

“Regulating Location Based Services”

Patrick Clark – Partner – IT & Telecoms



23rd March 2011

The Law – Overview

- > The interception, retention and/or processing of user data from mobile phone users is heavily regulated in the EU and UK

- > User data includes:
 - communications data
 - personal data
 - traffic data
 - location data

- > Location data specifically is regulated by:
 - EU Legislation: e-Privacy Directive (2002/58/EC)
 - UK Legislation: Regulation 14 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (“PEC Regulations”)

Location Data

> Defined as:

- any data processed which indicates the geographical position of the terminal equipment (i.e. mobile handset) of a user

> Includes information relating to:

- the latitude, longitude or altitude of the terminal equipment
- the direction of travel of the user
- the time the location information was recorded.

Processing Location Data

- > Location data may only be processed if:
 - a. The user cannot be identified by the data; *or*
 - b. Location data is necessary for the provision of a value-added service *and* consent of the user has been obtained

Consider:

- > Can the user be identified?
 - Is the data truly anonymous? Could it be reverse engineered?
- > If the user *can* be identified:
 - Is processing necessary for a value added service?
 - Processing should be restricted to what is necessary for those purposes
 - Has the user given consent?

Location Data: Consent

> Needs to be a positive indication

- Freely given
- Specific
- Informed

> Prior

- Types of location data that will be processed
- Purposes for which it will be processed
- Whether data will be transmitted to a third party to provide the value added service

> Must be opportunity to withdraw at any time and each time connect / transmit a communication

> “Opt in” v “Opt out”?

- Mechanism can vary – ICO guidance that they are both permissible
- Individuals must fully appreciate that they are consenting and must fully appreciate what they are consenting to → latter aspect often most difficult to demonstrate

Service Providers Obligations

- > Ultimate responsibility for complying with the Privacy Regulations
- > Any processing of personal data will require registration under Data Protection Act
- > Processing may only be done by the communications provider in question, the third party provider of the value added service or a person acting on behalf of either of these
- > Need to protect the security of the data by contractual relationship with any data processor
- > Retention of location data
 - Should only be held for as long as necessary to provide the service (rough guideline of 2 months maximum).
 - If the service provider wishes to retain the data for longer periods it should be anonymised.

Data Retention

> Voluntary Code of Practice for Communication Service Providers:

> Retention Periods

- Subscriber and telephony data: 12 months
- SMS data: 6 months
- E-mail and ISP data: 6 months (but server logs 4 days max)
- Only for data already commercially collected by providers

> Location data

Practical Issues

- > Anonymize the data?
- > If not, only process the data that is strictly necessary for the value added service
- > Obtain consent
 - Corporate subscribers
 - person making decisions on behalf of the company is likely to be able to give consent but use with caution
 - From users:
 - Seek informed, prior consent and provide the necessary opportunities for the user to withdraw consent
 - Don't rely on "catch all" wording
 - Doesn't have to be "opt-in" but regulation may push that way
 - The way in which the service is provided should be consistent with the expectations of the user

Regulating Location Based Services

> Thank you.

> Any questions?

“Regulating Location Based Services”

Patrick Clark – Partner – IT & Telecoms



23rd March 2011

Office details

Berlin
EbertstraÙ5 15
10117 Berlin
T. +49 (0)30 88 56 36 0
F. +49 (0)30 88 56 36 100

Brussels
Trône House
4 Rue du Trône
1000 Brussels
T. +32 (0)2 289 6060
F. +32 (0)2 289 6070

Cambridge
24 Hills Road
Cambridge, CB2 1JP
T. +44 (0)1223 446400
F. +44 (0)1223 446401

Dubai
26th Floor, Rolex Tower,
Sheikh Zayed Road, Dubai,
United Arab Emirates
T. +971 (0) 4 309 1000
F. +971 (0) 4 358 7732

Düsseldorf
Benrather Straße 15
40213 Düsseldorf
T. +49 (0)211 83 87 0
F. +49 (0)211 83 87 100

Frankfurt a.M.
Senckenberganlage 20-22
60325 Frankfurt a.M.
T. +49 (0)69 971 30 0
F. +49 (0)69 971 30 100

Hamburg
Hanseatic Trade Center
Am Sandtorkai 41
20457 Hamburg
T. +49 (0)4 0 36 80 30
F. +49 (0)4 0 36 80 3280

London
5 New Street Square
London EC4A 3TW
T. +44 (0)20 7300 7000
F. +44 (0)20 7300 7100

Munich
Isartorplatz 8, 80331 Munich
T. +49 (0)89 2 10 38 0
F. +49 (0)89 2 10 38 300

Paris
42 avenue Montaigne
75008 Paris
T. +33 (0)1 72 74 03 33
F. +33 (0)1 72 74 03 34

Representative offices

Beijing
Unit 1503, Tower 2,
Prosper Center No. 5, Guanghai Road
Chaoyang District
Beijing 100020
T. +86 10 8587 5886
F. +86 10 8587 5885

Shanghai
Unit 1509, United Plaza
No. 1468,
Nanjing West Road
Shanghai 200040
T. +86 21 6247 7247
F. +86 21 6247 6248

Associated office

BSJP Legal
Warsaw
Al Armii Ludowej 26
PL-00-609 Warsaw
T. +48 (0) 22 579 89 00
F. +48 (0) 22 579 89 01

© Taylor Wessing 2010

This publication is intended for general public guidance and to highlight issues. It is not intended to apply to specific circumstances or to constitute legal advice. Taylor Wessing's international offices operate as one firm but are established as distinct legal entities.

For further information about our offices and the regulatory regimes that apply to them, please refer to www.taylorwessing.com/regulatory