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RESEARCH ARTICLE

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Video surveillance in public space in China
— Focus on the right of privacy

Abstract Video surveillance device has been widely installed in public places at present. How should the right of privacy under video surveillance in public space be considered and protected effectively? There is no enough attention in the existing legislation of China, which results in a relatively conservative attitude in the judicial system of China. In fact, it is supposed to have privacy interests in public space. Privacy is not simply an absence of information about people in the minds of others. Moreover, it is the control over information about ourselves. Unlike casual glimpse by passers-by, the continuous, intentional and intensive focus of video cameras make individuals lose control of their information, which consequently leads to lose their privacy interests in public space. Thus, in order to protect personal privacy interests and defend personal justice in public space, it is necessary to regulate video surveillance in public space in legislation and judicature.

Keywords public space, video surveillance, right of privacy, reasonable expectation of privacy

摘要 目前，在公共空间实施摄像监视已日益普遍。如何看待公共空间摄像头“注视”之下的个人隐私权并予以相应保护，中国现有的立法尚未予以足够关注，司法上亦采取较为保守的态度。事实上，个人身处公共空间，亦有其隐私利益存在。因为隐私并不仅仅是他人头脑中关于人们自身信息的某种缺失，而更多的是，人们对

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于自身信息的控制。摄像头长时间地有计划地有目的地注视，不同于路人偶然无意识地一瞥，它将使人们因此而丧失对自身信息的选择暴露权和控制权，从而导致个人在公共空间的某些隐私利益的丧失。鉴于此，我们认为有必要从立法上和司法上规范公共摄像监视行为，捍卫人们在公共空间中的必要隐私利益，维护人们在公共空间中的个性正义。

关键词 公共空间，摄像监视，隐私权，合理隐私期待

1 Privacy interests in public space

1.1 Definition of public space

Video surveillance in public space is effective and necessary to maintain public administrative order. However, the concept of public space shall be defined because of entirely different legal effects for implementation of those activities in public space and private space. The U.S. scholar Max Guirguis deemed that the features of public place may fall into three aspects: Firstly, access to the place is not actually restricted; secondly, the place is visible to the public; and thirdly, the place can be accessed at any time. (Guirguis, 2004) Specifically speaking, such places as public streets and plazas are undoubtedly public space for being in the open air, where anyone may access or stay as they like; secondly, nonspecific persons cannot access or stay in such places as banks, restaurants, stores and stations sheltered by roofs except for business hours. Do those places still keep their nature of being public? Finally, classrooms and office halls are the places accessible to numerous specific persons and how about the public feature of these places?

Firstly, we use the Circular of the Ministry of Construction of China on Printing and Issuing the Measures for Administration of Sweeping and Cleaning Urban Roads and Public Places issued 1994 as reference. It points out that “the urban roads and public places herein refer to roadways, sidewalks, streets and alleys, bridges (including cloverleaf junctions, overhead viaducts, tunnels and skyways), underground passages, plazas, parking lots, public green areas and various stations, airports, wharfs, markets as well as the places for conduct of cultural, sports and entertainment activities.” Thus, it can be seen that one of the key attributes of “public place” lies in “public use”. Secondly, as prescribed in Article 3 of the Implementing Regulations on the Law of Assembly, Procession and Demonstration of the People’s Republic of China of 1992, “the public place in the open air as mentioned in Article 2 of the Law of Assembly, Procession and Demonstration of the People’s Republic of China refers to the outdoor public space freely accessible to the public or accessible by ticket, exclusive of the

internal places in the open air of state agencies, communities, enterprises or institutions; and the public roads herein refer to the roads and water courses other than the internal roads for special use by state agencies, communities, enterprises and institutions", which further indicates that another key attribute of "public place" lies in "free access".

In China's Taiwan legal theory, it is held that there exists a difference between the public place and the place accessible to the public. Li Zhenshan points out that the concept of public place focuses on "public use", while the place accessible to the public highlights "access". The public place is the place where numerous nonspecific people may assemble, stay or which may be visited or utilized, such as parks, roads, plazas, stations, wharfs and ports and airports; while the place accessible to the public refers to the place accessible to nonspecific persons at any time, such as restaurants, hotels, canteens, department stores, gambling dens, temples and meeting halls.[1] (Li, 2004) In his opinion, people are allowed to access in most of public places, but not all the places named as "public place" are freely accessible to the public. The scopes of public place and the place accessible to the public overlap with each other.

