

Children's Charities' Coalition on Internet Safety



Secretary of State and Lord Chancellor
Department of Constitutional Affairs
Selborne House, 54-60 Victoria Street
London SW1E 6QW
7th July, 2004.

Dear Lord Falconer,

Children and the Data Protection Laws

I am writing to draw your attention to a number of important ambiguities or omissions in the data protection laws which could, potentially, put children at risk. We are keen to discuss with you, at the earliest opportunity, changes to the law which would remedy these deficiencies.

The ambiguities or omissions we have identified became apparent in the course of discussions we have been having with the mobile phone networks in relation to the rapidly emerging market for passive location services. Passive location services provide one person with the opportunity to track the physical whereabouts of another e.g. a child, through their mobile.

We think the emergence of passive location services also raises other policy and non data protection legal issues which, for the sake of completeness, we have included in this letter even though we recognise they may not directly be part of your Ministerial concerns.

I have discussed key elements of our views with the Office of the Information Commissioner, but it would seem that, in the main, they are outside the scope of their remit, hence this letter to you as the Minister responsible for data protection issues.

You will know that location services are already on sale in the UK. The relevant mobile phone networks (02, 3, Vodafone, T-Mobile and Orange) are now seeking to develop guidelines which will govern how these services are to be managed, and these guidelines may well go beyond the strict legal requirements.

We have been consulted about the proposed guidelines. Our discussions with the mobile companies are continuing and the police are now also involved in an advisory role. We may well end up, pragmatically, agreeing a satisfactory working solution with regard to certain key issues around verification and consent, but it is already quite clear that some of the matters that have been causing difficulties go well beyond a narrow concern with mobile phones and location services. Potentially they affect the way a very wide range of other online or similar remotely managed services are marketed or supplied to children.

In the attached note I have set out the matters fairly fully because this is likely to be the first time your Department will have been asked to consider them in such a specific or detailed way. I apologise for the length of the note nonetheless.

I have also copied this letter to the Home Office, DTI, the DfES (Children's Minister), OFCOM, and to the Information Commissioner. These agencies may have an interest either in the substantive data protection matters or in some of the other issues we have identified.

Yours sincerely,

John Carr
Secretary

Commentary by CHIS on the child location aspects of the draft mobile phone industry guidelines on passive location services

Part 1

How passive location services work

1. When someone turns on their mobile phone, one of the first things it does is look for the nearest radio cell on their operator's network. If the person is within range of a cell at that time, their presence is registered with the network immediately. Once registered on the network a mobile phone user can make and receive calls, send or receive text messages and engage with any of the other network services available via that operator.
2. If the user is out of range of any cells the phone will keep on looking until it finds one. In the course of a day someone can move between cells and in and out of range of cells several times. All of this information is recorded by the network and it can be related to specific geographical locations. In this way the networks have the power to track people's movements and whereabouts.
3. Once registered with the network, should the phone subsequently run out of power, be turned off or go out of range again, the network knows where the user was at that last connected moment. To be precise, it knows where the SIM card is, or was, because it is the SIM card which actually handles all these transactions. For these purposes the handset, as such, is irrelevant, although for the next generation of location services important elements may become integrated into the hardware.

Accuracy

4. The accuracy of the location information which the network has depends critically on the density of network cells in a given area. Typically, in a densely populated urban environment with lots of cells, it can get you to within 30 metres of the mobile phone user, whereas in a rural area it might be much less exact. However, with the next generation of services, the overall level of accuracy will increase dramatically in both rural and urban areas. Limits of 3 metres or less are being mentioned.

Police use of location data

5. Hitherto in emergencies or, with a warrant for the purposes of investigating a crime, the police have always been able to obtain information about an individual mobile phone user's current whereabouts, or indeed their past whereabouts. One of the most spectacular and highly publicised recent examples of a location service at work was in the case of the (then) missing Manchester schoolgirl, Siobhan Pennington, whose abductor, Toby Studebaker, was arrested by the German police on a street in Stuttgart. They were able to find Studebaker because they knew his mobile phone number and he had left his phone switched on.

This kind of location data is now on sale to the public

6. The police will continue to be able to access location information as before and as necessary, directly from the mobile phone companies. However, now, through 3rd Party wholesalers and independent intermediaries known as “location service providers” (LSPs), the mobile networks are also selling this kind of location information to the public.
7. Typically the location service would be established on an annual or monthly basis via a subscription, with an additional cost being incurred each time the service is actually used to check on someone’s whereabouts. The networks are anticipating considerable growth in location related services over the next few years. They have identified several potential markets for such services.

