-arrest (a) seizures of a suspect's phone, or (b) police calls to a detainee's cell phone [New]
§ 28:33	Search "incident to arrest": constitutional principles [New]
§ 28:34	Riley v. California: background [New]
§ 28:35	Riley: summary [New]
§ 28:36	Riley: cell phones and the justifications for the search incident doctrine [New]
§ 28:37	Riley: privacy interests—The nature of a cell phone [New]
§ 28:38	Riley: categorical, not nuanced, approach [New]
§ 28:39	Pre-Riley searches and the "good faith exception" [New]
§ 28:40	Introduction [New]
§ 28:41	Probable cause [New]
§ 28:42	"Particularly describing the place to be searched" [New]
§ 28:43	"Particularly describing the thing to be seized" [New]
§ 28:44	"Minimization" [New]
§ 28:45	The "exigent circumstances" doctrine: constitutional principles [New]
§ 28:46	"Imminent danger" exigencies; apprehend fleeing felon [New]
§ 28:47	Evidence-destruction exigencies [New]
§ 28:48	Answering the phone; reading incoming text messages; returning or initiating calls or messages [New]
§ 28:49	Where probable cause exists that defendant used the phone to commit the arrest offense [New]
§ 28:50	Exigent circumstances in the absence of a probable cause connection [New]
§ 28:51	Exigent searches of a cell phone's memory [New]
§ 28:52	Duration of exigency [New]

§ 28:54 Standing to challenge admissibility of evidence obtained from or regarding a suspect's cell phone [Retitled]

CHAPTER 29. ELECTRONIC TRACKING DEVICES

§ 29:37 GPS and the Fourth Amendment: U.S. v. Jones [Retitled]

CHAPTER 30. TECHNOLOGICALLY ENHANCED VISUAL SURVEILLANCE; OTHER FORMS OF SURVEILLANCE TECHNOLOGY

SCHVEILLANCE LECHNOLOGI		
§ 30:31	An overview [Retitled]	
§ 30:32	Terminology [Retitled]	
§ 30:33	The technology: What drones can do [Retitled]	
§ 30:34	Drones: Usage by law enforcement [New]	
§ 30:35	Drones: Administrative regulation [Retitled]	
§ 30:36	Drones/UAVs: Legislative regulation [Retitled]	
§ 30:37	Drones: Generally applicable existing electronic surveil- lance legislation [New]	
§ 30:38	Drones/UAV-targeted or specific legislation [New]	
§ 30:39	Drones/UAV-targeted pending legislation [New]	
§ 30:40	Drones/UAVs: Legality under common law and the constitution [New]	
§ 30:41	Private industry surveillance [New]	

CHAPTER 31. BIOMETRICS

§ 31:30	Biometrics and State Legislation: an overview [New]
§ 31:30.10	Illinois' Biometric Privacy Information Act [New]
§ 31:30.20	Texas' Capture or Use of Biometric Identifier Act
	[New]
§ 31:30.30	Existing legislation: Adding biometric data to the defi-
	nition of "personal information" under state data
	breach notification statutes [New]
§ 31:30.40	Pending legislation [New]
§ 31:44	Biometrics: private industry use [Retitled]
§ 31:52	Biometrics in the courts: Federal decisions—Facial recognition [New]
e 01.50	e
§ 31:53	Biometrics in the courts: Federal decisions— Biometrics and standing [New]
§ 31:59	Biometrics in the courts: Cases on the horizon [New]