However, I believe that a careful distinction of the differences between the public place and the place accessible to the public means little for the purpose of implementation of laws. In terms of the open or public nature of a public place, its essence lies in "public use" or "access by the public" and the third feature of the public place as referred by Max Guirguis — accessible to the public (Guirguis, 2004), or the "accessibility by the public", has also implied "public use". Hence, I deem that as long as the nature of "public use" or "accessibility by the public" is satisfied, it can be determined that one of the features of the "public space" herein is met. Secondly, another major element in a public space shall be "nonspecific persons", otherwise it can not be fully identified as "public space", for instance, classrooms, offices and employees' lobbies. Since those places are accessible to specific persons, they are hardly categorized as a complete public space. In our opinion, they should, more accurately, be defined as "quasi-public space" since they are different from completely secret residential housing and fully open public space accessible to nonspecific persons at any time, and thus they are treated as the place of a "medium expectation of privacy"in judicature.[2]

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[1] When travelers use their rented rooms of hotels for common use or gathering of a number of persons, such as meeting place or the place accessible to numerous nonspecific people at any time, they shall still be regarded as public place or the place accessible to the public. See the Letter of Interpretation (Jian Zi No. 16531) by China Taiwan "Ministry of Legal Affairs" in 1994. See Li Zhenshan (2004), page 28.

[2] See United States v. Mesa-Rincon, 911 F. 2d 1433, 1443 (10th Cir. 1990).

1.2 Privacy interests in public space

To ordinary people, a public space is the place visible for the public. When a person exposes himself either intentionally or unintentionally in a public place, he should have predicted that he will bear his own privacy open accordingly. According to the US Supreme Court, if one takes initiative to expose his information to others, the constitution will no longer protect the privacy of such information. For example, a person who discloses his financial information to bank cashiers should take more risk of information exposure;[3] and in case of information exposure by reliance of trust relationship, the constitution will no longer protect any further exposure of such information.[4]

But in fact, the concept of privacy shall start from the concept of ego, which is a complicated and diversified concept. We show different aspects of our nature in different occasions. Every one of us wears different "masks" at different occasions (Rosen, 2000), each of which reflects one aspect of our nature. All the masks integrated constitute ourselves. Generally speaking, we will select the mask we like at special occasions to display the aspect we want to display. However, if our secrets are peered or the information we intend to display is merely to Party A but acquired by Party B, we will lose such right of selection and control. As Black's Law Dictionary points out, the essence of information privacy depends on the right of an individual to "choose to determine whether, how, and to what extent information about oneself is communicated to others."[5] Thus, under this concept of privacy, as long as we can control those factors of our actions as we wish, such as who can observe us, how they do and what is their intention, we can still keep our privacy interests.

Judge Andrew J. Cobb of the Georgia Supreme Court once pointed out that, each is entitled to a liberty of choice as to his manner of life, whether to live a life of seclusion or a life of publicity. One may decide the time and the way to appear before the public, which is part of the right of liberty, including the liberty to disappear from the public gazing at any time.[6] Privacy enables us to define

[3] See United States v. Miller, 425 U. S. 435 (1976).
[4] See Hoffa v. United States, 385 U. S. 293 (1966).
[5] See Black's Law Dictionary, 1233 (2004).
[6] "Liberty includes the right to live as one will, so long as that will do not interfere with the rights of another or of the public. One may desire to live a life of seclusion; another may desire to live a life of publicity; still another may wish to live a life of privacy as to certain matters and of publicity as to others. One may wish to live a life of toil where his work is of a nature that keeps him constantly before the public gaze; while another may wish to live a life of research and contemplation, only moving before the public at such times and under such circumstances as may be necessary to his actual existence. Each is entitled to a liberty of choice as to his manner of life, and neither an individual nor the public has a right to arbitrarily take away from him his liberty." See Pavesich v. New England Life Ins. Co., 122 Ga. 190, 195 (1905).

self-feeling and defends such self-feeling for each of us, which renders us capable to determine what aspects in our life we are willing to expose and to whom. It also provides a limit by displaying only certain aspects of our wish to certain specific persons at certain specific occasions. Within such range, we may pursue our own unique interests and do as we want without worrying about others "gaze". Just like reading, no one knows what we read, which is the right of anonymity of readers. (Rosen, 2000) Hence, privacy is not simply a lack of our individual information rather it is the control of our information. The right of privacy gives us the freedom to expose some of our nature at some certain occasions, which is a way to realize the personal justice that can in turn facilitate the intimacy and individual autonomy.

