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More Than Meets the Eye with New Google Contact Lenses

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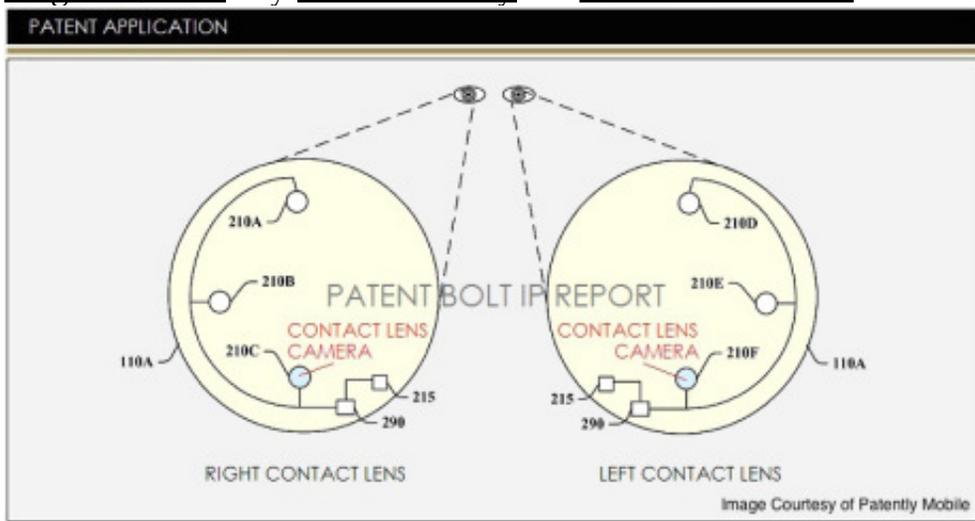
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More Than Meets the Eye with New Google Contact Lenses

August 1, 2014 · by Alec Wheatley · in GGU Law Review.



(<http://ggulawreview.files.wordpress.com/2014/08/contacts-patent-application.jpg>) Technology informs privacy.

This is the lesson we relearn every time a company puts out a new product that changes the way we interact with the world and each other. The recent disclosure (<https://www.google.com/patents/US20140081178?dq=contact+lenses&hl=en&sa=X&ei=a83CU8yEF8n28OXE6ID4CO&ved=0CCwO6AEwAg>) of Google's filings with the United States Patent and Trademark Office last year for a contact-imbedded "image capture component" (read: camera) caused a flurry of commentary by privacy hawks and tech fans alike.

The proposed contacts will contain a camera, sensor, and control circuit (<http://www.patentlymobile.com/patent-bolt/2014/04/google-invents-micro-camera-system-for-future-contact-lenses.html>), and will likely communicate wirelessly with a remote device (smart

phone) to store and process the pictures, or send them straight to the cloud (<http://www.pcmag.com/article2/0,2817,2372163,00.asp>). The contacts appear to be controlled by the included sensor to take pictures via eyewinks (<http://www.patentlymobile.com/patent-bolt/2014/03/google-takes-their-google-glass-vision-to-smart-contact-lenses.html>) or other eye gestures, which will make using the contacts virtually imperceptible to others.

This raises the question: if the contacts are invisible to others so that it's impossible to know if someone is wearing them, how can you know if they are being used to record you without your consent? Traditional cameras and smartphones require the user to obviously point and click to take a picture, giving you the opportunity to get out of the frame if you do not wish to be photographed. Even Google Glass wearers are obtrusive enough that they provide notice to those around them that they might get recorded. In contrast, Google Contacts would provide no such notice to others. Someone wearing Google Contacts would be free to snap away, and those around them would be completely oblivious. These issues continue to draw a bright line between those understandably worried about the privacy concerns the futuristic contacts will impinge, and those excited about the more positive potential applications of the new mini cameras.

