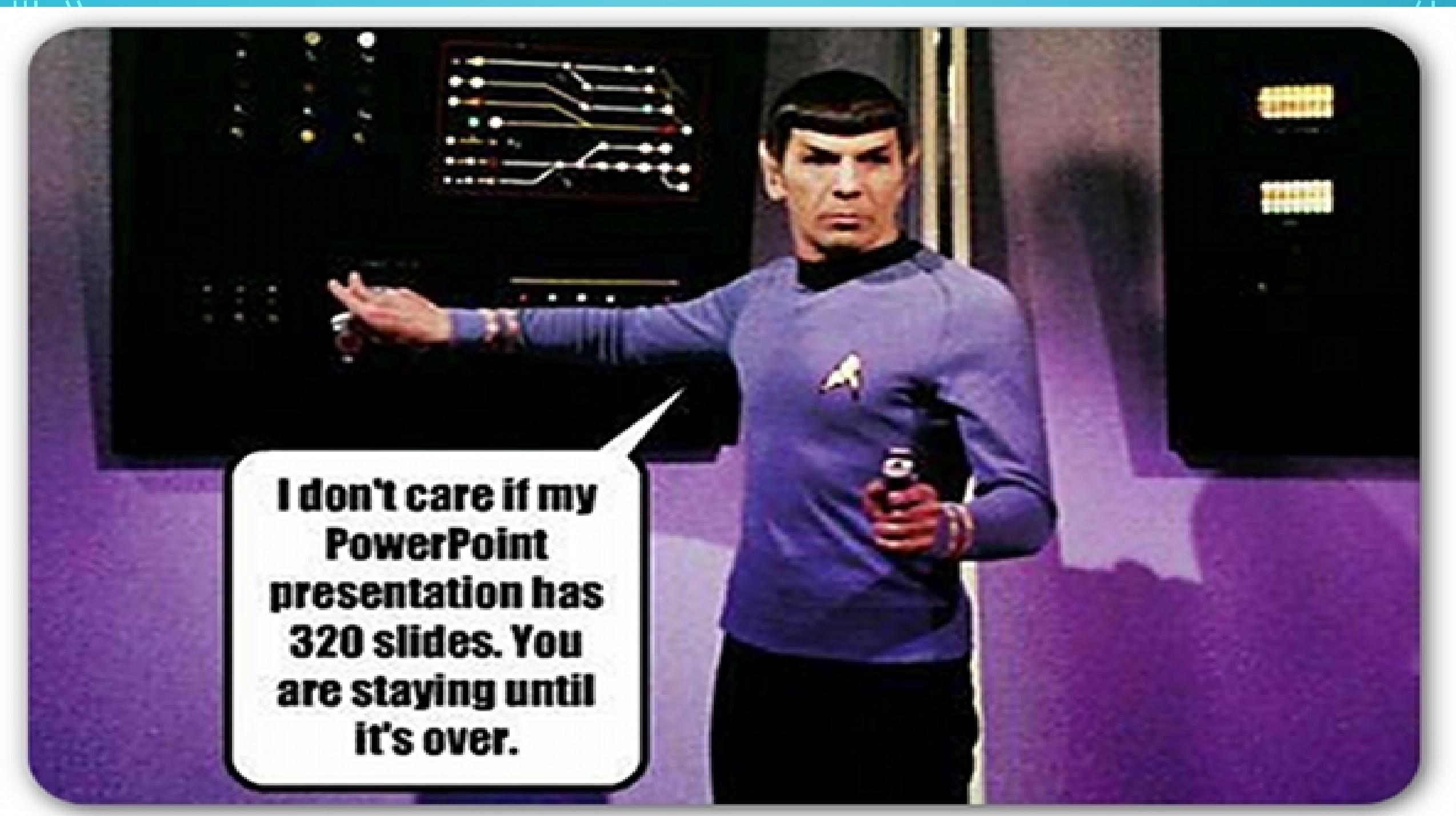




LEGAL DIMENSIONS OF CCTV

1. THE RIGHTS OF THE INDIVIDUAL
2. BALANCING THE USE OF CCTV
3. CCTV AND THE LAW

A meme featuring the character Spock from Star Trek. He is wearing his signature purple uniform and is standing in a control room. He has a serious expression and is pointing his right hand towards a control panel on the wall. The panel has various buttons and a small display showing a circuit diagram. In his left hand, he holds a small, dark, cylindrical object. A white speech bubble with a black border is positioned in the lower-left foreground, containing text.

