Does Drone Technology Present New Threats to Privacy?

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As I discussed in a previous blog post, Whose Airspace Is It, Anyway?, the proliferation of drones has resulted in various state laws designed to address threats (real or imagined) posed by the those curious little flying machines. In other words, Newton's Third Law is alive and well. One subset of those laws deals with protecting the privacy rights of citizens. But do drones really pose additional threats to privacy rights? In the main, probably no more than many other technologies that have emerged in recent years in a society that is constantly connected.

Let's start with the right to privacy. The general rule is that individuals have privacy rights only in an area in which he or she has a reasonable expectation of privacy. The classic example is inside one's home with the shades drawn. Or, in the unfortunate case of Erin Andrews, in a hotel room.

But what about within a fenced yard while sunbathing by a pool? According to the U.S. Supreme Court in *Florida v. Riley*, a person does not have a reasonable expectation of privacy in areas that are visible from the air. While that case addressed aerial surveillance by law enforcement, the same principles likely apply to the bounds of privacy when commercial drones are used. Of course, commercial drone use will not typically involve surveillance of citizens, but the rationale remains that drones simply flying over private property do not invade the property owner's privacy unless used to surveil or video someone who is not out in the open.

So perhaps the fear that drones will result in a significant infringement on privacy rights is a bit overstated. That fear is somewhat understandable, however, given the portability and size of drone aircraft. After all, someone with bad intentions can use drone technology to monitor someone else with relative ease. But tech savvy bad actors can use numerous technologies for improper purposes, but that does not — and should not — serve as an indictment of those technologies for all purposes.

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