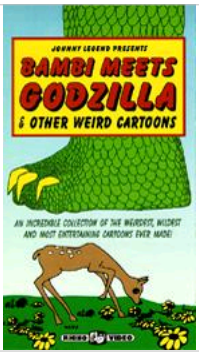
Reasonable Expectations of Privacy Meet Technologies of Surveillance



Katz v. United States, Harlan concurrence (1967)

- first that a person have exhibited an actual (subjective) expectation of privacy and,
- second, that the expectation be one that society is prepared to recognize as "reasonable."

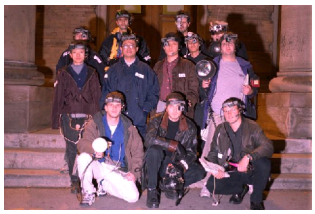
We've seen so far…

- Wiretap a phone conversation
- Wire up an informant

Spy gadgets

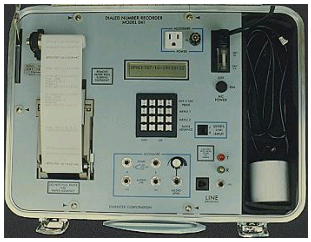
Everyday gadgets spy

Steve Mann's Wearcam



Which of these can law enforcement do?

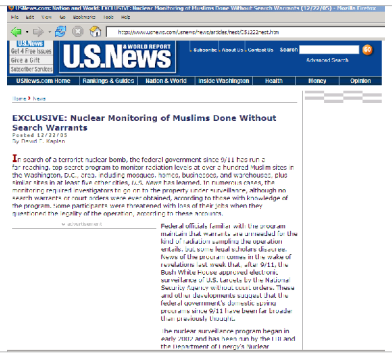
- Wiretap a phone conversation
- Wire up an informant
- Pen-register trap
  dialed phone numbers
- Dog-sniff for drugs
- Rummage through trash
- Fly-over inspection
- Thermal imaging



- Dianatek Pen Register: The Model 041 is connected to a telephone subscriber line and will capture, decode, display and print the dialed numbers on that circuit. It will also print the date and time of each call plus the call duration and necessary information regarding call progress to establish an acceptable determination of call completion. Every 12 hours a summary print is provided of incoming and outgoing calls by type and duration. The user can enter up to 10 dialable numbers for matching to trigger external accessory equipment for a timed duration. Matched numbers will also be flagged on the printout and summarized every 12 hours. All programming and parameter adjustments are done from the front panel. The instrument is complete with printer, LCD display and is housed in a polyethylene case. It has a carrying weight of about 15 pounds.

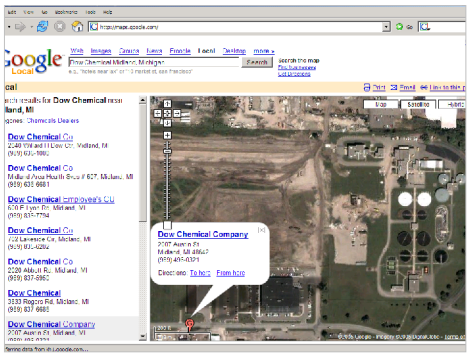
sui generis or “a creature of legal fiction”?

David McNew / Getty Images for



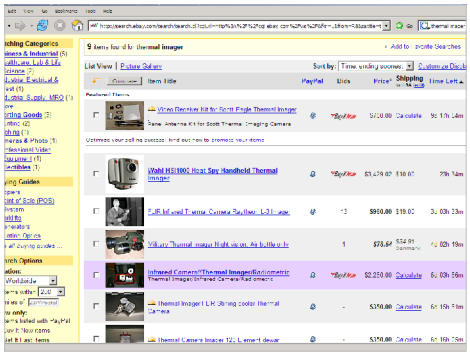
U.S.News

EXCLUSIVE: Nuclear Monitoring of Muslims Done Without Search Warrants



Google Local

Dow Chemical Company



Barking at RFID

- Many stores use Radio Frequency ID tags (RFID) to track merchandise. RFID tags respond when “interrogated” with a particular radio frequency. If a pallet of razors is stolen from WalMart, can police set up a RFID checkpoint to see if anyone leaves the parking lot with the hot merchandise?
- If they identify a car that responds, can they use the RFIDs to track the car? The person carrying the razors?