



January 4, 2011

The Honorable Jonathan D. "Jon" Leibowitz, Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

RE: Public Comments on December 1, 2010 Preliminary FTC Staff Privacy Report

Dear Mr. Leibowitz:

MAPPS (www.mapps.org) is the only national association exclusively comprised of private sector firms in the remote sensing, spatial data and geographic information systems field in the United States. Current MAPPS memberships span the entire spectrum of the geospatial community, including Member Firms engaged in satellite and airborne remote sensing, surveying, photogrammetry, aerial photography, LIDAR, hydrography, bathymetry, charting, aerial and satellite image processing, GPS, and GIS data collection and conversion services. MAPPS also includes Associate Member Firms, which are companies that provide hardware, software, products and services to the geospatial profession in the United States and other firms from around the world.

MAPPS is deeply concerned that the December 1, 2010, Federal Trade Commission (FTC) report, *Protecting Consumer Privacy in an Era of Rapid Change*, would result in a serious threat to the geospatial community. The report is very broad in its application. Ostensibly, the report is targeted at internet-based cyber tracking of personal data. However, through the use of terminology without definition, and a failure of the report to limit its scope to specific problem areas, the restrictions suggested in the report would hamper the ability of firms, agencies and organizations to collect, use, share, or apply geospatial data. MAPPS respectfully urges the FTC to use extreme caution and not implement any enforcement or broad regulation that would have a harmful affect on the broad private geospatial community.

Pages 74-75 of the *FTC Preliminary Staff Report* states "Moreover, staff notes that both sensitive information and sensitive users may require additional protection through enhanced consent. The Commission staff has supported affirmative express consent where companies collect sensitive information for online behavioral advertising and continues to believe that certain types of sensitive information warrant special protection, such as information about children, financial and medical information, and precise geolocation data. Thus, before any of this data is collected, used, or shared, staff believes that companies should seek affirmative express consent. Staff requests input on the scope of sensitive information and users and the most effective means of achieving affirmative consent in these contexts."

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Specifically, we are concerned that such FTC regulation, which inexactly uses and regulates the term “precise geolocation data” will result in serious and harmful unintended consequences for consumers, geospatial firms, and government programs our member firms serve. We are particularly concerned that this term was **not defined** in the FTC staff report. The use of the term “geolocation” or other geospatial relevant terminology, as it is used in this or possible future FTC regulation, could thwart legitimate and desireable business activities; deny consumers the products, technologies and services they are demanding in the marketplace; and impose a significant new liability on our members.

On one hand, the term could mean actual street/house address or on the other hand, the actual location of the individual at any given time, i.e. location provided by cell phone triangulation or some other method. If the geolocation refers to a person's name and address being private, then it is inconsistent with virtually every “open records” law in the United States, and could potentially shut down the nation’s commercial aerial and remote sensing satellite market and prevent our member firms from collecting, hosting or distributing ownership information.

Page 5 of the Report states “Companies should not have to seek consent, for example, to share your address with a shipping company to deliver the product you ordered.” We believe similar geospatial data should also be excluded from having to be subjected to consent or waivers.

Page 1 of the *FTC Questions for Comments* asks “Are there practical considerations that support excluding certain types of companies or businesses from the framework – for example, businesses that collect, maintain, or use a limited amount of non-sensitive consumer data?” We believe geospatial firms’ precise geolocation activities should be excluded. Failure to do so would thwart some common, justifiable, and emerging uses of geospatial data for emergency response/post disaster remediation, insurance, environmental protection, E-911 & ambulance services, fleet management broadband mapping, home security, navigation, mortgage foreclosure monitoring/early warning system, and others. Moreover, many geospatial activities, technologies, and applications development could be deemed illegal. For example, it would be impractical, if not impossible, for our member firms to obtain prior approval or consent from individual citizens prior to acquiring or applying data such as satellite imagery, aerial photography, or parcel, address, or transportation data. A FTC regulation of this nature would effectively ban our member firms, or their clients, from important value-added, integration and application activities.