Passive and active location services

8. The type of location service described above is known as a “passive” service because, once consent has been given, the person who is the subject of the service, the “locatee”, does not need to do anything further in order to facilitate the actual tracking. In other words, once the locatee’s phone has been put on the service it can be tracked at any time without the locatee being made aware that their location has just been pinpointed, or being warned that it is about to be pinpointed.
9. In effect a passive service has three components: a locatee, a locator and the network. The locator asks the network to tell them where the locatee is. It is in this sense that the locatee is passive.
10. “Active” location services are also available. These can help you, for example, to locate your nearest cash point or railway station, or whatever. They can therefore be distinguished from passive location services because with active services there are only two parties to the transaction, namely the mobile phone user him or herself and their network. The user alone initiates or invokes the transaction with the network e.g. by asking the network to tell them where the nearest service point is for what it is they are interested in finding. At the moment we see no issues in respect of child safety where active location services are concerned, but we may return to this point at a future date. The passive services are the more pressing.

Targeting families with children

11. Some LSPs are specifically targeting families with children who have mobiles, promising to provide parents with a ready means of determining where their children are at any given moment. With the current high levels of parental anxiety about child safety, we can imagine that a number of families will wish to avail themselves of such services. The marketing of location services might also have the effect of persuading a number of families, whose children may not currently have a mobile, to buy one just so they can put them on to a location service.

Establishing the service

12. A passive location service for a child would normally be initiated by the would-be locator first establishing themselves as a customer with one of the LSPs. Typically the locator will be the child's parent or legal guardian.
13. Next the locator nominates the mobile telephone number of the child they wish to track. An introductory text message is sent to the child's handset informing the child that someone wishes to put them on to their tracking service. The would-be locator's name and telephone number will be given as part of that initial text message. The locatee must send back a text message confirming that they agree to be tracked by the locator, and only then will the service be activated. Thus at this stage the child has a right to refuse to go on the service in the first place, and this right to refuse is pointed out to them. The child's right to refuse, and associated issues, are discussed more fully in Part 3 (see below).
14. Subsequently, at random intervals, further text messages will be sent to the child's handset reminding them that they are on the tracking service of a named locator and also reminding them that they can withdraw from or cancel the service at any time. Eventually the frequency of these randomly timed reminder messages will fall to once per month, but at first they will appear more often.
15. With very young children it is acknowledged by all concerned that the parent will generally undertake all of the initial registration transactions on their child's mobile phone. This is just as well because we are not sure how meaningful any of the provisions concerning refusal, withdrawal or cancellation are for, say, a three or five year old who may not even be able to read, much less understand any of it. Nonetheless this all points towards an acceptance by the LSPs that, while they may have a contractual relationship with the locator, they also have an independent duty of care towards the locatee, the child. We think that is right.

The limitations of the technology

16. If a child simply turns off their phone, leaves it at home, at school or at a friend's place, or the phone runs out of power, or it gets lost or stolen, and the parent is unaware of any of this, then that severely compromises the service, with a range of possible consequences for parental and family stress levels. It may even start to generate additional and unnecessary calls to the police. It will be important for these limitations of the technology to be fully acknowledged and drawn to the attention of would-be purchasers.
17. Neither should it be forgotten that in genuine emergencies the police anyway have the ability to obtain exactly the same location information, possibly more, from the mobile phone company directly, without having to trouble any LSPs, and at no monetary cost to the family concerned.

Concerns about family relationships

18. We can see potentially useful applications of location technology, but the truth is for the system to work optimally the child's phone has to be switched on and be within range of a cell so if a parent had any cause to worry they could always do what they probably do now, which is simply ring the child, ask them where they are and check that all is well.
19. However, some of the companies selling location services emphasise that they can enable a parent to check on their child's whereabouts without being so "intrusive" as to actually ring them and speak to them. In other words they are telling parents they can check on a child's whereabouts covertly.
20. In rare or extreme circumstances a parent might want to make use of something of the kind being offered by a passive location service. But as an ongoing or regular feature of family life it leaves a great deal to be desired. At a number of different levels it is not consistent with best parenting practice. If parents are so anxious about where their children might be, or do not know whether or not their children will normally tell them the truth about where they are when they ring them, maybe there are some deeper or underlying issues which need to be addressed.
21. Similarly we are concerned about how children might feel about their parents putting them on such a long electronic leash. Again, it does not speak of trust or confidence within a family. It could even be used in a very harsh, controlling way and deny a child or young person their reasonable expectation of some level of privacy. Clearly this is less a matter for the mobile phone companies as for parents and society generally to reflect upon, but it remains an important consideration for those concerned with family policy.

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