

Restatement (Second) of Torts § 652D cmt. C (1977). Today's satellite-image technology means that even in today's desert, complete privacy does not exist. In any event, Plaintiffs live far from the desert and are far from hermits. Although they live on a privately maintained road, the road is shared by several neighbors and there is nothing around their home intended to prevent the occasional entry by a stranger onto their driveway. There is no gate, no "keep out" sign, nor guard dog standing watch. There is no fence surrounding their property, nor is it located where the yard cannot be seen by satellite or low-flying aircraft. Indeed, images of Plaintiffs' property that are already widely available on the Internet reflect that during the ordinary incidents of Plaintiffs' community life, many people—visitors pulling in the driveway, neighbors turning around at the end of the road, deliverymen delivering packages—can plainly see the exterior view of their home. The view of which Plaintiffs complain simply is not private.

Moreover, Plaintiffs live in a residential community in the twenty-first-century United States, where every step upon private property is not deemed by law to be an actionable trespass. An actionable trespass claim requires that the entry be unprivileged, and a privilege may be created by custom. In today's society people drive on our driveways and approach our homes for all sorts of reasons—to make deliveries, to sell merchandise and services door-to-door, to turn around. As a society we accept these "intrusions." They are customary, even expected. Thus, unless there is a clear expression such as a gate, fence, or "keep out" sign indicating that the public is not permitted to enter, anyone may approach a home by a walkway, driveway, or any other route commonly used by visitors, without liability for trespass. Plaintiffs' allegation of a "private road" sign at the top of their street standing alone is insufficient to negate Google's privileged and trivial entry upon Plaintiffs' property.