



MAPPS

Management Association for Private Photogrammetric Surveyors
An Association of Photogrammetry, Mapping, and Geospatial Firms®

Privacy Issues & Geospatial Firms

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Background

- + Congress, Federal agencies and State Legislatures are increasingly attempting to regulate UAVs, aerial imagery, and “precise geolocation data” in order to protect individual citizen privacy

Legal/Historic Perspective

- + Airspace cannot be regulated by the states. “The United States Government has exclusive sovereignty of airspace of the United States.” **49 USC § 40103**

Legal/Historic Perspective

- + The United States has long been a signatory to an international “open skies” treaty that permits aerial observation using certain sensors on unarmed fixed wing aircraft.

Legal/Historic Perspective

- + US Supreme Court has upheld taking of aerial photography
- + DOW CHEMICAL COMPANY, v. UNITED STATES, 476 U.S. 227 (1986)
- + EPA employed a commercial aerial photographer, using a standard precision aerial mapping camera, to take photographs of the facility from various altitudes, all of which were within lawful navigable airspace

Legal/Historic Perspective

- + EPA's taking, without a warrant, of aerial photographs of petitioner's plant complex from an aircraft lawfully in public navigable airspace was not a search prohibited by the Fourth Amendment
- + EPA was not employing some unique sensory device not available to the public, but rather was employing a conventional, albeit precise, commercial camera commonly used in mapmaking.

Legal/Historic Perspective

- + “surveillance of private property by using highly sophisticated surveillance equipment not generally available to the public, such as satellite technology, might be constitutionally proscribed absent a warrant.”

Recent “Geolocation” Legislation

- + 2010 - Rep. Rush (D-IL) introduces H.R. 611 “BEST PRACTICES Act” - Fosters transparency about the commercial use of personal information, provide consumers with meaningful choice about the collection, use, and disclosure of such information
- + Regulates “sensitive information” including “precise geolocation information and any information about the individual’s activities and relationships associated with such geolocation” .. Including an address or ID number (parcel ID)
- + Does not define “precise geolocation information”

Recent “Geolocation” Legislation

- + 2011 Rep. Rush (D-IL) re-introduces H.R. 611 “BEST PRACTICES Act”
- + Virtually same as previous bill, *except*
- + Requires FTC to define “precise geolocation information”

Recent “Geolocation” Legislation

- + 2011 - Rep. Speier (D-CA) introduces H.R. 654 “Do Not Track Me Online Act” - Directs the Federal Trade Commission to prescribe regulations regarding the collection and use of information obtained by tracking the Internet activity of an individual;
- + “‘covered entity’ means a person engaged in interstate commerce that collects or stores online data containing covered information”
- + “‘covered information’ means ... the computer and geolocation from which online information was accessed ... personal information such as ... a postal address or other location”

Recent “Geolocation” Legislation

- + 2011 - Rep. Chaffetz (R-UT), Sen. Wyden (D-OR) H.R. 2168, S.1212
- + "Geolocational Privacy and Surveillance (GPS) Act" - Amends title 18, United States Code, to specify the circumstances in which a person may acquire geolocation information.

Recent “Geolocation” Legislation

- + 2011 - Rep. Markey (D-MA) H.R. 1895 “Do Not Track Kids Act of 2011” - Amends the Children's Online Privacy Protection Act of 1998 to extend, enhance, and revise the provisions relating to collection, use, and disclosure of personal information of children and to establish certain other protections for personal information of/from children and minors ... including collecting geolocation information

Recent “Geolocation” Legislation

- + **2011 Sen. Leahy (D-VT) - S. 1011 “Electronic Communications Privacy Act Amendments Act of 2011”** - Improves the provisions relating to the privacy of electronic communications; limits certain private firm (including a “geolocation information service”) disclosure of certain information to the government without a warrant

Recent “Geolocation” Legislation

- + 2011 - Sen. Franken (D-MN) - S. 1223 “Location Privacy Protection Act of 2011” - Addresses voluntary location tracking of electronic communications devices;
- + “the term ‘geolocation information’—
- + (A) means any information—
- + “(i) concerning the location of an electronic communications device that is in whole or in part generated by or derived from the operation or use of the electronic communications device; and

Recent “Geolocation” Legislation

- + “(ii) that may be used to identify or
- + approximate the location of the electronic
- + communications device or the individual
- + that is using the device; and
- + “(B) does not include any temporarily assigned network address or Internet protocol address of the individual; and

Recent “Geolocation” Legislation

- + “the term ‘geolocation information service’ means the provision of a global positioning service or other mapping, locational, or directional information service.