In public space, people are expected to see that we want them to see, at appropriate time, by following certain procedures. (Reisman, 1999) A glimpse of others and a collection of simple visual information do not involve any further actions; while a too long, attentive and frequent observation becomes the "observation" purposely for collection of information. When the government installs cameras at street corners to continuously "gaze" at us, our ability to keep privacy will be lost, which is important to realize individual autonomy in modern society. Though we have no way to force others to move their eyes off when they watch us, we can control our actions by considering the existence of others and taking numerous opportunities for anonymous actions. Therefore, it's relatively easy to realize individual autonomy, which, however, would be hard to maintain under continuous watch by video cameras with advanced technologies. For example, people can confuse others by disguising, while it becomes difficult before video cameras with facial identification. Moreover, the threat to individual privacy also lies in its long-time observation of people's behaviors. When the details of one's daily life recorded by video cameras are collected and integrated, some privacy information may be disclosed automatically. Therefore, it is hard for us to completely control the disclosing of our information before video cameras. Usually, what we expose to others may be far more than what we are willing to expose. In that case, we do not have privacy any more. Meanwhile, the feeling that privacy may protect is destroyed, and thus we confuse our masks, our feeling and our relationship with others. When people accept the inescapability of being observed and recorded, their habits change, and so do they. What's worse, those changes are much deeper than we expect, since people have brought much of their own viewpoints and self restriction of actions from monitored public space to their own private life. (Burbules, 2006) At that time, people are no longer themselves.

It can be concluded that intrusion of privacy may occur in private houses as well as on public roads and streets. To permit video cameras to continuously "watch" legally at every corner, it actually creates a power. However, such power

needs to be regulated, otherwise it is easy to be abused and consequently people's privacy could not be protected effectively. Thus, who is watching us, how we are watched, how long, for what purpose, and whether we are aware that we are watched, are quite important. When the development of technology makes it possible for the government to continuously watch us around the street corner, it is necessary for us to maintain our personal justice in public space, to maintain our information being exposed under our control and to protect our privacy interests in public space.

2 Legislative regulation on public video surveillance

Regarding the installation of video cameras in public space, China does not have national statutes currently, but has local regulations, such as "the Measures of Beijing Municipality for the Administration of Public Safety Images Information System" (hereinafter referred to as Beijing Municipal Image Law or the Measures) issued by Beijing Municipal Government on December 15, 2006. The Measures specifically prescribes that video system "should" be installed in a plenty of areas.[7] While China Taiwan Police Authorities Enforcement Law prescribes that no implementation of video surveillance shall be made in public places or the places accessible to the public unless public safety or public order is being threatened.[8] In comparison, the scope of area for installation that

[7] Article 5 of the Measures of Beijing Municipality for the Administration of Public Safety Image Based Information System (promulgated on December 15, 2006) specifically provides that public safety image based information system shall be installed in the following units and areas: (1) The places where the CPC Party and government organizations as well as state organs are located or domiciled, and such key units as radio, TV, telecommunication, postal, finance, service units, museums, archives, important protection units of cultural relics, and the places where dangerous goods are produced, sold and stored; (2) Public places where people assemble, including hotels, restaurants, malls, hospitals, schools, kindergartens, cultural and entertainment centers, venues for sports matches, places, residential areas and parking lots; (3) Key roads, road sections and major crossroads, underground passages, overpasses, airports, railway stations, metro and tram stations and major traffic hubs of bus; (4) Major urban basic infrastructures including urban water supply and drainage, electric power, fuel gas, heat power facilities, urban rivers and lakes and other major waterworks; and (5) Other places and regions prescribed by state laws and regulations. In addition, Paragraph 2 herein makes the complementary provisions that the competent departments at the city level responsible for establishment of public safety image based information system shall determine other regions where public safety image based information system shall be installed according to need, which shall be reported to the municipal government for approval. http://www.bjfzb.gov.cn/newsite/xbbfggz/20070125-163568.htm, 2007-1-24.