For the purposes of the regulations and privacy efforts currently under consideration by the FTC, MAPPS submits the following proposed definition of what is **NOT** “precise geolocation data/information” and thereby **exempt** from the scope of such regulation:

1. Any information about the location and shape of, and the relationships among, geographic features, including remotely sensed and map data;
2. Any graphical or digital data depicting natural or manmade physical features, phenomena, or boundaries of the earth and any information related thereto, including surveys, maps, charts, remote sensing data, and images;
3. Collection, storage, retrieval, or dissemination of graphical or digital data to depict natural or manmade physical features, phenomena, or boundaries of the earth and any information related to such data, including any such data that comprises a survey, map, chart, geographic information system, remotely sensed image or data, or an aerial photograph by surveyors, photogrammetrists, hydrographers, geodesists, cartographers, or other such mapping and geospatial professionals; and
4. Data originating from commercial satellite systems licensed to operate by the U.S. government, global positioning systems, geographic information systems, and airborne or terrestrial mapping equipment.

Page 36 of the Report states “The presentation outlined the virtually ubiquitous collection of consumer data that occurs in multiple contexts and at numerous points throughout a given day – for instance, when consumers browse websites, purchase items with payment cards, or use a geolocation application on a mobile device. In addition, the presentation depicted how companies that collect data through such activities share the data with multiple entities, including affiliated companies, as well as third parties that are many layers removed from, and typically do not interact with, consumers.” The geospatial community is one of the fastest growing in the marketplace. It has been identified by the U.S. Department of Labor as one of the “high growth” sectors of the U.S. workforce. There are numerous legitimate geospatial applications, in a rapidly growing market, that fit the aforementioned scenario. We are concerned that unintended consequences of such FTC regulation will stymie economic growth, job creation, and introduction of new consumer products enabled by geospatial technologies.

Page 10 of the Report states “Some of these practices, such as where a retailer collects a consumer’s address solely to deliver a product the consumer ordered, are obvious from the context of the transaction, and therefore, consent for them is inferred. Others are sufficiently accepted – or necessary for public policy reasons – that companies need not request consent to engage in them.” The December 1, 2010 FTC news release states “The report adds that, to simplify choice for both consumers and businesses, companies should not have to seek consent for certain commonly accepted practices.” In addition, pages 66-67 of the Report states “Companies do not need to provide choice before collecting and using consumers’ data for commonly accepted practices, such as product fulfillment. Legal compliance and public purpose: Search engines, mobile applications, and pawn shops share their customer data with law enforcement agencies in response to subpoenas. A business reports a consumer’s delinquent account to a credit bureau.” The geospatial activities described in the aforementioned exemption language is consistent with these scenarios and thus, such activities should also be exempt from the FTC regulations.

Many states define a number of geospatial or geolocation activities as the practice of professional surveying. Therefore, practitioners are licensed and regulated by the government -- state licensing boards. Consumers are already protected. Moreover, commercial satellite remote sensing firms are licensed to operate by the Federal Government (Department of Commerce). Therefore, there are already statutory standards for such individuals and firms, and the public health, welfare and safety, as well as national interests are already protected by a governmental authority. Further regulation is unnecessary, and would create conflict and confusion among such regulatory schemes. Finally, any such FTC regulation could put U.S. companies at a significant and insurmountable competitive disadvantage against foreign firms that may not be covered by that regulation, or for which enforcement would be impractical.

In conclusion, MAPPS urges FTC to either remove any reference to “precise geolocation data”, more specifically and exactly define the term; and/or include the exemption we have suggested herein.

We look forward to working with you and the FTC to provide the necessary and desirable privacy protections to individual citizens, while permitting the geospatial community to grow, prosper, and bring to the market those technologies and applications that meet the economic demands of consumers and citizens.

If you have any questions, or if we can be of any assistance, please do not hesitate to contact John “JB” Byrd, MAPPS Government Affairs Manager at jbyrd@mapps.org or 703-787-6996.

Sincerely,

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John M. Palatiello
Executive Director