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Privacy & Security Issues in Location Based Services

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- **Francoise Gilbert** is the founder and a principal of the **IT Law Group**, a niche law firm that focuses on information privacy and security, cloud computing, and data governance. Her clients include primarily global companies and publicly held entities, which she advises on all aspects of the collection, use, and protection of personal data at the national and global level.
- She has been recognized as one of the top privacy lawyers in the United States in a survey by *Computerworld* magazine. For several years, she has been listed in *Chambers USA*, *Chambers's Global*, *Best Lawyers in America*, and *Who's Who in E-Commerce* as one of the leading lawyers in the field of Information Privacy and Security.
- Francoise is the author and editor of the two-volume treatise ***Global Privacy & Security Law***, which analyzes the laws of 60+ countries on all continents.
- She serves as the General Counsel of the ***Cloud Security Alliance***. She is also the founder of I-WIN, an international network of women technology lawyers, and she serves on the Board of Directors of the International Technology Law Association, and on the Technical Board of Advisors of the ALI-ABA.

Today's Pressing Issues - US

- ▶ US Legislative issues and trends
 - ▶ **Outdated laws**
 - ▶ Pending bills would designate location information as “**sensitive information**”
 - ▶ “Privacy by Design”
- ▶ Problems with data handling practices
 - ▶ Lack of transparency; failure to clearly disclose practices
 - ▶ Failure to meet privacy promises
 - ▶ Behavioral targeting; profiling; tracking
 - ▶ Cloud computing as the new untamed territory
 - ▶ Lack of appropriate information security measures
 - ▶ Security breaches; Epsilon security breach

Today's Pressing Issues - Foreign

- ▶ Abroad, and especially in EU / EEA
 - ▶ Location data already regulated under national laws that implement the 2002 e-Privacy Directive (applies to providers of telecom services)
 - ▶ Laws governing geolocation
- ▶ Issues and concerns of the day
 - ▶ Interpretation of the “Cookie Directive”
 - ▶ Update to the EU Data Directives
 - ▶ Security breach notification requirements
 - ▶ Privacy invasive practices, e.g., RFID or biometrics
 - ▶ Employee monitoring; employee privacy
 - ▶ Relations with multiple providers; offshoring
 - ▶ Cross-border data transfers

Unique Issues Associated w. LBS

- ▶ Location information is more **accurate** than most other personal data collected because users generally cannot lie about their location
- ▶ Collection of personal data **can allow for the creation of a profile**
- ▶ Location information is likely to be used in connection with **disputes** such as
 - ▶ divorces
 - ▶ employment litigation
- ▶ Also more likely to be used in **criminal investigations**, by the police, or for state security

Challenges in Baking Privacy, Security

- ▶ Location Information
 - ▶ Location information is a **unique type** of data
 - ▶ Field still in development
 - ▶ Few precedents, few examples
 - ▶ **Small screen size**
 - ▶ **Unique issues associated with children data**
- ▶ In general
 - ▶ Lack of awareness of the legal and other issues
 - ▶ Lack of appreciation of the importance of the privacy and security issues
 - ▶ Lack of funding
 - ▶ Significant **pressure from marketing & sales departments**; data hungry

Global Challenges

- ▶ Significant **differences** between the laws of the different nations, even within the same region
- ▶ US culture tends to be one where personal data are the fuel that feeds the marketing machine
- ▶ Foreign culture tends to view **privacy as a basic human right**
- ▶ Difficult to have a common, global approach

Mistakes Companies Make

- ▶ Examples of mistakes that companies make
 - ▶ Failure to understand the nuances. It is **not a one-size-fits-all market**
 - ▶ **Cutting corners**
 - ▶ Cutting and pasting other companies terms & conditions or privacy statements without paying attention to the differences in business or to the specific activities and policies of one's own company
 - ▶ **Failure to appreciate the importance of data protection**, information privacy and security
 - ▶ Personal data treated as commodity
 - ▶ Lack of security causes security breaches

Mistakes / 2

- ▶ Lack of openness and **transparency**; attempt to deceive the customer
- ▶ Taking the customer for granted; assuming that the customer does not care, does not read or understand
- ▶ Lawyer avoidance
 - ▶ Failure to **educate the lawyers**
 - ▶ **Hiding the project** or contract from the lawyers
 - ▶ Consulting with the lawyers at the last minute or after the fact, in passing, whereas lawyers should be integral part of team and participate in all project phases

Mistakes in Global Markets

- ▶ Companies that expand to foreign markets often act as if US law or US way of doing business was controlling abroad
- ▶ They must **appreciate, understand, and take into account the national laws**
- ▶ Failure to appreciate the different cultures, sensitivities, history, throughout the world
- ▶ It's not just a legal issue. **It is also a cultural issue**

How to Avoid Trouble / US

- ▶ Do your home work
 - ▶ Understand the capabilities of the product or service
 - ▶ Understand the law
 - ▶ Understand that laws, regulations evolve at speed of light; keep informed
- ▶ Respect your users: **“say what you do, do what you say you do”**
- ▶ **Be upfront and clear:** balance the need to finance your operations against the value of person data and privacy to your users, and their expectation of privacy
- ▶ **Beware of your service providers, contractors**
- ▶ **Don't do anything your mother or grandmother would disapprove**

How to Avoid Trouble / Global

- ▶ Beware of jurisdiction issues
- ▶ Do your homework
 - ▶ Same suggestions as above for US practices
 - ▶ **Don't assume that US laws, practices or policies will apply. They don't!**
 - ▶ Make every effort to comply with the laws of the countries where you are doing business and be extremely **sensitive to the local culture**
- ▶ **Don't do anything that your mother or grandmother - and your Uncle Giuseppe from Milan and your Aunt Gretchen from Munich - would disapprove**

Best Practices

- ▶ What are the best practices to avoid compliance or reputation problems?
- ▶ Look at the product from a holistic viewpoint
 - ▶ Understand **the unique issues associated to LBS**
 - ▶ Understand what the law is, or is going to be
 - ▶ **Understand the technology**
 - ▶ Understand role of contractors, service providers, anyone in the chain who has or may have access to location and other personal information
- ▶ Apply the “**privacy by design**” principles and the **FIPPs**
- ▶ **Limit the retention of location data to the minimum necessary, or required by law.**
- ▶ Use appropriate **security measures**

Best Practices / 2

- ▶ Use **clear and conspicuous terms** of use and privacy statements
- ▶ Give the users some control over their data:
 - ▶ Ability to **change default settings**
 - ▶ **Ability to delete their location information**
 - ▶ **Ability to turn off data collection**
 - ▶ Ability to opt-out of data collection
 - ▶ Give **preference to opt-in**
- ▶ Ensure **constant communications** between those who create the need, implement the vision and those who try to keep the company out of trouble
- ▶ **Sanity Test: Keep asking yourself:** “how would I / my mother / my grandmother / etc. feel if”

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Global Privacy & Security Law

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www.GlobalPrivacyBook.com