

# GEOLOCATION PRIVACY

**Ted Claypoole**

Member, Womble Carlyle

Charlotte, NC

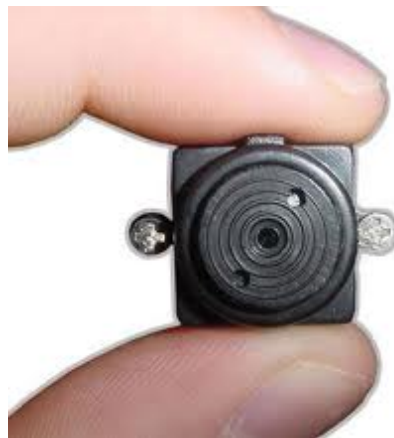
Leader of Firm Privacy/Data Security Team

Co-Chair, Privacy and Data Security Subcommittee  
for the American Bar Association



# Why Care? Why Now?

- 1) Pervasive Tracking Technologies
- 2) Unintended Consequences



“There was no way of knowing whether you were being watched at any given moment...it was even conceivable that they watched everyone all the time”

- George Orwell, *1984*



# Pervasive Tracking Technology

## Some Move With You:

- Global Positioning Tools
  - Cars
  - PDAs
- Triangulation Tools
  - Telephones
- RFID (Passive and Active)



# Pervasive Tracking Technology

## Some Don't Move at All:

- Stationary Cameras
- Video Digitization
- Biometric Identification



## Expanded Expectations

# Location Tracking Choices

**GPS.** The Global Positioning System uses multiple communications satellites to triangulate a devices location with high accuracy

**Cellular Identification.** Mobile phones are generally in the signal range of at least three cellular towers, allowing triangulation among those towers. Cell providers can find location information for cellular phones by using Cellular Identification even when the phones are not calling on the system.

**Wireless Positioning.** Users can be mapped according to the wireless access points that they pass. Certain services send information about detected wireless signals to databases of access point locations with high location accuracy.

**IP Location.** Phones or other devices connected to an Internet network are provided with an IP address. IP location looks up the IP address of the user's device in a database that maps IP addresses to geographic locations. This method is less precise than the others and is often used in the last resort, as the mapping may only be as specific as narrowing to a city.



# Applications Push Envelope

## Navigation:

Google Maps

UpNext

## Social Games:

Foursquare

Loopt

Google Latitude

Facebook

## Shopping:

Sifter

RedLaser

Pic2Shop

## Dating:

Skout

Grindr/Manhunter

PinpointX

## Utilities:

Recognizr

Sex Offender Tracker

Bed Bug Alert

Taxi

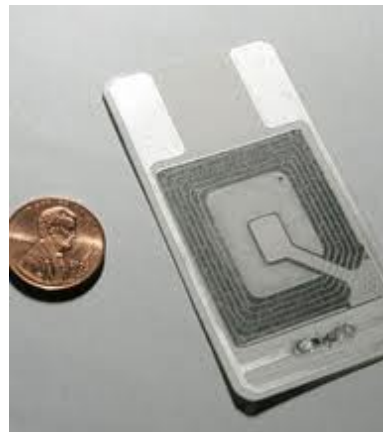


# Radio Frequency ID

## Collection of Technologies

- Passive/Active
- Pallets
- Home full of Tattletales

## Tracking Pets and Kids





# UNINTENDED CONSEQUENCES

## Data Aggregation

- Zip Code, Birthday, Gender – 87%
- Collection of locations
  - Commute
  - Banking
  - Common Locations



# UNINTENDED CONSEQUENCES

PleaseRobMe.Com

Rental Car Fines

Location Tracking: Cell Phone

Penn. School Laptops



# Practical Considerations for Regulators

Enable Consumer Applications

Telecommunications Priorities

Government Needs (Traffic)

Law Enforcement

Public Safety (911)

Personal Data



# European Regime

## EU Privacy Directives:

2002 Directive on Privacy and Electronic Communications (2002/58/EC) – Consent required for capture of geolocation data (or kept in anonymous fashion).

“location data’ means any data processed in an electronic communications network, indicating the geographic position of the terminal equipment of a user of a publicly available electronic communications service.”

Universal Service Directive, 2002/22/EC –  
Emergency Calls (Reg. E-112).



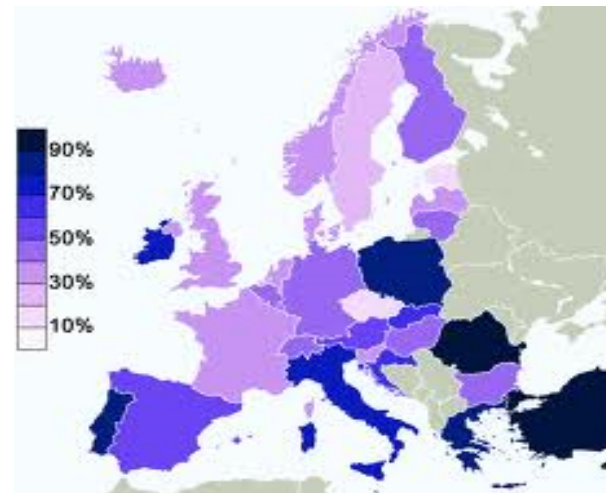
# European Regime

**Italy** – Written Security Policy for biometrics and geolocation tracking

**Spain** – Requires encryption for sensitive data

**UK** – Allows broader consent definition than Continent

**Germany** – No information collected from Toll Stations.





O Canada!



## Umbrella Privacy Act – PIPEDA (and Provincial Laws)

- Privacy Commissioner Examining Location
- Consent is primary tool

## Telecom Confidentiality Requirements

2003 decisions set forth consent requirements



# USA



## Statutes and Regulations

- 1996 Telecom Act – no location disclosure
- 2010 FCC Rules – Digital Data protected
- 1999 Wireless Act – allows location disclosure in certain circumstances
- State stalking laws



# USA

## Case Law

*U.S. v. Pineda-Moreno, 9<sup>th</sup> Cir.*

24/7 Tracking without warrant is acceptable

*People v. Lacy, NY*

Warrant required for car tracking





# USA

## Constitutional considerations

### First Amendment

- Freedom of Association – *AL. v. NAACP*
- Freedom of Speech

### Fourth Amendment

- Right to security in home and person



