

# Don't Make a Peep

By Reg P. Wydeven  
August 1, 2009

A few years ago, it seemed that every week a new picture of a young Hollywood starlet not wearing any underpants sprang up on the Internet. If you opened up an 'Us' or 'People' magazine, all you saw were photos of Britney Spears, Paris Hilton or Lindsay Lohan getting out of a vehicle while "going commando" and wearing a short skirt.

These girls were young and foolish, and certainly garnered much sympathy for their youthful indiscretions. However, people didn't feel too bad for them, since all they had to do was put on some skivvies. In addition, some Hollywood insiders are convinced the flashers intentionally left their drawers in their drawer for the extra media exposure (no pun intended).

Recently, a new revealing video has been posted on the web that has generated just as much buzz as the celebrity upskirt photos. But unlike those photos that were taken in public of poses that were perhaps even premeditated by the models, this video was taken in a private setting without the consent or even knowledge of the subject. The video is of Erin Andrews, 31, an ESPN sideline reporter, who was unknowingly videotaped while naked in her hotel room.

Even though she is a terrific reporter, Andrews is probably better known for her good looks. Accordingly, before the clip was removed from most video sharing sites, it was Google's most searched item for two days. The video shows grainy images of a naked woman, purportedly Andrews, whom the camera seems to be following, indicating the camera is most likely handheld. Investigators have been unable to determine if the video was shot through a specially made hole in a wall or door, or through the hotel door's peephole.

Marshall B. Grossman, Andrew's attorney, asserted that, "We are focused on putting this predator behind bars. This conduct is unacceptable in a civilized society." The difficulty is that investigators have no idea who "this predator" is. To complicate matters, the actual hotel and its location are unknown, making the search for the cameraman even harder.

Even if the perpetrator is discovered, however, whether or not he gets prosecuted will depend on where he shot the footage.

If investigators are able to find the Peeping Tom behind the camera, there still might be a question of whether he can be prosecuted. There are currently only 19 states that have laws banning secretly recording someone without that person's consent.

Fortunately, Wisconsin is one of those states. In Wisconsin, it is illegal for anyone to knowingly install a surveillance device in any private place, with the intent to observe any nude or partially nude person without that person's consent. According to the statute, a "private place" is somewhere a person may reasonably expect to be safe from being observed without his or her knowledge and consent.

It is also illegal for someone to look into a private place that is part of a public accommodation, such as a dressing room, where a person may reasonably be expected to be nude or partially nude, for the purpose of sexual arousal or gratification.

If there's any silver lining in this travesty, hackers pounced on the opportunity and attached a harmful virus to the clip, infecting anyone's computer who tries to download it.

I was once the victim of a peeping tom, but mine had the audacity to reach through the window and actually close the curtains.

*This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2009 McCarty Law LLP. All rights reserved.*