[8] Article 10 of China Taiwan Police Authorities Enforcement Law (adopted on June 5, 2003) provides that the police shall, for the purpose of maintaining security, coordinate with related organs (institutions) to install surveillance equipment in public places or the places accessible to the public where crimes frequently occur or probably occur through reasonable judgment, or

authorized by Beijing Images Law is rather vast, and the scope that who can install video cameras are also authorized too widely.[9] However, it fails to offer sufficient protection to individual privacy rights under public video surveillance, and only covers as "the establishment of the video system shall not intrude the privacy of people and measures shall be taken to keep individual's private information secret."[10] In my opinion, legislative regulation on public video surveillance shall consider the following issues.

2.1 Who can install video cameras?

At present, the installation of video cameras in public places in China is basically in disorder, and nearly anybody may install them without any reason or any procedures. If there is no regulation on the installation of video cameras in public space, it may trigger intrusion of the rights of citizens. Therefore, it is necessary to clarify such questions as who can install video cameras, how is the legitimacy of installation purposes. Also, it should be under administrative permission and supervision.

Firstly, video cameras in public space such as public streets and public plazas shall be installed by the government, since public space usually involves social security interests, and the government that provides public services should do such duty. Also not every public place needs video cameras, it is necessary to consider the necessity of installing video cameras, by balancing social safety interests and individual privacy interests. Secondly, for those public places accessible to public, such as hospitals, classrooms and stores, video surveillance should be installed by the government or other non-profit organizations authorized by the government after thorough examination. Finally, no other

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collect data with the existing photography or other technical instruments. Article 9 provides that the police shall, according to the fact, completely confirm that the actions of participants in the assembly and demonstration or other public activities threat public safety or order to collect data of participants in the site activities during the period of such activities, with photography, record or other technical instruments. Collection of data shall reach the third party if unavoidable. http://www.klhpb.gov.tw/new-page-112.htm, 2007-2-5.

[9] Article 6 of the Measures of Beijing for the Administration of Public Safety Image Based Information System specifically provides that any unit shall meet the government's uniform planning and requirements and shall not collect image information in public regions beyond the unit while establishing the public safety image based information system by itself according to the provisions of the Measures.

[10] Article 9 of the Measures of Beijing for the Administration of Public Safety Image Based Information System provides that: "The establishment of the public safety image based information system shall not intrude the privacy of citizens and confidential measures shall be adopted with the image information concerning the individual privacy of citizens. The construction of the public safety image based information system that relates to state secrets or commercial secrets shall be subject to the related state provisions."

individuals could install video cameras in public places.

In addition, there should be a procedure of administrative permission, to approve those applications, considering that who can install and why such installation is necessary. In detail, the following factors shall be considered: Firstly, whether the purpose of installation is for public safety or other public interests; secondly, whether the public interests that protected by video surveillance outweigh the individual interests that intruded by video surveillance.

2.2 Where can video cameras be installed?

The concept of public space has been clarified and defined as described above. In my opinion, all places may fall into three categories: (1) Public space, such as public streets and parks; (2) quasi-public space, such as classrooms, offices; and (3) private space, such as home, houses for rent, and hotel rooms.

In my opinion, installation of video cameras in private space is absolutely forbidden. Therefore, unless the investigation of criminal or national security and with reasonable reason and warrant, can such installation of video cameras be made in private space. Secondly, generally speaking, installation of video cameras is permissible in public space. But only when public safety is being threatened, can the police record something by the installed video cameras.[11] Finally, quasi- public space is the space of medium expectation of privacy, which usually do not involve public interests like public space. So, no installation of video cameras is allowed in quasi-public space, except for the necessity of installation is provided, just as in United States v, Mesa-Rincon.[12]

2.3 Why some advanced technologies should be restricted?

As we know, everyone exposes his face to public every day in public space. No one can reasonably expect his face to be like a mystery in the world. We usually do not know who a passerby is, so it does not matter even though others choose him as background occasionally when taking photos. However, it is easy to identify a person by video cameras with facial identification technology. There

[11] Article 10 of China Taiwan Police Authorities Enforcement Law (adopted on June 5, 2003) provides that "only in public places or the places accessible to the public where criminal often occur or may occur as reasonably judged may surveillance equipment be installed or collection of data be conducted with existing photography or other technical instruments as required for maintenance of public security and order." Article 9 also provides that only when public activities "threaten public safety or order can collection of data of participants in the activities shall be made with photography, record or other technical instruments at site during such activities".

