

Coalition of Geospatial Organizations

June 29, 2012

The Honorable Jonathan Leibowitz
Chairman, Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Protecting Consumer Privacy in an Era of Rapid Change: Recommendations For Businesses and Policymakers

Dear Chairman Leibowitz:

I am writing to you on behalf of the Coalition of Geospatial Organizations (COGO), a coalition of 11 national professional societies, trade associations, and membership organizations in the geospatial field, representing more than 35,000 individual producers and users of geospatial data and technology.

The stakeholder groups that make up COGO speak with one voice wherever possible on geospatial data and policy issues. COGO only takes public policy positions with a unanimous vote of its member organizations. In this regard, COGO seeks to express its urgent and critical concern regarding the issues under consideration by the Commission in the referenced report (hereinafter referred to as the "Report").

According to the FTC staff, the Report (<http://ftc.gov/os/2012/03/120326privacyreport.pdf>), in footnote 187, clarifies that use of geolocation data for mapping and surveying does not require a choice mechanism where the data is not linked to a specific consumer, computer, or device.

The member organizations of COGO are concerned that footnote 187 does not adequately address the activities of the geospatial community, is not as comprehensive as FTC staff led us to believe it would be, and should be replaced with modified text within the body of the report to clarify the issue.

When the Report draft was issued in December 2010, numerous comments were received by the FTC on the use of the term, and regulation of, "precise geolocation" activities. As a result, the Federal Geographic Data Committee (FGDC), a Federal coordination entity established by Office of Management and Budget Circular A-16, convened a meeting on April 27, 2011 among FTC staff, Federal agencies, and non-Federal geospatial stakeholders, including COGO. At that meeting, and in other public statements, FTC staff assured the geospatial community that it was not the FTC's intent to cover the ordinary activities of the geospatial profession in the Report, that the undefined use of the term "precise geolocation data" was problematic and an unintended consequence, and that a definition of the term or an exception for the legal, legitimate and ordinary activities in the professional geospatial practice would be included in the Commission's final version of the Report. We do not believe the current version of the Report achieves those goals.

The footnote, "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" does not protect the provider of the data in the case of physical addresses, parcel information, or other geolocation or survey data

tied specifically to public land records, because the information can ultimately and reasonably be linked to the owner or occupant of record, and that owner/occupant may be considered a “specific consumer” within the context of the note. An acceptable modification of the footnote language to address this specific concern might be worded as “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. Linkage to a specific consumer through public land records and/or publicly available information for surveying, mapping or similar purposes including a physical address would also not trigger the need to provide a consumer choice mechanism.”

However, even if the footnote were modified as suggested above, it is questionable as to its location within the document. As it now stands, the footnote may be in the correct section (i.e., PRACTICES THAT DO NOT REQUIRE CHOICE), and the correct subsection (i.e., a. General Approach to “Commonly Accepted” Practices), but being tied to the statement “legal compliance and public purpose would cover intellectual property protection or using location data for emergency services” implies the note only applies in those cases. There are many other applications of mapping, surveying, and related geospatial data than the creation of intellectual property or its use for emergency services, and thus the footnote language and location appears to be restrictive.

For example on page 8, in the first paragraph, the Report states, "The Commission agrees that the range of privacy-related harms is more expansive than economic or physical harm or unwarranted intrusions and that any privacy framework should recognize additional harms that might arise from unanticipated uses of data." Included among examples of this sensitive information is "precise geolocation information." Again, this is too vague and to include "additional harms that might arise from unanticipated uses of data" leaves too much to interpretation with respect to precise geolocation data, while providing little protection to the free exercise of commerce by geospatial firms. Geospatial professionals have no way of controlling "unanticipated uses of data" by third parties and making such practitioners liable or responsible for such uses is unfair and unreasonable.

In another example on page 59, last paragraph, the term "precise geolocation data" is still being used as one of several categories of information that is sensitive and requires affirmative consent from consumers BEFORE collecting data. Unfortunately, in its current configuration, the Report continues to lack a broad definition of "precise geolocation data" as used in this paragraph. It is likely this reference will be interpreted to include orthophotos, addresses or other selected mapping deliverables that are commonplace in the market. Nowhere in the Report is this term generally defined. As a result, in its current configuration there are insufficient "exceptions" for mapping and surveying functions being performed today or indeed those that will come to market tomorrow. Our concern is that, absent a broad exemption of mapping and surveying, or a clear definition of "precise geolocation data" which addresses this concern, the Report will continue to be a dangerous threat to our profession and those we serve.

Thus, we strongly recommend modified language, similar to that noted in the above discussion of footnote 187, be combined with the existing second sentence of that footnote, and the resulting combined language be removed from the footnotes and inserted as a new paragraph within the body of the Report at the end of section a. (just before section b. starts on the top of page 40) to read as follows:

“With respect to the use of the term precise geolocation data for mapping, surveying or similar geospatial purposes throughout this report, 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. Linkage to a specific consumer through public land records and/or publicly available information for surveying, mapping or similar geospatial purposes including a physical address would also not trigger the 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.”

Such a revision, addition and clarification in the Report would provide the increased clarity with respect to parcels and addresses, and also make it clear that treatment of surveying, mapping and related geospatial data is generalized and not tied to specific applications such as emergency services.

We respectfully urge a modification to the Report.

Sincerely,



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American Congress on Surveying and Mapping (ACSM)
American Society for Photogrammetry and Remote Sensing (ASPRS)
Geographic Information Systems Certification Institute (GISCI)
Management Association for Private Photogrammetric Surveyors (MAPPS)
United States Geospatial Intelligence Foundation (USGIF)
University Consortium for Geographic Information Science (UCGIS)

Association of American Geographers (AAG)
Cartography and Geographic Information Society (CaGIS)
International Association of Assessing Officers (IAAO)
National States Geographic Information Council (NSGIC)
Urban Regional Information Systems Association (URISA)

