

The Location Privacy Protection Act of 2011

Senator Al Franken

In January 2009, a special report by the Department of Justice revealed that approximately 26,000 persons are victims of GPS stalking annually, including by cellphone.

In December 2010, an investigation by the *Wall Street Journal* revealed that of 101 top apps for Apple iPhones and Google Android smartphones, 47 disclosed a user's location to third parties without his or her consent.

In April 2011, consumers learned that their Apple iPhone and Google Android smartphones were automatically sending Apple and Google information about the smartphone's whereabouts—even when users were not using location applications and, in Apple's case, even though users had no way to stop this collection.

These events have raised serious concerns among the American public about their location privacy on cellphones and smartphones. What most Americans still don't know is this: **Current federal laws allow many of the companies that obtain location information from their customers' cellphones and smartphones to give that information to almost anyone they please—without their customers' consent.** While the Cable Act and the Communications Act prohibit cable companies and phone companies offering telephone service from freely disclosing their customers' whereabouts, an obscure section of the Electronic Communications Privacy Act (18 U.S.C. § 2702) allows smartphone companies, app companies, and even phone companies offering wireless Internet service to freely share their customers' location information with third parties without first obtaining their consent.

This legal landscape creates a confusing hodge-podge of regulation. Thus, when a person uses a smartphone to place a phone call to a business, that person's wireless company can't disclose his location information to third parties without first getting his express consent. But when that *same* person uses that *same* phone to look up that business on the Internet, because of ECPA, his wireless company is legally free to disclose his location to anyone other than the government.

The Location Privacy Protection Act of 2011 is a narrowly-tailored bill that would close current loopholes in federal law to require any company that may obtain a customer's location information from his or her smartphone or other mobile device to (1) get that customer's express consent before collecting his or her location data; and (2) get that customer's express consent before sharing his or her location data with third parties. If any company obtains the location information for more than 5,000 mobile devices, that company will also have to (3) take reasonable steps to protect that information from reasonably foreseeable threats; (4) tell an inquiring customer whether or not they have his or her information, and (5) destroy that information if that customer so requests it.

The provisions of the bill are modeled after existing privacy protections in the Electronic Communications Privacy Act (18 U.S.C. § 2510 *et seq.*), the Video Privacy Protection Act (18 U.S.C. § 2710) and elsewhere. They are also built on the existing commercial best practices of several major stakeholders in the mobile market. It exclusively governs the activities of non-government entities and does not affect law enforcement activity.

*To co-sponsor the Location Privacy Protection Act of 2011,
or for more information, contact Alvaro Bedoya at (202) 224-1024.*