



# VIDEO SURVEILLANCE IN RENTAL STORES

# EYE ROBOTS

BY ED WINN III



Both the price and size of closed-circuit video cameras and recording equipment keep getting smaller. Some cameras are the size of your thumb. It is no wonder that rental dealers wonder about using this technology to keep an eye on things in the store when they aren't physically standing there looking around.



Who wouldn't like to have a camera on the back room to see where those DVD players keep disappearing to? Who wouldn't like to have a camera trained on the Dumpster in the parking lot to record who is really "Dumpster diving" for customer lists or other proprietary information? Who wouldn't like to watch and listen in on a new employee's sales presentation to measure his or her progress and attention to the expensive new training program?

Well, in the words of Meatloaf, "Two Out of Three Ain't Bad." You can do the first two. You can't do the third.

Here is the law in a nutshell about video surveillance in the workplace as it applies to the typical store.

First, you can do it. You don't need permission. You don't need consent. You don't need to post no-

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tices if you don't want to. You can be as surreptitious about it as you want. You can hide or camouflage the cameras so that people will not know that they are there if you want. You might ask yourself, however, if you are intent on cutting down on pilferage and that is the main reason you are videotaping activity in the store or the parking lot, that maybe big posters telling everyone that they are being filmed and having cameras openly on display will actually help with the theft problem. Otherwise, nobody knows about the filming and somebody is going to have to watch a lot of boring footage to catch the thief. Maybe it's better to put the thief on notice that he or she is being watched.

Next, make your videos silent. Don't record voices. This is because of the Electronic Communications Privacy Act (18 USCA sec. 2510). This federal law, an amendment to the Omnibus Crime Control and Safe Streets Act, governs aural communications and provides a civil remedy to anyone whose wire, oral or electronic communication is intercepted, disclosed or used by someone else without permission.

The act does not address the issue of videotaping without sound directly, but a number of lawsuits have done so. There have been several federal appeals court cases testing the proposition and the rulings have consistently been that it is the interception of an oral communication that

triggers the statute and not mere video surveillance without any sound.

You can't tape someone's conversation without his or her knowledge and consent and if you do, there is civil liability under this federal law and under some state laws as well. That is why you hear the voice telling you that your call may be recorded when you are put on hold with almost any company these days. They are selectively recording conversations for training and other purposes and are putting everybody who is on a call on notice. This federal statute does not apply to silent video recordings as per a number of federal circuit court opinions.

The only other rule you must follow is not to set up a video camera in areas where either customers or employees could arguably have a "reasonable expectation of privacy." The Nevada Supreme Court held that people have less of an expectation of privacy in the workplace than elsewhere. This was a case brought by PETA against an animal trainer in a Las Vegas casino act. The trainer was secretly videotaped beating an orangutan backstage before a performance was to begin. The trainer's contract with the casino provided that he was to be free "from distracting intrusion and interference with his animals." He used this language in his contract to argue that he had a reasonable expectation of privacy in the backstage area where his animals were kept. The court ruled against him holding that the videotaping of the area did not interfere with his handling of the animals.

There are not going to be many places in or about an RTO store where either customers or employees can legitimately claim a reasonable expectation of privacy. It does mean no cameras in restrooms. Rental dealers aren't renting clothes, yet, and so there are no dressing rooms, unless employees wear uniforms and there is a place for them to change in the store. Employees don't generally have a reasonable expectation of privacy in the back room. Nobody can reasonably expect privacy in the parking lot. On this point there was a case against the Golden State Warriors in California in which the court dismissed privacy claims from a plaintiff who was trying to suppress videos taken by a private eye of the employee taking drugs in his car while parked in a parking lot. You can videotape parking lots and the cars that are in them. Dumpsters aren't private.

There are rules against videotaping employees doing union business under the Labor Management Relations Act (29 USCA sec. 185), but so far at least, there are few, if any, union employees or union activity in rental stores.

Do think about your goals in setting up cameras in your stores. Make sure that it is something you feel you need to do to protect and further your business. You can find out all about the equipment that other merchants are using and how much it costs by Googling "video surveillance equipment" on the Internet. Happy filming. ■

*Ed Winn III is APRO's general counsel.*



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