



THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW

NATIONAL CENTER FOR REMOTE SENSING, AIR AND SPACE LAW

INFORMATIONAL RESOURCES ON THE LEGAL ASPECTS OF HUMAN ACTIVITIES USING AEROSPACE TECHNOLOGIES

Geolocational Privacy: Introduction and Context

**Prof. Joanne Irene Gabrynowicz
DOI National Geospatial
Advisory Committee**

**Washington, DC
18 September 2012**

© Gabrynowicz 2012

Overview

- **Privacy Relationships**
 - Government - citizen
 - Citizen - citizen
- **Modern Context: Geolocation Privacy**
 - Monitoring, tracking, and complex devices



Privacy Relationship: Government - Citizen

4th Amendment Privacy Statutes



The Fourth Amendment

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and *no Warrants shall issue, but upon probable cause, supported by Oath or affirmation*, and particularly describing the place to be searched, and the persons or things to be seized.”

Amendment 4 - Search and Seizure

Ratified 15 December 1791



THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW

NATIONAL CENTER FOR REMOTE SENSING, AIR AND SPACE LAW



Privacy Relationship: Government - Citizen

United States v. Jones

- Does Constitution allow police to put a tracking device on a car without either a warrant or the owner's permission?
- Is Constitution violated when police use tracking device to keep track of the car's whereabouts?



THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW
NATIONAL CENTER FOR REMOTE SENSING





Privacy Relationship: Government - Citizen

- **Significance of case: what are implications of new technology on 4th Amendment doctrine?**
- **Government argued “tracking” not a “search” or “seizure”**
- **Jones argued gathering GPS data from a car’s movements is “seizure”**
- **Jan. 23, 2012 decision: Govt.’s attachment of GPS device to vehicle, and its use of device to monitor vehicle’s movements, is a search under the 4th Amendment**



Privacy Relationship: Government - Citizen

- **Statutes apply to local, state and federal governments**
- **Specific interests addressed**
 - Financial, educational, library, computers
 - Require search warrants
 - Significant post 9/11 changes
- **Reactions to information misuse**
 - Publication of video rental record
 - Bork case, e.g.



THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW
NATIONAL CENTER FOR REMOTE SENSING, AIR AND



Privacy Relationship

Citizen - Citizen

Privacy Torts

Informational Privacy



THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW

NATIONAL CENTER FOR REMOTE SENSING, AIR AND SPACE LAW

Privacy Relationship: Citizen - Citizen

“Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual...the right ‘to be let alone’ ... Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that ‘what is whispered in the closet shall be proclaimed from the house-tops.’ ... and the question whether our law will recognize and protect the right to privacy in this and in other respects must soon come before our courts for consideration.”



Privacy Relationship: Citizen - Citizen



**“The Right to Privacy”
Warren and Brandeis
Harvard Law Review, 1890**



“Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual...the right ‘to be let alone’ ... Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that ‘what is whispered in the closet shall be proclaimed from the house-tops.’ ... and the question whether our law will recognize and protect the right to privacy in this and in other respects must soon come before our courts for consideration.”



THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW

NATIONAL CENTER FOR REMOTE SENSING, AIR AND SPACE LAW

Privacy Relationship: Citizen - Citizen

- **Privacy torts**
 - Intrusion on seclusion, false light, public revelation of private facts, etc.
- **Informational privacy**
 - Addresses individualized, one of a kind events and settings
 - Right to determine
 - What personal information is being collected
 - How personal information is being used
 - Case-by-case determination
 - Judicial protection
- **Focus moving to databases and IT systems**
 - Reasonableness of design for information security, etc.



THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW

NATIONAL CENTER FOR REMOTE SENSING, AIR AND SPACE LAW



Privacy Relationship: Citizen - Citizen

- **Informational Privacy**
 - **Legislative protection for special kinds of privacy protection**
 - **Health Insurance and Portability and Accountability Act (HIPAA)**
 - Health records
 - **Gramm-Leach-Bliley Act**
 - Requires financial institutions to explain their information-sharing practices to customers and to safeguard sensitive data.
 - **Do Not Call list**
 - **Telemarketing sales rules**
- **Can overlap with government to citizen issues**



THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW

NATIONAL CENTER FOR REMOTE SENSING, AIR AND SPACE LAW



Modern Context: Geolocation Privacy, Monitoring, Tracking, and Complex Devices

- **Cell phones and towers**
 - Law enforcement memos re: difference between phone and tower searches
 - ACLU case working its way up to Supreme Court
- **Browsers**
 - Google “wi-spy” controversy
 - Next Internet Explorer: do not track option
 - Duck Duck Go: does not track, “bubble”
- **UAVs**
 - Number 1 issue: privacy
 - Congress directed FAA to integrate them into national airspace
 - Has attention of both the political right and left
- **Laws also being passed at state level**



THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW
NATIONAL CENTER FOR REMOTE SENSING, AIR AND



Conclusion

- **Citizens are becoming aware of being tracked, documented**
 - Major issue: opt-in versus opt-out as default
- **Different technologies raise similar or same issues**
 - Cell phones, towers, smart phones, UAVs, browsers, etc.
 - Cumulative effect = critical mass
- **U.S. v. Jones is critical watershed**
 - Demonstrates Court's willingness to address technologies in 21st Century Constitutional context





Thank you.

