



Location Privacy: Legal and Policy Issues

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Media Is Now Focusing On Concerns Over Location Privacy

- Facebook
- Smart phone apps
- Drones
- Google Street View
- Geotagging of on-line photos
- Law Enforcement's Use of Location Data
- Smart Grid
- Tracking Devices
- License-plate reading technology
- Automobile Insurance

Media Attention Is Having Impact

- Self Regulation
 - Short Pump Mall pulls mobile phone tracking device
- Court Cases
 - Borings v. Google
 - Apple lawsuits
- Increased concerns over developing technologies
 - Drones
 - Smart Grids
 - Intelligent Transportation Systems

As a result . . .

- At least 15 bills before Congress that would regulate location privacy
- Federal Trade Commission and Department of Commerce have both issued privacy reports that cite precise geolocation information as personal information
- Growing number of cases looking at location privacy
- States are becoming more active in location privacy

Legislative/Regulatory Environment Is Changing

- A number of bills being considered in Congress:
 - “Tracking” bills
 - “Internet” bills
 - “Drone” bills
- Not always clear that “location” is included
- Cover a number of aspects of “location” information
 - Data
 - Sensors
 - Software

“Internet” Bills

- Commercial Privacy Bill of Rights Act of 2011
- BEST Practices Act
- Do Not Track Me On-line Act
- Consumer Privacy Protection Act of 2011
- Update to Children’s Online Privacy Protection Act

“Tracking” Bills

- Location Privacy Protection Act of 2011
- Geolocational Privacy and Surveillance Act
- Electronic Communications Privacy Act Amendment Acts
- Mobile Device Privacy Act (draft)

“Drone” Bills

- Drone Aircraft Privacy and Transparency Act of 2012 (Draft)
- Preserving Freedom from Unwarranted Surveillance Act of 2012
- Preserving American Privacy Act of 2012
- Farmers Privacy Act of 2012
- **Query: What is the difference between a drone and a satellite or manned aircraft from privacy standpoint?**

Privacy Bills

Things to Watch

- Internet bills primarily intended to address personal information collected via the internet
 - Location privacy is simply one set of data covered
 - Getting enough attention in discussion?
- ‘Precise geolocation information’
 - How will it be defined?
 - Many types of data associated with our location
- What Type of Consent Will Be Required:
 - Opt-in vs. Opt Out
 - Is either practical for some geospatial technologies?
- How Will Notice and Access Requirements Apply?

Federal Trade Commission Staff Report

- Protecting Consumer Privacy in an Era of Rapid Change – A Proposed Framework for Businesses and Policymakers
- Supports “Do Not Track” legislation
- Approximately 100 page report only mentions “location” ten times
- However, staff agrees that “precise location data” is sensitive

Court Cases

- Pineda v. Williams-Sonoma Stores, Inc. 51 Cal. 4th 524 (Cal: Supreme Court 2011)
- Williams-Sonoma was sued by a customer because a clerk asked for her zip code during check-out
- Claim was that it violated Song-Beverly Credit Card Act of 1971 (Cal. Civ. Code § 1747 *et seq.*)
- Illegal for a business that accepts credit cards to request personal identification information from a consumer in connection with a credit card transaction.
- Court finds that a zip code can be 'personally identifiable information'
 - "information *concerning* the cardholder . . . including, but not limited to, the cardholder's address and telephone number."
- Led to similar lawsuits in other states

Court Cases

- U.S. v. Jones 132 S. Ct. 945 (2012)
- Supreme Court was asked to decide whether law enforcement was required before using a tracking device
 - Circuit courts had conflicting decisions
- Court found that the act of placing a device on auto was a violation
 - Trespass theory
- Majority of justices appear to believe that tracking itself can be a violation
 - Mosaic theory

Court Cases

- US v. Skinner - No. 09-6497 (6th Cir. Aug. 14, 2012)
- Case involves law enforcement “pinging” pay-as-you-go phone without a warrant
- Defendant did not know that phone was GPS-enabled
- Court found that warrant was not required
 - Seemed to focus on suspect’s location in public rather than technology
- Will Supreme Court address these types of cases?
 - Administration says no REOP in mobile phone location data

Court Cases

- At what point does aggregation of spatially-enabled government data encroach upon privacy interests of citizens?
 - Forest Guardians v. United States Federal Emergency Management Agency 410 F.3d 1214 (10th Cir. 2005)
- Who decides?
 - Multi-Media Ag. v. Department of Agriculture 515 F3d. 1224 (DC Cir. 2008)
 - Agriculture Appropriations Bill

Future Location Privacy Issues

- State Regulation
 - Use of tracking devices
 - RFID technology
- Cloud Computing
 - Hosting of data in different jurisdictions
- Crowdsourcing
 - Freedom of Information/Open Records
- Smart Grid
 - States are focused on privacy concerns
- Intelligent Transportation Systems
 - Requirement for 'black boxes' in autos?

Unique Aspects of Location Information

- Much more difficult to define
 - Compared to other protected information - social security number, health records, credit information
- Temporal component
 - Present vs. historical?
- Cultural, gender, age, religious, social components
- Location information is collected in many more ways
- We provide our location to strangers whenever we go out in public
- Location information can be used for “good” or “bad”

Definitions/Examples of “Personal” Location Information

- "information *concerning* the cardholder . . . including, but not limited to, the cardholder's address and telephone number." (Song-Bird Act)
- “[g]eolocation information sufficient to identify street name and name of a city or town” (COPPA amendments)
- “any information that is collected, used or stored in connection with personally identifiable information or unique identifier in a manner that may reasonably be used by the party collected the information to identify a specific individual” (Section 3(3)(A)(iii) Commercial Privacy Bill of Rights.)
- Examples from Opinion 4/2007 on the concept of personal data by the Article 29 Data Protection Working Party
 - video surveillance systems (see e.g. Example No. 3),
 - monitoring of taxis’ position to optimize service having an impact on drivers (see e.g. Example 8),
 - an individual’s presence in a meeting as included in the meeting minutes (see e.g. Example 9),
 - IP addresses (see e.g. Example 15)
 - and published photos of shoplifters in shops with faces blurred (see e.g. Example 19).

What Are The Potential Concerns?

- Who is looking at privacy from location standpoint?
 - Does privacy community understand location?
 - Does geospatial community understand privacy?
- Location privacy concerns will limit important uses
 - E-911
 - Street View
- Definitions/Precedents in one area will be used in others (without recognizing differences)
 - Zip Codes
 - US. v. Skinner

What Are We Trying To Protect?

- Stalking
- Tracking
 - Employers
- Government surveillance
- Unwanted targeted advertisements
- Important decisions being made based in part in total on our location
 - Insurance

Conclusion

- We don't understand location privacy yet
 - Technology is changing expectations
 - Location privacy is unique
- Need to identify and weigh the true risks
 - “good” vs. “bad” uses of location information
- Location information doesn't fit easily into existing privacy protection constructs
- One definition of “precise geolocation information” will impact other definitions
- Changing REOP for location will have much broader implications than anticipated
- Heavy regulation and/or differing legal regimes could have a significant impact on ability to collect, use geospatial data