

REMOTE SENSING AT YOUR COURTYARD – A NEW ERA OF PRIVACY?

G. Kirschner, J. Forrai

Survey of Israel, 1, Lincoln St., 65220 Tel Aviv, Israel (gili11@mapi.gov.il, forrai@mapi.gov.il)

Commission IV, ICWG IV /VIII,

KEY WORDS: Remote Sensing, GPS, Development, Integration, Interpretation, Monitoring

ABSTRACT:

"Google Earth" and other similar services became a part of our everyday life. For the public they are the preferred mediums to acquire spatial information. Common positioning tools like GPS, became also an inseparable part of our life. New gadgets and services like children's cellular phones (enabling parents to track them) or transmitters for pets (for similar purpose) are common and advertised.

1. INTRODUCTION

The world is changing rapidly. Legal settlements can not cope with new remote sensing technologies and their vast effect on our daily life. As the remote sensing services improved our lives in many ways (how easy is to plan the next vacation and to find the exact way to a remote country) there are some aspects of the combined data that should be dealt with. In this paper the authors will try to demonstrate some of the questions and dilemmas with regard to the Israeli law and to show a number of examples which are relevant to other countries too.

2. THE RIGHT TO PRIVACY (ISRAELI BACKGROUND)

The right to privacy is a well known fundamental human and civil right derived from the liberal perception of society¹. As mentioned in the Opinion 6/2009 on the level of protection of personal data in Israel², the Israeli legal system is characterized by two key elements as the basis of its special profile with respect to other legal systems: firstly, Israel does not have a written constitution; secondly, although its system may be

considered as fundamentally linked to those countries with Common Law, it also includes certain characteristics that show the influence of Continental Law. The absence of a written constitution is complemented with the existence of the so called "basic laws" to which the Supreme Court of Israel has conferred constitutional status. Certain basic principles and fundamental human rights, such as equality, freedom of speech or freedom of religion also have a constitutional status. Within this frame, the right to privacy is included under section 7 of the Basic Law: Human Dignity and Liberty, which establishes:

- (a) Each person has the right to privacy and to intimacy.
- (b) There shall be no entry into the private premises of a person who has not consented thereto.
- (c) No search shall be conducted on the private premises of a person, nor in the body or personal effects.
- (d) There shall be no violation of the confidentiality of conversation, or of the writings or records of a person.

At the same time, the right to privacy and to the protection of personal data is regulated by the Privacy Protection Act approved in 1981 and was subject to amendments on nine subsequent occasions. The most relevant amendment was passed in 2007 and it established new requirements for the processing of personal data, and regulated the organization, powers and functions of the supervising authority in matters of personal data protection in greater detail and with a greater precision than the exiting legislation up to that date, creating an Authority within the Ministry of Justice: The Israeli Law,

¹ See – M. Birnhack - <http://www.tau.ac.il/law/members/birnhack/pratiut.pdf> (in Hebrew).

² See- <http://www.justice.gov.il/MOJHeb/RashutTech/News/adequacy.htm> (in Hebrew).

http://www.justice.gov.il/NR/rdonlyres/B0BA61D6-76B6-4157-B879-03A5E70412E4/18200/wp165_en1.pdf

Information and Technology Authority (ILITA), which includes the previous Database Registrar. In addition, due attention has to be paid to a report drafted in January 2007 by a Committee of Experts appointed by the Ministry of Justice, known as the "Schoffman Report", which made a set of recommendations for amending the data protection legislation which are currently being considered for the adoption of a new data protection framework.

3. DOES A "LOCATION PRIVACY" EXSIST?

There is a claim regarding the existence of a new kind of privacy the "Location Privacy"³. It means that each person has a right to keep the details of his whereabouts' to himself. In the past, there was no need to define such a right or to include such information in the orthodox definition of terms of "privacy" because there was no a simple way to track people intensively without their consent. As the narrow legal definitions do not fit, the test should be a wider and more logical one: do I have a right to keep my whereabouts' to myself? Do I waive such right expressively or evidently in certain situations (for instance, when I use a car or a cellular phone provided to me by my employer) or only if I am suspected of not obeying the employers' rules regarding their use?

4. RELATIONSHIP BETWEEN FAMILY MEMBERS (PARENTS AND CHILDREN, SPOUSES ETC.)

One can claim the questions arise from the use of tracking devices are more moral than "legal" ones. There are many questions regarding the implement of tracking devices within the family. Does law prohibit applying them? Does a 17 years old child need to consent to a tracking device which will "tell" his parent when he is speeding using his (or his parent car) car? Does he need to consent to such an appliance which will call his parents when he is absent from school on a school day? And what about a 5 years old child in regard to a fear of hijacking?