[12] See United States v. Mesa-Rincon, 911 F. 2d 1433, 1443 (1990).

are two actions: Firstly, take pictures of an individual's face with high photography techniques; then, compare this image information with that stored in computer to identify who he is. The first action is just like a passerby who takes photos with a good digital camera, for which there is no intrusion of the privacy right since facial information is continuously exposed in public space. But the second action, face identification, is destroying the right of anonymity in public space, one of the important privacy interests.

In addition, people in public space do not have reasonable expectation of privacy when others including policemen glimpse at him or hear what he talks with others by accident. However, he may reasonably expect not to be focused upon by video cameras equipped with powerful zooms that could zero in on a letter he may be reading, or sound-recorders that could tape the words he may be speaking, since the video cameras' ability of "watch" and "hear" is far beyond that passerby. It's definitely not the problem of the person's recklessness that abandons his privacy, by reading a personal letter in public space, but the problem of the government who zoom in his letter. Because people never lose the right to pursue such values as privacy, security and decency even in public space, which distinguishes free societies from controlled societies.

In my opinion, it's not necessary to use those advanced technologies during video surveillance in public space, such as powerful zooms, facial identification, sound-recorders, unless for the national security or other public interests. Otherwise, it will probably violate the principle of proportionality and threaten the right of privacy. For example, it's necessary to confirm individual's identification on the purpose of immigration investigation, while it's not appropriate if only for the purpose of preventing a slight wrongdoing. Therefore, to regulate the usage of advanced technologies in video surveillance, it will be helpful on the control of administrative power and protection of individual's right of privacy.

2.4 How long should the record be preserved?

In public space, it is not a big issue if a passerby watches us. Such transient "watch" is different with camera's long-time observation. Moreover, what is in mind will fade away thereafter, while the records of video cameras will exist forever. Such existence means possibility of being seen by others in future, which will threaten individual's privacy greatly. What's more, the records may be misused or abused during the long-time existence, and some adverse consequences may happen thereafter.

In China, there is currently no legislation on how to use and preserve photographic record. In my opinion, firstly, we need to ensure the right purpose of using those records. The use of records shall be within the necessary scope of

authorities in compliance with the specific purpose of collection.[13] Secondly, preserving those records and keeping the personal information secret are important. We need to destroy those records once the preservation is not necessary. It is suggested that the photographic records shall be preserved for no more than one year.[14] Generally speaking, those records shall be destroyed when the public activities end. However, it can be kept for the purpose of investigation of crimes or other illegal actions, but must be destroyed within one year.

3 Judicial opinions on public video surveillance

3.1 Comparison of judicial opinions on video surveillance between China and U.S.

Generally speaking, Chinese courts have relatively conservative attitude currently on the protection of individual's privacy in the video surveillance. Wei Gang v. Shanghai Fuxing High School in 2003 is the first case regarding privacy under video surveillance in public place. In 2003, Shanghai Fuxing High School broadcast a video that recorded by video surveillance system to all students. There was around one minute's video that captured the kissing activities between two students Wei and Ren in their classroom. Wei and Ren suit the school, claiming that such actions of video recording and broadcasting to the students intruded their rights of privacy. Shanghai Hongkou District Court judged by reasoning as follows: Firstly, it is in the classroom — a public place, that camera is installed to supervise whether students obey the disciplines. The plaintiffs have already been informed of the existence of cameras, and thus the installation of cameras is a known action. Also, no statute or regulation in China has prohibited schools from installing video cameras for the purpose of administration; Secondly, the behavior of kiss occurred in the classroom. Since there were more than 20 students on the scene, it's not a private kiss. Hence the judge concluded that the actions of video recording and broadcasting didn't intrude Wei and Ren's rights of privacy.[15]

According to such judgment, as long as the school installs the video cameras openly in public space, people under these cameras have no reasonable expectation of privacy. That means, as long as the video cameras are in public places and the installation is open, there is no privacy interest for people, no matter how the cameras continuously gaze, magnify or trace, and no matter what kind of advanced technologies are applied.