Recent UAV Legislation

- + 2012 Rep. Austin Scott (R-GA) - H.R. 5925 “Preserving Freedom from Unwarranted Surveillance Act of 2012” - Protects individual privacy against unwarranted governmental intrusion through the use of the unmanned aerial vehicles commonly called drones;

Recent UAV Legislation

- + **Rep. Poe (R-TX) - H.R. 6199 “Preserving American Privacy Act of 2012”** - Provides for limitations on the domestic use of drones in investigating regulatory and criminal offenses;
- + “No Federal agency may authorize the domestic use, including granting a permit to use, of an unmanned aircraft to permit any private person to conduct surveillance on any other private person without the consent of that other private person or the owner of any real property on which that other private person is present.”

Recent UAV Legislation

- + **Rep. Markey (D-MA) - H.R.6676 “Drone Aircraft Privacy and Transparency Act of 2012” -**
Amends the FAA Act of 2012 to provide guidance and limitations regarding the integration of unmanned aircraft systems into United States airspace;
- + a study that identifies any potential threats to privacy protections posed by the integration of unmanned aircraft systems into the national airspace system, including any potential violations of the privacy principles.

Recent UAV Legislation

- + **Sen. Paul (R-KY) - S. 3287 “Preserving Freedom from Unwarranted Surveillance Act of 2012”** - Protects individual privacy against unwarranted governmental intrusion through the use of the unmanned aerial vehicles commonly called drones;
- + shall not use a drone to gather evidence or other information pertaining to criminal conduct or conduct in violation of a statute or regulation except to the extent authorized in a warrant that satisfies the requirements of the Fourth Amendment to the Constitution of the United States.

Recent Aerial Surveillance Legislation

- + Amendment #2372 to Farm Bill S. 3240, Senator Johanns (R-NE) - to prohibit the Administrator of the Environmental Protection Agency from conducting aerial surveillance to inspect agricultural operations or to record images of agricultural operations.
- + 56-43, but needed 60 votes
- + Allegation was drones used, EPA confirmed small piloted planes used to check for polluted runoff and potential violations of the Clean Water Act.

State Legislation

- + H-0701, State Rep. Neal Kurk (R-Ware) pre-filed in the New Hampshire state legislature, "prohibiting images of a person's residence to be taken from the air."
- + Text not available

FTC Regulation

- + FTC issued a report in December 2010 limiting “collection, storage or use” of “precise geolocation data”
- + More comments on this issue than any other; thanks MAPPS members!
- + Due to MAPPS, NGAC & FGDC involved
- + FTC attorney spoke at MAPPS Fall Policy Conference in Herndon/Dulles, VA in November 2011

FTC Regulation

- + FTC has admitted its use of “precise geolocation data” in proposed rule was inappropriate, needs definition, and intent was *not to cover geospatial profession*
- + Final FTC rule, "*Protecting Consumer Privacy in an Era of Rapid Change: Recommendations For Businesses and Policymakers*, issued March 26, 2012, did not adequately exempt and protect the geospatial community from unintended consequence

FTC Regulation

- + Report did not adequately address “precise geolocation data”.
- + “The Commission defines as sensitive, at a minimum, data about children, financial and health information, Social Security numbers, and certain geolocation data.”

FTC Regulation

- + Only provision was footnote 187 -
“With respect to use of geolocation data for mapping, surveying or similar purposes, if the data cannot reasonably be linked to a specific consumer, computer, or device, a company collecting or using the data would not need to provide a consumer choice mechanism. Similarly, if a company takes reasonable measures to de-identify smart grid data and takes the other steps outlined above, the company would not be obligated to obtain consent before collecting or using the data.”

- + The Coalition of Geospatial Organizations, (COGO) sent a MAPPS-initiated letter to the FTC expressing the unanimous concern of 14 geospatial associations;

FTC Investigation

- + FTC announced on December 18, 2012 it issued orders requiring nine data brokerage companies to provide the agency with information about how they collect and use data about consumers. The agency will use the information to study privacy practices in the data broker industry. Included CoreLogic (recent MAPPS member).

Conclusions/Next Steps

- + John “JB” Byrd has done a great job flagging bills and educating members of Congress
- + Read the FTC Report - <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>
- + “Eternal vigilance is the price of liberty”
- + MAPPS will include privacy in Federal Programs Conference issues



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