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 device’s 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
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:


“‘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.”

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, 9th 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
1984 was not supposed to be an instruction manual.