

Security vs. Privacy

Since 9/11, the Department of Homeland Security has implemented new policies and practices that increase our safety and security while flying the “friendly skies.” To handle this mission a new agency was formed, the Transportation Security Administration, (TSA) which is a component of the Department of Homeland Security. They are responsible for the nation’s transportation system (“What is TSA”). Many of these new policies and practices have received a fair share of criticism claiming to be unreasonably invasive to our privacy. One issue, airport security screening, has been under fire for possibly revealing more than we are aware of. The Transportation Security Administration has implemented more sophisticated technological measures to screen passengers for weapons and explosive devices prior to boarding airlines in an effort to combat terrorism. The American Civil Liberties Union believes the technology being used violates our Fourth Amendment Privacy Rights. (“The USA Patriot ACT and Government actions that threaten our civil liberties”). Based on the following review of the Transportation Security Administration’s procedures for screening passengers, it is concluded that the current technology measures being used do not violate our constitutional rights.

The Fourth Amendment of the United States Constitution guarantees citizens the right to be secure in their persons, papers, and homes (US Const.). This “right to privacy” is not absolute and the US Supreme Court has recognized several exceptions. In *Katz v. US*, the US Supreme Court outlined that an individual has a right only to privacy that society has recognized as reasonable (Katz). What constitutes a reasonable expectation of privacy is dependant on the particular circumstances and may be subject to change as society’s values change.

BodySearch, a new enhanced passenger-screening technology, has been recently installed (Feb, 2007) at Phoenix Sky Harbor Airport on a trial basis (Frank, 1). According to the Transportation Security Administration’s website, the BodySearch unit operates by utilizing millimeter wave imaging technology. The millimeter waves penetrate clothing and reflect off of an individual’s skin generating a three-dimensional image (“Millimeter Wave”). This allows the TSA image technician to view weapons that would not otherwise be detected. Under its present implementation the BodySearch is being used as a secondary screening tool in place of a body pat-down and strip search. The president of American Science and Engineering, the manufacturer of BodySearch, states, “It’s an alternative to a strip search. And a strip search is much more invasive than the BodySearch technology” (“Airport BodySearch may reveal more than passengers know”). When an individual sets off the metal detector

they are escorted aside to continue with a secondary security screening and given the choice of the BodySearch machine or a body pat-down.

On initial consideration, one might consider the BodySearch to be incredibly invasive of our privacy rights. What could be more invasive than having a stranger inspect an image of you through your clothing? This is a valid concern; however, as with all technology, it is up to the public to question and critique the technology in a manner that keeps it acceptable. Three procedures that have been implemented to keep the use of BodySearch technology within the bounds of the protected privacy rights are; (1) when the image is generated the face is automatically blurred, and (2) the TSA image technician is located in a closed, remote room, (3) the technology is currently only being used for secondary screening (“Millimeter Wave”).

Blurring or obscuring the facial features of an individual is a long-recognized practice in order to maintain the anonymity of an individual. Webster’s College Dictionary defines anonymous as “lacking individuality, unique character, or distinction” (54). Can the personal privacy of an individual be violated under circumstances where their identity is not otherwise linked to the perceived invasion? In the legal textbook, “Information Privacy Law,” Daniel Solove outlined the prescribed state of privacy through anonymity. Under his analysis individuals can have privacy in public places if they are free from being personally identified. Their privacy is maintained through becoming part of the situational landscape (42). In the case of BodySearch, the TSA image technician is viewing numerous body images with blurred facial features in their repetitive work environment. Under such circumstances, a single individual would become part of the mass transit background.

Similar to the facial blurring software, the physical separation of the TSA image technician in a closed, remote room helps separate the personal intrusion and observation that is considered violation of privacy. To illustrate this point, we may consider the opposite situation where the TSA image technician is not located in a separate room but rather adjacent to the unfortunate traveler. Under this unacceptable scenario, the TSA image technician is personally present and is in close proximity to your physical space. It is this physical association that eliminates our anonymity and violates our privacy. By having the TSA image technician in a closed, remote room, our anonymity is maintained and the intrusion is not invasive of our personal space. Statistical evidence supports this statement in that over 70% of the individuals at the Phoenix Sky Harbor Airport when given the choice of the BodySearch versus the traditional pat-down chose the BodySearch (Tang 1).

Since BodySearch is only being used for secondary screening, this procedure does not exceed reasonable expectations of privacy. This is an important point that must be recognized if we are to maintain our privacy rights. To summarize a “secondary screening” is when an individual is pulled aside after the primary screening due to suspicious behavior, metal detection or other observations. This is where traditionally a body pat-down is conducted or under rare circumstances a strip search is initiated. These secondary screening techniques are long established as not violating our Fourth Amendment privacy rights. Given this long established practice, airline passengers would generally expect such searches to occur to a small percentage of travelers. To have a computer generate a three-dimensional view of our body is less invasive than the long accepted secondary screening measures of a body pat-down or strip search

The point that BodySearch is only used for secondary screening is important. As established above, it is less invasive of our privacy than the traditional secondary screening measures. However, if BodySearch or a similar technology were to be implemented as a primary screening tool or in circumstances outside of air travel, then there are justifiable concerns of privacy issues. The ACLU believes this is just the initial step. They suspect that the government is attempting to condition American citizens to consider this screening reasonable. If all airline passengers were screened with BodySearch, similar to a metal detector, then this procedure would go beyond the established bounds of our privacy rights. It would be improper for the police to routinely pat-down any individual encountered on the street without any suspicion of criminal activity. Similarly, it would be improper to utilize this new technology on all airline travelers without them first failing the initial screening. The limits of our privacy rights have not changed with this technology, only the method of searching has become more sophisticated. Citizens must scrutinize how this technology is used to assure it is reasonably implemented.

In conclusion, the current usage of BodySearch for air travel security is not overly invasive of our privacy rights. Through the established procedures of blurring facial features, separating the TSA image technician from the individual being scanned, and its use only for secondary screening individuals are able to maintain their privacy through anonymity, personal space, and within the bounds of well-established procedures.