**I don't care if my
PowerPoint
presentation has
320 slides. You
are staying until
it's over.**

INDIVIDUAL RIGHTS – THE INDIVIDUALS RIGHT TO FEEL COMFORTABLE IN A PUBLIC PLACE

Events that people may not appreciate being on video may include:

1. Disciplining their children
2. Greeting someone with a kiss
3. Bending over in public
4. Drinking an alcoholic beverage
5. Having a cigarette

MISUSE, ASSUMPTIONS AND POLICE EVIDENCE

- The risk is misuse of such footage
- Clips can be uploaded to social media to a limitless audience
- A common assumption is that CCTV surveillance deters antisocial and criminal behaviour
- Surveillance recordings are invaluable in providing evidence to assist police officers to identify offenders where the footage records criminal activities

COUNCIL TURNS OFF CCTV SURVEILLANCE

- Shoalhaven Council installed the cameras as part of a government and police campaign encouraging CCTV cameras in public places such as shops, parking lots and parks to prevent crime.
- The resident argued before the Administrative Decisions Tribunal it was not the council's role to collect evidence for the purpose of prosecuting crime.
- He produced figures showing crime had actually increased after the cameras were installed.
- The tribunal upheld the complaint, ruling signage near the cameras did not adequately inform people about the privacy implications. It ruled the council had not established filming people was 'reasonably necessary' to prevent crime.
- The council immediately turned off its cameras.
- The NSW Government was aghast.
- The decision could lead to challenges for all CCTV cameras across the State.
- The government promptly changed the Privacy and Personal Information Act 1998 to exempt councils from privacy laws allowing them to use cameras in public places to collect personal information and to pass that information to police.

CCTV USAGE

- A careful and diligent approach is suggested to achieve the right balance between security and privacy
- There needs to be protection against improper use
- No specific law deals with the use of CCTV in the home and business environment

OVERVIEW OF THE CURRENT LAW SURVEILLANCE LAWS AND LAWS AFFECTING PHOTOGRAPHY

- Legislation exists in each of the states and territories that variously restricts
 1. the use of listening,
 2. optical,
 3. data and
 4. tracking surveillance devices.

CURRENT LAW

- The surveillance device laws of each state and territory differ greatly,
 1. In terms of the types of surveillance devices they regulate, and
 2. the circumstances in which those surveillance devices may or may not be used.
- For example, the laws of Victoria, Queensland and the Northern Territory permit a participant to record a private activity in the absence of the consent of other parties, while the remaining surveillance device laws do not

CURRENT LAW

- Different state and territory workplace surveillance legislation prohibits employers monitoring their employees at work through covert surveillance
- Laws only exist in three jurisdictions (the ACT, NSW and Victoria).
- Methods such as the use of
 - CCTV cameras or computer, internet and email surveillance.
 - [\[35\]](#) Once again there are inconsistencies between these laws

CURRENT LAW OVERVIEW

- Criminal laws in some—but not all—jurisdictions provide for offences relating to photography being used for indecent purposes^[36]
- or indecent filming without consent.^[37]
- Criminal laws also provide protection against indecent photography of children in private and public places.^[38]
- In each case, the laws are restricted to specific subject matter,
- for example, matter of a sexual nature; filming for specific purposes,
- for example, for sexual gratification; or filming of a particular type of person,
- for example, a child. These laws therefore provide limited general privacy protection.

THE PRIVACY ACT

- The operation of the *Privacy Act 1988* is restricted to the actions of government agencies and big business (greater than 3 million turnover),
- Not the activities of individuals acting in a personal capacity such as freelance or amateur photographers.
- However the Act does regulate the activities of individuals, agencies and companies which ‘disclose personal information about another individual to anyone else for a benefit, service or advantage’.^[39]
- This may provide scope to regulate the actions of photographers who take unauthorised photographs of individuals

REFERENCES

- *Listening Devices Act 1992* (ACT); *Surveillance Devices Act 2007* (NSW); *Surveillance Devices Act* (NT); *Invasion of Privacy Act 1971*(Qld); *Listening and Surveillance Devices Act 1972* (SA); *Listening Devices Act 1991* (Tas); *Surveillance Devices Act 1999* (Vic); *Surveillance Devices Act 1998* (WA).
- [35] *Workplace Surveillance Act 2005* (NSW); *Listening and Surveillance Devices Act 1972* (SA); *Listening Devices Act 1991* (Tas); *Surveillance Devices (Workplace Privacy) Act 2006* (Vic); *Surveillance Devices Act 1998* (WA); *Workplace Privacy Act 2011* (ACT).
- [36] *Summary Offences Act 1988* (NSW) s 4; *Criminal Code Act 1899* (Qld) s 227(1); *Police Offences Act 1935* (Tas) s 13.
- [37] *Crimes Act 1900* (NSW) ss 91K–91M; *Criminal Code Act 1899* (Qld) s 227A(1); *Summary Offences Act 1953* (SA) s 26D; *Police Offences Act 1935* (Tas) s 13A; *Summary Offences (Upskirting) Act 2007* (Vic) s 41A.
- [38] See, for example, *Criminal Law Consolidation Act 1935* (SA) s 63B.
- [39] *Privacy Act 1988* (Cth) s 6D(4)(c),(d).
- [40] *Ibid* s 6: The definition of ‘record’ includes ‘a photograph or other pictorial representation of a person’.
- Internet paper by Slater Gordon Lawyers “What are the legal implications of using CCTV around your home or business”

GHOSTS ON CCTV

- <https://www.youtube.com/watch?v=HLMYMi0N8YA>