



# Location Privacy: Legal and Policy Issues

Kevin D. Pomfret  
Executive Director  
Centre for Spatial Law and  
Policy



# 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 (10<sup>th</sup> 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