[13] See China Taiwan Police Authorities Enforcement Law, Article 17.
[14] See China Taiwan Police Authorities Enforcement Law, Article 10.
[15] http://book.qq.com/a/20041027/000092.htm, 2006-11-15.

This case shows the conflict between public interest and privacy interest. It should be noted that there were more than 20 students in the classroom when the incident happened. How is individual's expectation of privacy there? In my opinion, classroom falls somewhere between a private home and a public business. It's accessible for numerous specific people, so the expectation of privacy here is less than in a private home, but higher than in a public business. Hence, classrooms are quasi-public places, where people should have "medium expectation of privacy".

However, U.S. courts hold a completely different attitude on video surveillance. In United States v. Torres in 1984, it was concluded that the use of video cameras by governments were extremely intrusive and it should be restricted. Otherwise, video surveillance "could be grossly abused — to eliminate personal privacy as understood in modern Western nations."[16] It is even more invasive of privacy than general, "just as a strip search is more invasive than a pat-down search."[17] Therefore, people before cameras should have more expectation of privacy. Judge Robert R. Beezer pointed out in United States v. Taketa that a person "has a stronger claim to an expectation of privacy from video surveillance ... than he does to an expectation of privacy against an entry and manual search."[18] Here, Taketa and O'Brien were suspected of misconducts, so a camera was secretly installed in the ceiling of their office to record their activities. The court held that the search by video surveillance "was directed straight at him", which is "rather than being a search of property he did not own or control", and furthermore, such "silent and unblinking lens of the camera was intrusive in a way that no temporary search of the office could have been."[19] In State v. Bonnell in 1994, it was held that the investigation by video cameras was extremely intrusive, and "whatever the general privacy interest the defendants may or might not have had in the lobby, they had an objectively reasonable expectation of privacy against being videotaped in it."[20]

In order to maintain public administrative order, it is absolutely effective and necessary to install video surveillance equipments in public space. We do not think it good to ban video surveillance, but it surely should be regulated. In my opinion, the following two important factors shall be considered when making a judicial decision: (1) How public is the place that video surveillance happens; and (2) how is the importance of public interests compared with the privacy interests.

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[16] See United States v. Torres, 751 F. 2d 875, 882 (7th Cir. 1984).
[17] See United States v. Torres, 751 F. 2d 875, 882(7th Cir. 1984).
[18] See United States v. Taketa, 923 F. 2d 665, 667 (1991).
[19] See United States v. Taketa, 923 F. 2d 665, 667 (1991).
[20] See State v. Bonnell, 856 P. 2d 1265, 1277 (Haw. 1993).

3.2 Factors to be considered in judicial decision on video surveillance

3.2.1 How public is due to the place

The public feature of a place is one of the important factors that the judge needs to consider.

Firstly, people in private space shall get full protection of privacy, and video surveillance in private space shall be strictly restricted. If the governments do need to install video cameras in public space, some requirements must be met. Like in United States v. Torres, they must show that (1) "Normal investigative procedures have been tried and failed or appear to be unlikely to succeed if tried or too dangerous"; (2) "The warrant must contain a particular description of the communication sought to be intercepted"; (3) "A statement of the particular offense to which it relates, must not allow the period of interception to be longer than is necessary to achieve the objective of the authorization"; and (4) "must require that it is conducted in such a way as to minimize the interception of communications."[21]

Secondly, people in quasi-public space, such as offices and classrooms, have relatively less expectation of privacy than in private home, but more than in public area. In such places that with "medium expectation of privacy", video surveillance need to be restricted conditionally. For example, in United States v. Mesa-Rincon, the court deemed that the place be accessed for several special people. So it fell between a private home and a public business where people had "medium expectation of privacy", and thus more necessity of video surveillance shall be provided than that in public space.

