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THURSDAY, OCTOBER 30, 2014

Chicago Daily Law Bulletin®

Volume 160, No. 214

Watch out: Privacy concerns in the age of wearable technology

Earlier this month, Apple unveiled Apple Watch, perhaps the most hotly anticipated product debut in the burgeoning market for wearable technology.

Apple's website displays the watch in its various elegant incarnations — from a sports watch with a fluoroelastomer (also known as rubber) wrist strap to an 18-karat gold collection — and vaunts the product's technological innovations.

Functionally, the watch's features include tracking a user's daily physical activity; allowing a user to not only text and e-mail but also to draw on the watch face while another user observes the drawing in real time; synching with a user's iPhone and Apple TV; and creating a securely encrypted payment platform so a user can make purchases on stored credit cards by merely holding the watch in front of a vendor's contactless reader.

The Cupertino, Calif., company's introduction of the Apple Watch is a harbinger of an explosion not only in wearables but in the apps designed for them. We can expect tremendous innovations in the wearables field over the coming months and years — and, with those innovations, significant challenges.

Because technology is developing so rapidly, it's impossible to anticipate all of the legal and ethical issues raised by wearables. What is evident is that the privacy concerns surrounding the Internet and mobile devices will be amplified as new wearable technology collects more and more personal information.

While these new devices and apps will surely raise a host of new challenges, these are actually not unique to wearables. Most — including the Apple Watch — essentially borrow existing technologies, shrink them and make them more portable and more connected.

The privacy concerns wearables raise are essentially ones we've encountered — and ones that will continue to exist until our existing legal framework catches up with technology.

What is wearable tech?

The term "wearables" encompasses a range of electronic technologies that users wear on their clothing or directly on their body. Most small portable devices are actually wearable — think a cellphone on a belt-loop holster — but the term refers to products specifically designed to be worn by the user.

While technology merely may be scaled down and incorporated into a wearable design, the term also connotes some degree to which the wearability of a product is essential to its function.

Wearables have actually been around for years, if not decades, depending on how loosely the term is defined. Historically, consumer wearables have been concentrated in the fitness and sports sector. Companies such as Garmin have been extremely successful with products like GPS-enabled running watches and heart-rate monitors.

While these products have been popular for years among serious amateur athletes, products such as Fitbit (as well as a variety of mobile apps) are making fitness data-tracking technology accessibly to a broader audience.

Wearables recently have achieved particular prominence in the world of professional athletics. A variety of devices can measure performance metrics such as acceleration, speed and distance, as well biometrics, including heart rate, skin temperature and blood oxygen. In the pro sports arena, this data may be used to improve performance, prevent injuries and engage sports fans.

The potential use of data in salary negotiations, however, raises not only privacy concerns but labor law issues.

Perhaps the most familiar example of wearable technology today is Google Glass. The Jetson-esque device is an "optical head-mounted display" that puts smartphone technology onto a display attached to eyeglasses. Through commands via voice, touch, gesture or simply winking, a user can check e-mail, search the Web and — most notoriously — take pictures and video.

In addition to Apple Watch (and other smartwatches developed for other operating systems), wearables are being developed in a panoply of other small packages, including jewelry. Usually, these products are not designed for use in isolation, but instead connect by Bluetooth to a user's smartphone or device.

Design elegance, privacy muddle

The growth of wearables will affect a range of legal areas, from intellectual property (patents) to product liability (products causing injury directly or indirectly) to employment (monitoring appropriate use and preventing abuses of wearables in the workplace) to regulatory law (the potential classification of certain products as medical devices by the Food and Drug Administration as well as broader regulation by the Federal Trade Commission).

When people (other than the most myopic lawyers) hear about Google Glass or Apple Watch, however, they tend not to immediately worry about patents or Lanham Act false-advertising violations. Instead, these new technologies typically agitate concerns about privacy.

The introduction of Google Glass, in particular, has occasioned something of a public backlash. Despite the product's beneficial applications (for example, remotely guiding a firefighter through a building), a large share of the public has fixated on the product's ability to take photos and videos surreptitiously. (A small light goes on when the device is in recording mode, but that feature has provided minimal comfort.)

Given the field's enormous breadth and rapid innovations, it's impossible to identify all of the privacy concerns that will arise in coming years. For now, though, it's useful to remember that many of the functions of wearables already exist in some form.

PRIVACY, TECHNOLOGY AND LAW

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While the public may fret about Google Glass, anyone with a smartphone can take photos or record video at any time quite discreetly. To the extent that any limitations on these technologies are appropriate, we can begin by evaluating how existing laws protect privacy interests, including data collected, stored and shared on smartphones and apps.

Smartphones already collect enormous caches of information about users — GPS data, photos, purchasing habits and browsing history — and no uniform set of laws and regulations exists concerning how data is protected.

The novel aspects of wearable technology serve as a bit of distraction from the reality that a comprehensive set of data privacy and security laws and regulations would likely encompass wearables as well as more banal devices such as smartphones, tablets and laptops.

This applies with particular force to data bearing on a user's medical condition. Plenty of smartphone apps already measure and record things such as how many steps the user takes in a day. Increasingly, technology may detect and collect more intimate personal data. This data needs to be safeguarded (particularly data stored in the cloud), and both device and app companies need to comply with applicable state and federal laws — currently, a confusing patchwork — while communicating to users how information is stored and, potentially, shared.

The "wearable" part of "wearable technology" isn't intrinsically threatening to privacy rights. The key is to focus on developing a more uniform regulatory framework governing how data is collected, stored and shared, rather than worrying about whether a device is in a user's hand or on her wrist.