

KEN KIRSCHENBAUM,ESQ

ALARM - SECURITY INDUSTRY LEGAL EMAIL NEWSLETTER

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Q&A - Camera - CCTV Issues

QUESTION:

Ken, I have a question concerning cameras in schools. There seems to be a debate on possible lawsuits if they can be viewed by school principles remotely which some parents are worried about that anyone could view the material if they could hack the security that is set up. Can the schools be sued if they have a camera system that offers authorities remote viewing? What about just having a camera system that records with no remote viewing? Also, what about not putting a system in even though systems are available? If a child or teacher have a problem can they say the school had quotes and didn't put in any system and sue them that way? Hope these questions will hit home with other dealers. What contract should we use for such camera systems if we install either system.

Kevin *****

QUESTION:

Dear Ken,

I recently subscribed, and may have missed discussion concerning CCTV coverage of condominium swimming pools.

Could you address the issues off implied warranty of safe premises and attendant liability, for both monitored and unmonitored, recorded only CCTV systems (by security personnel); life safety v. mitigation of liability; signage; and standard of care issues.

Mahalo

QUESTION:

Mr. Kirschenbaum,

I'm a Disputes Analyst and Investigator for Netspend, a pre-paid credit card company based in Austin, Texas.

We have been encountering issues involving ATM fraud involving amounts in excess of \$1,000.00. Naturally, we feel that obtaining ATM camera footage would be worthwhile in these cases; not only to protect our cardholders but also to press charges against the individuals in question.

After fruitless research, I came across your article written back in December 2006 concerning this topic. I had hoped you could shed some light for us to see how we can currently both legally and quickly access this resource before federal regulations require that we conclude our investigation, as well as the video is lost or destroyed.

We appreciate your quick and informative response to this query.

Wallace

ANSWER:

There are several articles on my web site that address cameras. You can read these articles at

<http://www.kirschenbaumesq.com/emailarticles.htm>. Use your edit feature to search and find articles titled with Cameras.

Camera systems can be installed in any area where privacy is not expected, subject to local statutes that may apply. You need to check your state. I have listed some state laws at

<http://www.kirschenbaumesq.com/avstatutes.htm>. The list probably needs updating. In the school setting parents can be asked to sign a waiver or simple be put on notice that the classroom can be monitored by administration, or even the parents, remotely. I don't know if this would be any different that permitting parents to sit in the class to observe. Obviously some areas of the school would be off limits for viewing or recording, such as dressing and bathrooms.

You would use a Sales Contract to install the CCTV and a Service Contract to service it, provided you the system uses a local DVR. For central station video monitoring and data storage, use the CCTV Sales contract. All are found at www.alarmscontracts.com.

Landlords who have recreational facilities, such as swimming pools, have a duty to tenants and visitors lawfully using the facility to provide adequate protection. That does not necessarily include CCTV viewing or recording, and more than likely there is no such requirement. Certainly recording

CCTV provides little or no protection, and serves only to view after the fact events. Even monitored CCTV would not replace a live lifeguard, which may be required at a recreational facility. I believe the best advice on this topic is that dummy cameras should not be used, for any reason, in recreational facilities. They would instill false expectations of security and could give rise to unnecessary liability.

Unless governed by statute in your area, ATM recordings are the property of the bank. Your request to view those recordings would be subject to the internal rules of the bank. No doubt the police would have access to the recordings, as would you if there was a lawsuit pending and the recordings were subpoenaed. Requesting the bank to preserve the recordings should be enough to get it to retain them. I would be surprised if the bank would not cooperate with your investigation. You may be required to indemnify the bank, but that should not be a problem since you are using the recordings for legal purposes and the ATM recordings are not likely privileged.

NEW LAWS

Reminder to those licensed in NY state: You need secondary office in New York and you need to maintain employee and subscriber files in that office.

NY does require an out of state license holder to have a NY office and that office must house all files for NY transactions and personnel files. You definitely need more than just a NY address. Don't risk a \$10,000.00 fine and loss of your license. Contact Eileen in my office to arrange a Secondary NY office. 516 747 6700 x 212.

MEETING NOTICES:

Next Presentation:

New Mexico Burglar and Fire Alarm Association. April 24, 2008. 5:30 PM

at ADI located at 4380 Alexander NE, Albuquerque, NM.

For further information contact NMBFAA Executive Director Vic Berniklau.

Telephone 505 260 7474

**Want to schedule me for a speaking engagement?
Alarm associations can book my presentation by calling Eileen in my
office at 516 747 6700 x212.**

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