Location Privacy: The Legal Landscape

David L. Sobel
Senior Counsel, EFF
Stanford PNT Symposium
October 29, 2014
Overview

• Increasing public concern about location tracking
• Tracking by both government actors (police) and private actors is growing
• Legal restrictions are being placed on government actors, but less so on private actors
• Sale and use of GPS jamming devices is prohibited
• What are the solutions to protect privacy?
Public Concern is Growing

DOCTOR FUN

“Yeah - we used to call them cell phones.”
Wireless Surveillance by Government is Increasing

Washington (December 9, 2013) - As part of his ongoing investigation into wireless surveillance of Americans by law enforcement, Senator Edward J. Markey (D Mass.) today released responses from eight major wireless carriers that reveals expanded use of wireless surveillance of Americans, including more than one million requests for the personal mobile phone data of Americans in 2012 by law enforcement. This total may well represent tens or hundreds of thousands more actual individuals due to the law enforcement practice of requesting so-called “cell phone tower dumps” in which carriers provide all the phone numbers of mobile phone users that connect with a tower during a specific period of time.
U.S. Constitution, 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.
The U.S. Supreme Court Rules on GPS Tracking

In its majority opinion, the Supreme Court ruled that planting a GPS device on a car is a physical trespass that requires a warrant, but dodged the question of whether the warrantless tracking itself would violate the Fourth Amendment. But in two concurring opinions, five of the nine justices said people have a reasonable expectation of privacy in their movements over time, and long-term location tracking without any physical trespass should require a warrant, too.

The U.S. Supreme Court Rules on GPS Tracking

An important concurring opinion:

In a GPS tracking case where no physical attachment occurred, Justice Sonia Sotomayor would “ask whether people reasonably expect that their movements will be recorded and aggregated in a manner that enables the Government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on.”
Protections are Developing at the State Level

• The New Jersey Supreme Court ruled in July 2013 that under the state’s constitution police need a search warrant before tracking a person's location through their cell phone.

• The Massachusetts Supreme Judicial Court ruled in June 2013 that the state’s constitution prohibited extensive GPS monitoring of an individual -- regardless of whether they are the driver or passenger of a car -- unless police obtained a search warrant.

• Montana in May 2013 became the first state to require police get a search warrant by statute before tracking a person’s location (California had a chance to be the first state but Governor Jerry Brown vetoed a location privacy bill).

• Maine in July 2013 passed a similar bill after the legislature overrode the governor’s veto. Over a dozen states are considering various electronic privacy bills.
GPS Tracking Devices are Small and Inexpensive
GPS Tracking by Individuals is Increasing

Private Snoops Find GPS Trail Legal to Follow

By ERIK ECKHOLM
Published: January 28, 2012 | 75 Comments

Only yesterday it was the exotic stuff of spy shows: flip on a computer and track the enemy’s speeding car.

But today, anyone with $300 can compete with Jack Bauer. Online, and soon in big-box stores, you can buy a device no bigger than a cigarette pack, attach it to a car without the driver’s knowledge and watch the vehicle’s travels — and stops — at home on your laptop.

Tens of thousands of Americans are already doing just that, with little
When It Is **Not Legal** to Place a GPS Tracker on a Vehicle

- You would have to break into the car to place the device
- You would have to “hardwire” the device physically inside the car
- The vehicle is in a location where the owner has a “reasonable expectation of privacy” (such as a private garage in their home)
When It Is **Legal** to Place a GPS Tracker on a Vehicle

- You or your business company owns the vehicle

- You don’t own the car, but the GPS device is placed on the outside of the car, such as underneath a bumper

- The vehicle is visible or accessible to the public when the device is placed on it (for example, on a public street or in a public parking lot)

- The information obtained could also be obtained by physically following the vehicle

- The vehicle is not located on another person’s private property
Sale and Use of GPS Jammers are Prohibited

- **The Communications Act of 1934**
  - Section 301 - requires persons operating or using radio transmitters to be licensed or authorized under the FCC’s rules
  - Section 302(b) - prohibits the manufacture, importation, marketing, sale or operation of these devices within the United States
  - Section 333 - prohibits willful or malicious interference with the radio communications of any station licensed or authorized under the Act or operated by the U.S. Government

- **The Criminal Code** (Enforced by the Department of Justice)
  - Title 18, Section 1362 - prohibits willful or malicious interference to US government communications; subjects the operator to possible fines, imprisonment, or both
  - Title 18, Section 1367(a) - prohibits intentional or malicious interference to satellite communications; subjects the operator to possible fines, imprisonment, or both
FOR IMMEDIATE RELEASE:  
June 19, 2014

NEWS MEDIA CONTACT:  
Mark Wigfield (202) 418-0253  
Email: mark.wigfield@fcc.gov

FCC PLANS $34.9 MILLION FINE

AGAINST CHINESE ONLINE RETAILER OF SIGNAL JAMMING DEVICES

 Warns U.S. Consumers that Importing and/or Operating a Signal Jammer is Unlawful

Washington, D.C. – The Federal Communications Commission plans to issue the largest fine in its history against C.T.S. Technology Co., Limited, a Chinese electronics manufacturer and online retailer, for allegedly marketing 285 models of signal jamming devices to U.S. consumers for more than two years. The FCC applied the maximum fine allowed to each jammer model allegedly marketed by C.T.S., resulting in a planned fine of $34,912,500.
Enforcement is Difficult
Can Personal Privacy Be Protected?

- Legal restrictions on use of tracking devices by private actors
- More precise and less disruptive jamming technology
- Other solutions?