



Privacy or Right to Know? Policy Development 2014

Issue:

Privacy issues are not just a concern of the farm community. The last couple of years while the agriculture community has dealt with legislative issues addressing covert filming on farm operations others have been addressing their own covert photography concerns.

"Paparazzi" legislation has been gaining attention across the country ever since Princess Diana's 1997 fatal car crash during a high-speed paparazzi chase. Even Tennessee has had legislation introduced to curtail unwanted photography. Legislation introduced in Tennessee would have created a civil cause of action against any person who physically invades the privacy of another or attempts to capture a visual image, sound recording, or any other physical impression of a person engaging in personal or familial activities.

The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) has been directed to study this issue during the off session of the legislature and present their results to the Tennessee General Assembly in January of 2015.

Questions:

What protections should individuals have on their own property against being recorded or having visual or auditory images captured and/or published?

What is a reasonable expectation of privacy?

What are the pros and cons of the potential solutions?

Should Farm Bureau engage in this issue?

Background:

The privacy issue is gaining increased attention because of the ever-changing technology advancements and the availability of inexpensive and easy-to-use digital cameras. Today, with little expense, nearly anyone can be a photographer or videographer.

The nation's first anti-paparazzi law went into effect in California in 1999, creating tort liability for "physical" and "constructive" invasions of privacy through photographing, videotaping, or recording a person engaging in a "personal or familial activity." California has now passed three laws intended to curb paparazzi abuses. In addition, Hawaii passed a similar law in 2013.

The legislation proposed in Tennessee, HB1855 – Williams/SB1840 - Norris, was designed to create a civil cause of action against any person who physically invades the privacy of another or attempts to capture a visual image, sound recording, or any other physical impression of a person engaging in personal or familial activities. The bill imposed civil liability for the publication or other use of images or recordings captured through such violation. It would have established exceptions for law enforcement and related activities. Before the bill was referred to TACIR it was amended to also exempt regular or contract employees of established news media outlets whose employees are members of recognized professional or trade associations.

Although we have strong trespass laws in Tennessee for physical trespass, some believe current law has not caught up with the effect technologies' are having on personal privacy. With the wide and affordable availability of technologies, a growing number of people have the ability to intrude on others' privacy. However, First Amendment advocates claim further restrictions will have a chilling effect on the interest of a free press being able to report legitimate news.

The problem is complicated by constitutional issues as well as governmental approval and regulation of certain technologies. Privacy laws play a major role in the policies that govern many different areas of our lives. We have health privacy laws, financial privacy laws, online privacy laws, and communication privacy laws. Europe even now has a 'right to be forgotten' law to allow individuals to have information from their past expunged from the internet.

The challenges and answers are not simple. Society is faced with some confusing questions about the extent of privacy rights versus the First Amendment. The debate comes down to a question of free speech and public interest versus the right of privacy, safety, and the right not to be defamed.

Farm Bureau Policy:

Property Rights (Partial)

Any erosion of private property rights weakens all other rights guaranteed to individuals by the Constitution. We oppose any legislation allowing access to or through private property without permission of the property owner or authorized agent. New technology expands the boundaries of property rights infringement. State and federal laws should evolve with these technological advancements to maintain the traditional concepts of private property rights.

All state and federal regulations encroaching on the rights of private property owners should be reviewed and altered. The Presidential Executive Order 12630 regarding the protection of private property rights should be made law.

Law and Order (Partial)

Laws protecting private and public property rights must be strictly enforced.

Gun Control (Partial)

Private property rights are a bedrock principle to our freedom and prosperity. We are strong advocates of well-defined and enforced private property rights. No law should erode or allow landowners rights to fade to the background.