

## CENTRE FOR SPATIAL LAW AND POLICY

Lawrence E. Strickling,  
Assistant Secretary for Communications and Information  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Ave.,  
NW Washington, DC 20230

RE: Comments to Multistakeholder Process to Develop Consumer Data Privacy  
Codes of Conduct

Dear Mr. Strickling:

The mission of the Centre for Spatial Law and Policy ([www.spatiallaw.com](http://www.spatiallaw.com)) is to improve the understanding of the unique policy and legal issues associated with the collection, use and distribution of location and the many other types of geospatial data. Such an understanding is a necessary component in the development of a consistent and transparent legal and policy framework that will allow for the successful growth of the emerging U.S. geospatial technology industry while still protecting important and legitimate privacy and other societal interests.

Our comments below are focused exclusively on what issues should be addressed through the multistakeholder process. We appreciate this opportunity to comment on the process. Clearly, location information is becoming an important component of our daily lives, as location-aware smart phones and other devices are collecting enormous amounts of data that increasingly is being used for a variety of societal, governmental and business purposes. The level of available data will only increase with time, compounding existing concerns about privacy.

The Consumer Privacy Bill of Rights is an important step in the development of a framework to protect the privacy of U.S. citizens. However, we believe that there is a good deal of education and dialogue that still needs to occur on location information before relevant codes of conduct can be implemented. Therefore, we suggest that the multistakeholder process should address the unique aspects of location information from a privacy standpoint. These discussions should include representatives from the many types of stakeholders that collect location information and should result in a dialogue between industry and the privacy community as to how these unique aspects of location information should be addressed in codes of conduct. Moreover, each discussion topic should be well defined and narrowly focused so as to make the process tenable. Specific topics for discussion would include:

Defining location information is difficult. Defining location from a privacy standpoint is much more difficult than other types of information considered personal, such as social security number, medical records or sexual orientation. For example, should location be defined as individual's location to within a few feet, a few blocks, or within a zip code? Moreover, a temporal component should be considered. An overly broad definition could impact business and consumer practices unrelated to privacy. A definition may vary between the various

## CENTRE FOR SPATIAL LAW AND POLICY

types of location information and/or the privacy risk. Moreover, definitions should be consistent across the various privacy regimes currently in existence or being considered.

Location information is collected by a variety of methods. A consumer's location information is collected almost daily in a variety of ways. Methods to collect location information can range from smart mobile devices and credit card transactions to employee key cards, security cameras, and aerial/ satellite imagery. Each method serves a diverse and meaningful role in today's society. However, in many instances, providing a consumer notice of such collection and/or obtaining meaningful consent would be difficult if not impossible. For example, a live broadcast of a baseball game that is simultaneously displayed over the internet will undoubtedly capture images and location of fans in the stands without their informed consent.

Location information is often 'publicly available information'. Developing codes of conduct that treat location information the same as other types of information will raise a number of challenges. For example, under many privacy regimes, information is no longer considered private if it is 'publicly available'. How does this apply to location information since a person discloses his or her location every time he or she goes out into the public? (A person also often discloses that he or she is at home as well – parking his/her car in the driveway, playing in the front yard with his kids, starting a fire in her fireplace, receiving a call on his home phone – often without even thinking about it – will collecting this information be subject to privacy rules?)

Location information is versatile and vital. Another factor that should be considered is that location information is much more versatile – and in some cases critical - than other types of protected information. For example, location information can be used to provide a number of critical governmental, societal and business services that empower citizens in ways that were unimaginable just a decade ago. The number and value of these services are increasing on an almost daily basis. Attempts to regulate the collection of location information before understanding the potential benefits will likely result in a number of important products and services not being introduced. Moreover, in order for a consumer to give informed consent, he or she needs to fully understand the consequences of not allowing for location information to be collected. For example, not allowing their location information to be collected may make it more difficult to find them in an emergency.

The impact of codes of conduct regarding location information will go beyond consumer privacy. Courts, regulators and lawmakers are all struggling with how to reconcile today's technology with existing laws, regulations and policies. From a location standpoint, a major issue is whether the general principle that a citizen does not have a reasonable expectation of privacy while in a public place still applies. This issue has a number of Fourth Amendment implications, and is therefore of critical importance for both law enforcement and homeland security. Codes of conduct that could be interpreted to provide for a reasonable expectation of privacy in a public place could have much broader implications. For example, defense attorneys could use them to challenge surveillance techniques used by law enforcement to monitor suspects.

## CENTRE FOR SPATIAL LAW AND POLICY

Rules need to be tailored to specific privacy concerns. There have been a number of different concerns expressed about the risks associated with an individual's location information being disclosed. However, before codes of conduct can be developed for location information, it is important to clearly identify the specific privacy risks that are being protected. For example, would the criminal code be better suited to protect individuals from having their location information used for 'stalking' purposes?

We would be glad to discuss these concerns with you as discussions move forward. To that end, we would be glad to meet with your staff who handles this issue to answer any questions. I may be reached at 804.928.5870 or [kevin@spatiallaw.com](mailto:kevin@spatiallaw.com). I thank you for your time and attention.

Sincerely yours,

/s/ Kevin D. Pomfret

Kevin D. Pomfret  
Executive Director