

For: LeClairRyan, Richmond, Va.  
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**MALL PRIVACY FLAP HIGHLIGHTS AMERICANS' UNCERTAINTY ABOUT PROPER USE OF LOCATION-BASED DATA, ATTORNEY SAYS**

*--Outcry over cell phone tracking program points to need for more discussion about looming legal and societal questions, says LeClairRyan's Kevin D. Pomfret*

RICHMOND, VA. (12/6/11) – The recent brouhaha over a mall owner's use of cell phone tracking antennas to keep tabs on shoppers' locations is yet another example of the need for a national dialogue on privacy as it relates to location-based data, said LeClairRyan attorney Kevin D. Pomfret, a leading advisor in the rapidly developing fields of spatial law and geospatial technology.

"This was enough of a PR headache that the mall owner wisely decided to shelve the program for now," said Pomfret, a Richmond-based partner in LeClairRyan and Executive Director of the Centre for Spatial Law and Policy. "But there are much broader questions at play here: What does 'privacy' actually mean in this era of location-based technologies? What exactly are we trying to protect consumers from when we scuttle these types of programs? And what will happen if, perhaps out of emotional reactivity, we sharply limit the collection of location-based data without adequately weighing the potential economic and societal benefits these technologies provide?"

The involuntary tracking of cell phone signals is certainly an affront to some, Pomfret noted, but it is just one of many ways in which American businesses are now taking advantage of a wide range of data, including location data, to put together more detailed customer profiles. "This happens every day — often without shoppers' consent or even knowledge," the attorney said. "When you use an ATM machine, hand your credit card and driver's license to a 16-year-old store clerk, or park your car in a deck monitored by security cameras, you are furnishing all kinds of location-based data to third parties," the attorney said. "Sometimes this data is sold or shared. Those who think their movements are known only to themselves are starting from a faulty assumption."

When it comes to any discussion of privacy concerns related to location-based data, a thoughtful understanding and analysis of the potential risks is needed before the best method to protect location-based privacy can be identified, Pomfret said. "What risk are you trying to protect against?" he said. "For example, from a physical security standpoint, the strange guy sitting next to you at a restaurant as you swipe away on your iPad is a bigger risk than a mall owner collecting anonymous location data from your cell phone. Likewise, when it comes to financial risk that clerk who has your credit card number and driver's license information clearly represents a greater danger."

Another critical lesson of this incident is that, today, businesses of all kinds are working overtime to gather more data from their customers, and this will only get easier for them thanks to rapid advancements in technologies such as smartphones. "The drive to collect so-called 'big data' is giving rise to so many of the legal and privacy issues slowly bubbling to the surface today," Pomfret said. "But rather than reacting to individual news stories in a piecemeal, case-by-case fashion, we need to think these issues through both systematically and comprehensively."

Businesses, in particular, can and should be proactive on this issue, Pomfret added. "Companies need to think carefully about the data they collect and the risks and benefits associated with its collection, use and storage. They need to understand, not just all of the applicable privacy laws, but also issues such as who

owns the data from an intellectual property standpoint, where the data is stored and/or whether the quality of the data actually is sufficient to meet their needs.”

Overall, American consumers, policy-makers and business leaders could benefit greatly by carefully weighing the pros and cons of the various ways in which location-based data might be used by public and private interests, Pomfret concluded. “Unfortunately,” he said, “that is not what is happening right now.”

**About LeClairRyan**

As a trusted advisor, LeClairRyan provides business counsel and client representation in corporate law and litigation. In this role, the firm applies its knowledge, insight and skill to help clients achieve their business objectives while managing and minimizing their legal risks, difficulties and expenses. With offices in California, Connecticut, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Virginia and Washington, D.C., the firm has approximately 350 attorneys representing a wide variety of clients throughout the nation. For more information about LeClairRyan, visit [www.leclairryan.com](http://www.leclairryan.com).

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