



Risk Management

by Michael Gentile, J.D.

The Erin Andrews case: A chance for hoteliers to review and improve

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By now the facts surrounding the stalking of ESPN sideline reporter Erin Andrews are no doubt known to just about everyone in the hotel industry. This past summer naked videos of Andrews in her hotel room were circulated on the Internet. To provide the setting for this article, the following summary of the allegations were gleaned from a criminal complaint filed by the FBI against a man suspected of taking the videos.

While on assignment, Andrews was staying at the Nashville Marriott at Vanderbilt University. While she was there, the suspect allegedly called the hotel and asked for the room adjacent to Andrews. The Marriott's computer records reflect this request and the suspect's email address is attached. The hotel granted the request and assigned the room next to Andrews, in a secluded alcove, to the suspect. The FBI goes on to allege that the peephole in the door of Andrews' room was tampered with in such a way that would allow someone to film through the hole with a cell phone or other type of camera. The complaint further alleges that the suspect was able to ascertain that Andrews was staying at a Radisson hotel in Milwaukee and, although he did not check in, booked a room where agents subsequently found a similarly altered peephole. The engineer at that hotel stated he had never seen a peephole in that condition in all his years at the property.



As a result of the facts in this complaint, the suspect in the case will undoubtedly face significant criminal charges. However, these facts also reveal some hotel management procedures that need to be reviewed and revised so that situations like this do not recur, subjecting hotels to civil liability from their guests who become victims of such criminal behavior on their property. The existence of this case provides a good reminder to review such policies, some of which have been covered in previous articles in *The Rooms Chronicle*.

Status of a hotel guest

A guest in a hotel holds the legal status as an invitee (sometimes referred to as a business invitee) because the guest comes to the hotel for the purpose it is in existence, in furtherance of the hotel's business objective. As such, the guest is entitled to the highest legal duty owed to any party on their premises, that duty being to keep guests safe from unreasonable risks and dangers that the hotel knows about or "should have known about". That means a hotel could be liable if it failed to exercise reasonable care to discover dangerous risks in a situation where a guest would not be expected to identify or protect themselves from that risk and where the hotel failed to exercise reasonable care to protect the guest from danger.

The next step then is to identify what duties a hotel owes to a guest in a scenario such as the Andrews case and how that duty may be met. This concept can be applied to the Andrews case as follows.

Guest's right to privacy and to occupy guestroom without intrusion

It is well established that a guest has a right to privacy and to occupy the guestroom without intrusion from any unauthorized person. Except in cases of routine housekeeping and maintenance, nonpayment, unauthorized stayover, or imminent emergency, the only person who can authorize an intrusion is the registered guest. For this reason, it should be the policy of a

hotel not to disclose the room number or any other information about a registered guest to anyone who inquires. This may present a problem where the person inquiring claims to be a spouse or co-worker or perhaps is a preferred or loyal customer of the property. However, customer service training of employees can prepare front desk staff to adequately and politely explain the need for such a policy.

Historical legal precedent indicates that cases where the location of a guest's room is disclosed usually results in actual physical trespass and abuse of that guest. But the Andrews case shows that policy should go further.

With the proliferation of cell phone cameras and other portable or miniature video devices, the privacy of the guestroom can be invaded on an ongoing basis from an adjoining room, without the perpetrator physically entering the space. Therefore, hotel policy should dictate that adjacent rooms will never be assigned unless the reservations are made simultaneously or the previously registered guest authorizes such an assignment. The operation of such a policy may even be extended to require that a guest be notified when a third party makes such a request, even if such request is not granted by the hotel.

Hotel's duty to inspect and maintain the premises

It is equally undisputed that it is the responsibility of the hotel to inspect and maintain its property in a safe manner for guests. This is the most notable way it can meet the "should have known" requirement of the duty owed to an invitee. While most hotels do conduct regular inspections and maintenance programs, it is doubtful that those inspections involve the condition of the peephole devices in rooms. Previous "peeping tom" cases in hotels often involved employees and staff members from sites to which they had access. Until now, no one would tamper with the peephole in the hallway of a hotel. Therefore, if they do not already, hotels should add to their room attendant's checklist the responsibility to inspect for the condition or alteration of the peephole (preferred terminology is "viewport") in each room. Further, it would be a good idea to have an independent firm conduct a risk management audit to determine if any other areas of the property have been compromised for this purpose.

Conclusion

Safety and security of guests is a non-delegable duty for a hotel. Although there may be costs attached to it, it is the right thing to do. When cases such as the Andrews case become public, they serve to draw attention to what still needs to be done to meet this duty. As a practical legal matter, publicizing such cases also heighten the requirements on hotels because courts can look at previous cases as "notice" to hotel owners about the need to be vigilant. Therefore, in light of the Andrews case, hotel owners should consider the following steps. Note: A more comprehensive presentation about dealing with undercover media stings as they relate to guest's privacy in hotels is presented by Todd Seiders' article on pages 7 and 9.

- Develop a policy and train staff to enforce a policy to not reveal the location or personal information of registered guests.
- Do not accept requests to assign rooms adjacent to registered guests and adopt a policy of notifying guests when such requests are made.
- Conduct regular inspections of the premises particularly looking for areas that may be compromised for the purpose of voyeurism.
- Consider an outside risk management audit.

In these types of matters, just when you think you've seen it all something else comes along. The most important thing to remember when cases like this happen is to take the time to review your own operation and honestly ask yourself how your hotel would have responded. ✧

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