

Bill Introduced to Protect Location Privacy

June 28, 2011

On June 15, Senator Ron Wyden (D-OR) and Representative Jason Chaffetz (R-UT) introduced the [Geolocation, Privacy, and Surveillance \(GPS\) Act](#) [1] in both houses of Congress. This is the third major bill addressing location privacy introduced in the past month, signaling an unprecedented level of Congressional interest.

The fact that many companies are tracking the movements of cell phone users has been much discussed in the press since the recent discovery of tracking files on [Apple mobile devices](#) [2] and [Android phones](#) [3]. Meanwhile, the question of when the government can track individuals using their mobile phones or GPS devices has been [litigated in the courts](#) [4], which are grappling with whether such tracking is [covered by the Constitution](#) [5].

Legislation is needed to ensure that companies get meaningful consent from consumers before disclosing information to advertisers and others and to set standards for government tracking. Legislation introduced by Sen. Al Franken (D- MN) focuses on commercial practice. And a major bill by Senate Judiciary Committee Chairman Patrick Leahy (D-VT) sets standards for governmental access. The Wyden-Chaffetz GPS Act addresses both sides of the location equation.

Most Americans carry a device – sometimes more than one – that tracks their movements minute-by-minute. These devices – our smart phones, other cell phones, iPads and other mobile devices – have become woven into our daily lives. They offer so much convenience that they have become essentially indispensable. Yet they enable unprecedented government surveillance. Whereas the government previously had to dedicate significant time and personnel to tailing someone, now technology makes it easy to find out where a person is and where they have been. GPS is only a small part of the landscape. Even more readily available is the data indicating which cell towers a device is near at any given time. This location data is becoming increasingly accurate – cell tower data may place you on a particular floor of an office building.

The GPS Act (despite its name) focuses on all these forms of tracking and establishes a uniform standard for government access to location data: Under the bill, government agents would have to go before an independent judge and get a warrant based on “probable cause” before using technological means to track an individual. The Act applies the warrant standard regardless of the technology employed and regardless of whether the government is seeking data on a prospective or retrospective basis.

In Chairman Leahy’s bill, the ECPA Amendments Act, protections for location data are not as uniform as those in the GPS Act. While the GPS Act requires a judicial warrant for any location information, Chairman Leahy’s bill would allow the government to obtain from service providers data tracking a person’s past movements without a warrant.

In terms of commercial use and disclosure, the GPS Act requires affirmative consent before private parties can collect and use consumers’ location data. Even this simple rule would be a huge improvement over current law, which establishes a crazy quilt of rules for collection, use and disclosure of location data. Currently, there is one rule for cell phone companies and a different rule for providers of what the wiretapping law refers to as “electronic communication service” and “remote computing service.” And there is no clear rule at all for entities that fall into none of those statutory categories. The GPS Act would establish a new umbrella category of “geolocation information service” and would require, at a minimum, that all entities processing location information obtain prior customer consent.

Sen. Franken’s bill goes an important step further, for it addresses other privacy principles (such as purpose specification and security) and it spells out how notice should be prominently provided in the mobile context, something the GPS Act does not clarify.

Especially noteworthy is the fact that the GPS Act is bipartisan, authored by a Senate Democrat and a House Republican. Moreover, a House co-sponsor is Representative Bob Goodlatte (R-VA), the chairman of the House Judiciary Committee's Subcommittee on Intellectual Property, Competition, and the Internet. Rep. Goodlatte has always recognized the importance of creating a sound policy framework for technology innovation, and the GPS Act shows that there is broad Congressional recognition that strong privacy protections should be the foundation for further development of geolocation services.

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- [GPS Act](#)
- [ECPA](#)

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[1] [http://thomas.loc.gov/cgi-bin/query/z?c112:S.1212:](http://thomas.loc.gov/cgi-bin/query/z?c112:S.1212)

[2] <http://www.cdt.org/blogs/john-morris/apple-trades-privacy-battery-life-instead-protecting-both>

[3] http://news.cnet.com/8301-31921_3-20070742-281/exclusive-googles-web-mapping-can-track-your-phone/

[4] <http://www.cdt.org/blogs/brock-meeks/gps-case-tests-fourth-amendment-protections-digital-age>

[5] <http://www.cdt.org/blogs/joshua-gruenspecht/courts-boldly-go-fourth-rulings-validate-digital-due-process>