Privacy in the Face of Technology

The Fourth Amendment of the United States Constitution guarantees that no one should be subject to a search without a warrant. However, for a search to legally require a warrant, it must intrude on the private life of a person, and what is considered private is an unclear area in law. Two examples of this ambiguity are the use of cellphone GPS information and the use of surveillance drones. Both gather information on a person which could not have otherwise have been obtained and which can reasonably be assumed to be private. When unwarranted, both the use of drones and cellphone GPS data are violations of the Fourth Amendment.

It is legal for police to obtain evidence from an airplane without a warrant, but this exception to the Fourth Amendment does not apply to the use of drones on private property. Since airplanes regularly fly overhead in public airspace, any objects visible from an airplane have been presented to the public. However, since an airplane cruises at thousands of feet above the ground, a passenger would not be able to see under roofs or other overhangs. Therefore, it can be reasonably assumed that with a high fence and an overhang, one should have privacy. Drones, however, can fly at elevations of just a few feet and maneuver into relatively small spaces such as a typical backyard. This eye level view and aerial maneuverability would allow a drone to run surveillance in places which can be reasonably assumed to be private.

Cellphones gather GPS data of where they have been which can be accessed by the service providers of the cellphone. The argument could be made that since the cellular provider can access the information it is public. However, cellphone owners sign a privacy policy concerning the use of any personal data the provider collects. If a service provider, in accordance with the privacy policy, publicly distributes GPS information, then this information is the essentially public. In most cases, however, the privacy policy only grants the service provider specific distribution rights to the information. In these cases, the owner of the cellphone can be reasonably assured that their information is private within a a select group. If this group not include law enforcement, then a warrant must be obtained.

The right of privacy is of the upmost importance, and it is important that this privacy be clearly defined and not violated. The use of drones for surveillance is an excessive measure which unreasonably violates a person's private property. The use of GPS information from cellphones, in most cases, is private information between the owner of the cellphone and the cellular service provider. In both cases the information can be reasonably expected to be private, and therefore neither the use of drones for surveillance on private properties nor the use of cellphone GPS location data to track a person's location may be constitutionally used without a warrant.