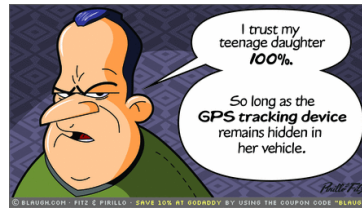


Figure 1. Big daddy is watching you
http://blaugh.com/cartoons/070629_set-it-free-gps.gif



Figure 2: Texas Students Who Skip School to Be Tracked by GPS?
<http://www.switched.com/tag/gpstracking/>

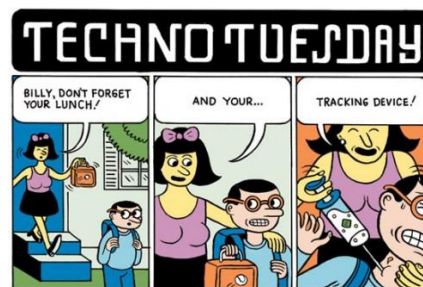


Figure 3. Mom& Billy
<http://www.affiliatetrackingonline.net/blog/tracking-device>



Figure 4. Australian Private Investigators Offer Illegal Spouse-Tracking Services
<http://www.switched.com/tag/gpstracking/>

³ <http://spatiallaw.blogspot.com/>

5. RELATIONSHIP BETWEEN EMPLOYERS AND EMPLOYEES

More and more employers equip their employees with GPS receivers and tracking devices, whether if they serve directly the needs of the work (as in the case of organizing vehicles or shipment and transport), or when they are "included" in common devices as cellular phones. There is growing discussion concerning the reciprocal rights and duties regarding the data collected by those devices. What are the employers' rights? Is the employer is free to check on the employees' location in order to enforce his managements rights, is that right is limited to certain cases and procedures? Should the employee be notified in advance and does he have the right to refuse? Does the government as an employer have the same rights and duties as A private employer - or not?

6. THE SPECIAL CASE OF "GOOGLE STREET VIEW"

Maybe the most intense discussion of these issues took place with the connection of the "Google Street View". Some of the critics referred to events that can be fixed technically (change of the angle of the cameras in order to compare the result to the human view gained by passing in the street). Some events showed that the cameras overpasses fences and "caches" a glimpse of the inside of the houses trough windows. Google had encountered a lot of criticism because of reported incidents that showed people in embarrassing situations (as sunbathing on the roofs, at the doorsteps of a notorious club etc.). Although these situations were public, thus "should have" gain the protection of privacy. Other technical measures were the blurring of faces and car numbers. The real problem is that what was incidental and temporary is now public (in the internet) and " well-documented". The other thing is that an individual is lacking of both control and consent (in most of the cases he \ she is not conscious of the operating of cameras in "real time"). The existing procedure is that one should "report a problem" to Google and the decision whether to take off the picture or not, is reserved to Google.



Figure 5. Google Zooms In Too Close for Some
http://www.nytimes.com/2007/06/01/technology/01private.html?_r=3&oref=slogin

7. GOVERNMENTS AND STATUTORY ORGANIZATIONS

The current reality is that in some cases private companies gain more information than some governmental ones. As the conduct of governments with relation to private data was discussed there are no such rules regarding the behaviour of private companies (along with it there is a great difficulty to enforce such a code on them).

8. THE USE OF TRACKING DEVICES FOR PREVENTING AND INVESTIGATING CRIMES AND TERROR

The threats of terror encourage governments to take all possible means in order to prevent "the next terror event". The tracking devices enable various sorts of authorities to observe suspects. The real hazard invasion of privacy caused by abuse of the powers given to these authorities by the anti-terror laws⁴.

Moreover, the procedure for the government to acquire the information should be one, which balances the security considerations with the contradicting rights that are effected. A useful tool which is commonly applied in the Israeli court is that the grater the damage to the right to privacy, the more evidence to "a clear and present danger" should be proven to the court.

On the other hand, the common usage of tracking devices to locate stolen cars and other vehicles (even in the midst of the pursuit) seems applicable. The thief does not have a legitimate privilege of privacy in someone else's stolen car.

⁴ See- <http://www EFF.org/deeplinks/2009/12/surveillance-shocker-sprint-received-8-million-law>



Figure 6. Police Locate Lost, Drunk Man Using GPS Chip in His Cell Phone

<http://www.switched.com/tag/gpstracking/>



Figure 7. GPS Tracking Traps Bike Thieves

<http://rotatelog.com/gps-tracking-system-as-an-anti-theft-device.html>



Figure 8. Joy Riding Teens Tracked and Arrested Thanks to GPS

<http://www.switched.com/tag/gpstracking/>

9. CONCLUSIONS

Law falls behind the technical development, and legislation is a long process. Common rules regarding fundamental rights should be applied. These rules should be considered not only by the courts, when a specific case is brought, but also by relevant companies and organisations which gather such information and make use of it, and especially by their legal advisers. Implementing restraints in advance, on the requirement and the usage of such data, should benefit the right to privacy without infringing the relevant information. Further consideration should regard the protection of some location data as part of privacy.