The court finally made a conclusion that "although we find video surveillance extremely intrusive, we hold that the expectation of privacy in this place was low enough as to be outweighed by the government's specific show of a need for video surveillance."[22]

However, the claim to protect one's privacy under the video surveillance in public space could not be granted by the U.S. courts. They hold that people have no general privacy interests in public space, and thus the "continuous gaze" of cameras will not intrude people's privacy. We admit that video surveillance is exceedingly intrusive, and people should have more expectation of privacy under it. But it's rarely heard that the claims for protection of privacy under video surveillance in public space get supported by U.S. court. In United States v. Jackson, the video cameras were installed on the top of telephone poles for overlooking the residences of Jackson. They could zoom in close enough to read

[21] See United States v. Torres, 751 F. 2d 875, 883–885 (7th Cir. 1984).
[22] See United States v. Mesa-Rincon, 911 F. 2d 1433, 1445 (1990).

a license plate, but could not record sound or view the inside of the house. The court held that the video cameras "were incapable of viewing inside the house, and were capable of observing only what any passerby would easily be able to observe."[23] Consequently, The Jackson's have no reasonable expectation of privacy for the information captured by the video cameras.

Moreover, for video surveillance in public place under roofs, such as hospitals, banks and stores, since such business places are different from those places like parks, streets, plazas, the reasonable expectation of privacy thereof is somewhat controversial, and there were different judicial decisions. In United States v. Gonzalez, the court held that video surveillance did not itself violate a reasonable expectation of privacy, and the videotaping of suspects in the quasi-public mailroom of hospitals, just like that of clients in the halls of banks, did not violate the fourth amendment of the Constitution and the police might record what they normally might view with the naked eye.[24] In State v. Thomas, however, the court made a different judgment. Here, Indiana State Government installed video cameras in the ceiling of a camp-store and aimed strictly over the cash register, to investigate the activities of Thomas. Though Thomas' activities usually occurred in the eyes of customers, the court held that "while one's expectation of privacy generally do not extend to incidental or occasional looks by members of the public, we believe they do extend to prolonged observation by the government from a non-public view".[25] Hence, occasional or incidental looks by a passerby does not constitute the search for privacy in the fourth amendment of the Constitution, but strictly continuous surveillance may be intrusive.

Even so, the idea that "it is not unconstitutional to place video cameras in public places" has been widely accepted in the United States. So far, no court was willing to state that individual's right against being videotaped could be extended to parks, streets and other public places. However, it is sure that the video cameras in public space, just like those in offices, or other quasi-public places, are intrusive, threatening to individual's privacy. Thus, no video camera in public space could be installed without any restriction.

3.2.2 Necessity of invasion

Since video surveillance is relatively more intrusive than other means of investigation, they can not be automatically exempt from judicial review simply because they are in public place. Such intrusive means of investigation of video

[23] See United States v. Jackson, 213 F. 3d 1269, 1281 (10th Cir. 2000).
[24] See United States v. Gonzalez, 328 F. 3d 543, 547–548 (9th Cir. 2003).
[25] See State v. Thomas, 642 N. E. 2d 240, 246 (Ind. Ct. App. 1994).

surveillance shall be controlled so as to form a balance between public safety and individual privacy. In the US judicature, it tends to believe that television surveillance is unconstitutional per se, and it is not suggested that the Constitution must be interpreted to allow it to be used as generally as less intrusive techniques can be used.[26]

Whether public video surveillance triggers the judicial review will depend on whether the scope and degree of video surveillance conform to the purpose and demand of conducts. "There can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails."[27] Thus, to facilitate the balance between public safety and individual privacy, we need consider the expectation of privacy by examining the necessity of the investigation and the threat to privacy under video surveillance. If the invasion to privacy by the method of video surveillance is increased, so is the expectation of privacy in such investigation, and the necessity required for investigation by the government shall be increased, too.

Since video surveillance is a highly intrusive method of investigation, the government has a higher responsibility in showing the necessity of video surveillance than other means. For example, in United States v. Mesa-Rincon, the police stated that they had exhausted all the investigative methods without success other than video surveillance, such as audio intercept or an inside confidential informant. Only video surveillance could provide: "(1) Information indicating the precise nature, scope, extent, and methods of operation of the participants in the illegal activities referred to above; (2) information reflecting the identities and roles of all accomplices, aides and abettors, co-conspirators and participants in the illegal activities referred to above; and (3) admissible evidence of commission of the offenses described above."[28] Therefore, there is a strong necessity for the police to use video surveillance.

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[26] See United States v. Torres, 751 F. 2d 875, 882–883 (1984).
[27] See Camara v. Municipal Court, 387 U. S 523, 536–37 (1967).
[28] See United States v. Mesa-Rincon, 911 F. 2d 1433, 1443 (1990).

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