



Coronavirus pandemic sparks new calls for personal surveillance, and concerns

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As countries around the world look for ways to track coronavirus infections using people's personal smartphones, measures President Trump says the U.S. is also considering, privacy experts and technologists warn that the U.S. government faces an uphill battle to put such surveillance into practice.

During a Monday press conference, President Trump described the potential of using GPS data to enforce social distancing guidelines as extreme, a measure his former Food and Drug Administration Commissioner Scott Gottlieb suggested in his roadmap to recovery after coronavirus. "So what happens? A siren goes off if you get too close to somebody? That's pretty severe," Trump said, while noting that "we're taking a look."

But unlike a number of other countries, surveillance and national security law experts say, the U.S. intelligence community doesn't currently have the authority or capability to tap into massive amounts of individualized American geolocation data. Technology and ad sales companies, who do have access to that kind of data, need to navigate their own complicated path in choosing to make some of its customers' information available or not.

"The government would ordinarily need a warrant to acquire non-anonymized location data from cellphone service providers," explained Elizabeth Goitein, co-director of the Liberty and National Security Program at the Brennan Center for Justice and an expert on executive authority and surveillance law.

A former FBI official said that even for the bureau, which handles domestic intelligence, getting access to real-time geolocation information would require a high standard of evidence. "Anything real time like that would be the equivalent of a criminal wiretap," the official said. "Anything that collects content has a significant administrative burden." While location data wasn't always considered invasive personal content, a recent Supreme Court decision determined otherwise.

Additionally, the president's executive authority, while wide reaching on issues of national security and foreign affairs, typically does not extend to matters of public health — though it could depend on creative legal interpretations. “Any President can do a lot with the combination of [executive orders] and emergency powers,” wrote Patrick Eddington, a research fellow in homeland security and civil liberties at the Cato Institute and a former congressional staffer and CIA analyst.

Al Gidari, the consulting director of privacy at Stanford's Center for Internet and Society and a former top private attorney representing companies like Google, told Yahoo News that “neither the Stored Communications Act nor the Communications Act permit the government to compel disclosure or location information in response to a public health emergency.”

He noted that the government can request the data from providers in response to an emergency “but nothing obligates the provider to make the disclosure.” Instead, providers can turn over aggregated data, if they choose. “While there are real privacy concerns, so far at least in the U.S., it has been managed well,” he wrote.

Consequently, changing those standards would likely require a change in the law — a tough lift for a Congress that is focused on resuscitating a plummeting economy without getting members sick themselves. Debates over whether virtual voting is possible have already created challenges for ongoing business for lawmakers.