

Senator Calls for Privacy Protections for Device Location

A U.S. senator says he wants to rewrite rules for police access to the location information of mobile device customers.

By Grant Gross

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The U.S. needs consistent rules for how law enforcement agencies can access the ever-growing collection of location-based data from mobile devices, a U.S. senator said Wednesday.

Senator Ron Wyden, an Oregon Democrat, said he will soon introduce a bill that would require law enforcement agencies to get court-ordered warrants to get location-based information from smartphones and other mobile devices, instead of simple subpoenas or other methods without court oversight.

"If you asked most Americans, I think they would tell you that surreptitiously turning somebody's cell phone into a modern-day tracking device ... and using it to monitor their movements, 24/7, is a pretty serious intrusion into their privacy, pretty much comparable to searching their house or tapping their phone calls," Wyden said during a Cato Institute forum.

The increasing ability of mobile service providers to track customer locations raises "serious issues" for law enforcement and intelligence agencies, Wyden added. "This is a policy area where the law has not kept up with the times," he said.

There's confusion across the U.S. about the current standard needed for law enforcement to get location information from mobile phones, with court rulings conflicting with each other, Wyden said.

The U.S. Department of Justice has been reluctant to support a [related push to rewrite the Electronic Communications Privacy Act \(ECPA\)](#), a 25-year-old law that sets out the rules for how law enforcement agencies can access electronic information, including e-mail messages and data stored in the cloud, as well as mobile tracking data.

Senator Patrick Leahy, a Vermont Democrat and chairman of the Senate Judiciary Committee, said in September that an update of the ECPA would be a priority going forward.

But ECPA helps law enforcement agents track terrorists, computer hackers, drug traffickers and other criminals, James Baker, associate deputy attorney general at the DOJ, told the Judiciary Committee then. In some cases, quick access to mobile tracking information can save lives, he said.

"Congress should refrain from making changes that would impair the government's ability to obtain critical information necessary to build criminal, national security and cyber-investigations, particularly if those changes would not provide any appreciable or meaningful improvement in privacy protection," he said.

But with conflicting rulings from several courts, there's confusion for law enforcement officials, as well as mobile phone owners, about the rules for location-based surveillance, Wyden said. One drug conviction in recent years was thrown out because of an apparent misunderstanding over whether the police needed a court order to track location, he said.

A new law on location-based tracking would provide certainty for police, he added. In some cases, government prosecutors have to guess what standard a judge wants them to follow, he said.

The lack of clarity from courts is "endangering the privacy of the American people and making it harder for law enforcement officials to do their jobs," he added. "The government spends vast amounts of time and resources litigating what ought to be laid in straightforward rules."

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