

Google Glass, Recordings, and the Law

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CNET is [reporting](#) that an Ohio man went to a movie theater wearing [Google Glass](#). Halfway through *Jack Ryan: Shadow Recruit*, an FBI agent approached him, flashed a badge, took his Google Glass, and ordered him out of the theater. Several agents questioned the man about whether he was recording the film, which the man denied. Eventually, the agents connected the Google Glass to a laptop, downloaded the contents, and determined that the man had not recorded the film. He was released.

Wearable computing is here. It isn't just Google Glass, which is still available only to a chosen few. Recon has a [rival product](#). Every snowboarder seems to have a Go Pro camera on his or her helmet. [Fitbit](#) and other companies have wrist-based fitness tools. More and more police officers are wearing "[badge cams](#)." (Some are also [experimenting with Google Glass](#).) These new technologies raise a plethora of legal issues, as I noted in a [previous post](#). This post will start by looking at the legal issues raised by wearable recording devices.

- 1. Wiretapping and surveillance laws.** Under North Carolina law, the consent of one party is sufficient to record a conversation. G.S. 15A-287. Therefore, a Glass wearer can record any conversation to which he or she is a party. But Glass might also be used to record a conversation to which the wearer is not a party – for example, a conversation taking place at the next table in a restaurant. Such surveillance likely would be a Class H felony. *Id.* Furthermore, in some states, *all* parties to a conversation must consent to recording. This raises the question of whether one implicitly consents to being recorded by engaging in a conversation with a Glass wearer. The Consumer Law and Policy Blog ponders the issue [here](#), and Fox News interviews several experts [here](#). Additional concerns might arise when Glass is used to record police activity, as some jurisdictions have special rules regarding recording the police. (I discussed some of those rules [here](#).)
- 2. Intellectual property laws.** As the Ohio movie theater incident illustrates, the recording capability of Glass creates both intellectual property concerns and questions about how to enforce intellectual property rights. Should Glass be allowed in movie theaters, at art galleries, and at concerts? If Glass is allowed, but recording is prohibited, does the fact that a person is wearing Glass provide probable cause to believe that the person is recording? And if so, may officers simply confiscate and search a wearer's Glass under the exigent circumstances exception to the warrant requirement?
- 3. Driving laws.** Using Glass to record one's morning commute appears to be lawful, if uninteresting. Using other features of Glass while driving, however, might raise legal issues. Surfing the internet or reading email on Glass might constitute reckless driving under G.S. 20-140. Note that it would not violate North Carolina's texting while driving law, G.S. 20-137.4A, because that statute refers specifically to using a "mobile telephone" to read emails and text messages. Some states have more specific laws, like California's law against using a video display in front of the driver's headrest; a driver who was ticketed under that statute [recently had the charge dismissed](#) when the judge found insufficient evidence that the device was in operation. [\[Update: An astute reader noted that North Carolina has a similar statute, G.S. 20-136.1.\]](#)
- 4. Other offenses.** Glass might facilitate a wide array of offenses. It could enable a criminal to "case" a target residence or business much more effectively. It could facilitate stalking. Using Glass to record one's sexual activity (yes, there's an [app for that](#)) might, in some instances, violate the obscenity – or even child pornography – laws.
- 5. Police use of Glass.** We know from *Florida v. Jardines* that a knock and talk becomes a Fourth Amendment

search when an officer brings a drug dog along, because we do not expect, and do not implicitly invite, social visitors to bring such dogs. Do we expect social visitors to come to our homes wearing Glass? We certainly expect them to come carrying cell phones, which are recording devices, but perhaps Glass is different.

The Supreme Court has finally [agreed to consider the issue of searching cell phones incident to arrest](#). Perhaps a decade from now, it will consider a Glass case. In the meantime, it will be interesting to see how the law unfolds.