The debate is nothing new. As far back as 1890, Warren and Brandeis wrote their famed piece on privacy (http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html) inspired by the invention of the handheld instant camera (<http://www.brandeis.edu/now/2013/july/privacy.html>). Prior to this, anyone who wanted their picture taken had to pose for a long time, and so only those who were really into having their picture taken would put up with the hassle to do so. With the advent of the handheld camera, for the first time a camera owner could snap your picture without your consent. Warren and Brandeis worried about the consequences for privacy in a world where all anonymity is lost because anyone may take your picture at any time.

The emergence of Google Glass sparked privacy concerns over the potential for well-equipped strangers to record you without your consent. In response, some establishments have banned Google Glass (<http://www.businessinsider.com/google-glass-ban-san-francisco-2014-3>) at the door outright in an effort to ease their customers' minds and prevent situations where a Glasshole (<http://www.cnn.com/2014/02/19/tech/mobile/google-glasshole/>) enrages other patrons by blatantly filming them against their wishes (<http://mashable.com/2014/02/26/google-glass-assault/>). The danger of Google Contacts is they bypass the social issues of Google Glass and can be worn invisibly by anyone. If they do indeed come to market, what remedies will be available to those who wish to go about their lives unrecorded?

Although you usually do not have a reasonable expectation of privacy in a public place that does not mean that you give up all privacy protections when you step out your door. A celebrity is expected to put up with a certain amount of publicity for their private affairs, and they make the decision to give up their anonymity in exchange for the other benefits celebrity offers. But Google Contacts have the potential to make us all celebrities without our permission. We should not have to give up our anonymity without our consent.

Additionally, while it appears the contacts do not currently have video recording capability, such technology is likely not far off. While public video cameras are increasingly becoming an unfortunately ubiquitous fact of life, there is a difference between being recorded by a building-mounted camera without sound while you walk down the street, and being recorded by the person at the next stool over while you talk with your friend at the bar. Even absent video capability, the idea of a user at a bar or restaurant secretly taking photos and processing them instantly with facial recognition software in the cloud is enough to raise anyone's privacy hackles. Google currently prohibits facial recognition (http://www.huffingtonpost.com/2011/06/01/facial-recognition-google_n_869583.html) software on Google Glass, but it is more than probable that third parties (<http://www.forbes.com/sites/kashmirhill/2014/02/05/google-glass-facial-recognition-app-draws-senator-frankens-ire/>) will implement such software in the near future.

Even with a ban on facial recognition, Google is a company that makes its money off of targeted advertising. It is hard to believe that the company would not employ some analytics to the camera on Google Contacts, and there would be no way to know how many were running at any given time. The Contacts would also allow Google to stream ads directly to your eyeballs, and while wearing the Contacts there would be no way to look away. This would enable Google to charge a premium for Contacts ad space, increasing its incentive to analyze everything that the Google Contacts wearer saw.

Furthermore, the rise of Big Data (https://en.wikipedia.org/wiki/Big_data) and the drive to collect anything and everything and store it in the cloud (<http://www.pcmag.com/article2/0,2817,2408125,00.asp>) for future use, in addition to the NSA's interception of massive amounts of customer data (<http://www.theguardian.com/world/the-nsa-files>) from Silicon Valley companies, would combine with Google Contacts to create a recipe for privacy violations of enormous proportions.

All this brings us to the conclusion that perhaps, just as Warren and Brandeis felt, we need a new conception of privacy (<https://recode.net/2014/04/18/introducing-a-theory-of-creepy/>). The thought of Google Contact users capturing pictures of those around them without their knowledge just feels creepy (http://yjolt.org/sites/default/files/Theory_of_Creepy_1.pdf). While we all admittedly give up a certain amount of privacy when we walk out our door each day, there must be a limit to what we give up. We still maintain the right to associate with others, and speak our minds freely without being constantly recorded. If we are to be recorded, then we need to be notified and given an opportunity to consent (<http://www.dmlp.org/legal-guide/california-recording-law>). The problem with camera contacts is that they are invisible, making any effort to enforce or regulate their usage a daunting task. While they undoubtedly would have some exciting applications, their potential for abuse just seems too great.

Tags: Google, privacy

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