

# The New York Times

## The Opinion Pages

### Old Laws Can Cover New Technologies



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Cameras, spike mikes, radio beepers, miniature tape recorders, cellphone cameras, radio frequency identification chips, cookies. These are all technologies that have stirred debates about privacy in their time — and legitimate debates to be sure. Now it's civilian drone aircraft.

Privacy is produced by exercising control of information about ourselves. New technologies can certainly challenge that control by evading or piercing the physical barriers we erect around ourselves and our information. With drones, this is quite literal. A drone equipped with a camera could capture images through windows that have been oriented to give access to light and air while excluding the eyes of our earth-bound neighbors.

#### *Would new laws deter teenage boys from using drones to take racy photographs?*

It may seem obvious that the government should restrict where drones can fly or film. Everyone agrees that unwanted photography around the intimate areas of the home can lead to offense. So we've solved the problem, right? It's a simple, straightforward law.

But it's not so simple. We would want to allow drone photography for reasons like inspecting gutters and chimneys. What about drone photography that confirms suspected animal abuse? Should a drone privacy regulation allow that litter of puppies to die?

If the point of law is actually to control behavior and not just make a statement, it's worth asking how well a new privacy law would stop teenage boys from using drones to take racy photographs through bedroom windows. They race cars and drink beer despite all the laws on the books. Real experience with drone-based privacy invasion might reveal technologies or techniques that directly counter invasive over-flying.

If outlawing drone photography is a slam-dunk because of today's consensus, should photography that embarrasses wealthy people have been outlawed in 1890? Such photography was the inspiration for the seminal privacy law article, "[The Right to Privacy](#)," by Samuel D. Warren and Louis D. Brandeis. It is unlikely that drone-based peep-photography will gain social acceptance, but — thanks to legal developments inspired by Warren and Brandeis — we need not race to outlaw it. In most states already, it is a violation of the tort law to give public disclosure to embarrassing private facts, such as the intimacies that go on within the home.

The privacy wrongs that may be done with drones are already addressed by our law. A special rule about drones would just add regulatory and enforcement complexity without increasing privacy protections.