Title:
Where Are We With Location Privacy? Reactions to the Supreme Court’s Oral Argument in Carpenter v. United States: Panel Discussion on Cell Phone Tracking Case at SCOTUS

Time:
November 30, 2017 @ 4:00 PM to 6:00 PM with reception to follow

Location:
John Marshall Room, 5th Floor, American Bar Association, 1050 Connecticut Avenue, NW

Webcast registration:
https://register.gotowebinar.com/register/3113530343354825986

Description:
In Carpenter v. United States <https://epic.org/amicus/location/carpenter/> the Supreme Court will decide whether the Fourth Amendment bars the warrantless collection of cell phone location records. The Court previously ruled in Riley v. California <https://epic.org/amicus/cell-phone/riley/> that officers cannot search a cell phone incident to a lawful arrest without a warrant, and earlier held in United States v. Jones <https://epic.org/amicus/jones/> that the warrantless attachment and use of a GPS tracking device to monitor the movements of a person’s car over time violated the Fourth Amendment. Now the Court is poised to consider the degree of Fourth Amendment protection given to the location data that is generated by our cell phones. How will the Court view this issue in light of its recent digital privacy cases? Will the Court take up the call by Justice Sotomayor and others to reconsider the application of Smith v. Maryland and the Fourth Amendment rules concerning records held by third parties? Join us to discuss the case following the oral argument on November 29th.

News

Now You Can Pay Hundreds To Let Amazon Workers Unlock Your Door- Amazon recently announced a new service called “Amazon Key,” which they expect to be enabled in 37 cities next month. For subscribers of the Amazon Prime service, Amazon Key will enable Amazon’s curriers to enter into customer’s homes to deliver packages. Amazon is hoping that this will reduce the number of packages that are damaged by rain or stolen. The system could be used by certain delivery contractors authorized by Amazon. The Amazon Key system is a combination of
digital locks and a camera and smartphone app used by the home owner. The system would unlock the homeowner’s door for a five-minute window and provide a live view of the package delivery via Amazon’s Cloud Cam. This system could create serious security vulnerabilities if it were compromised, as many other “smart home” devices have been.

Kentucky Secretary of State Accused of Improperly Gathering Voter Data: A former state election official has alleged that Secretary of State Alison Lundergan Grimes granted improper access to private voter information. The allegations claim that staff members were given improper access to the voter registration database. Typically, the Secretary of State does not have access to the voter registration database. The allegations have been referred to the State Ethics Commission. This news comes as state election systems are coming under increasing threats from cyberattacks and other interference efforts. Voter data systems, in particular, were targeted during the 2016 campaign, and have been designated by the Department of Homeland Security as critical infrastructure. A number of groups recently sued President Trump’s “voter fraud” commission, run by Kansas Secretary of State Kris Kobach, for improperly seeking to collect voter data from all 50 states and the District of Columbia.

Trump administration pushes state, local governments to experiment with drones regulations: The Trump administration on October 25, 2017, invited Local, State, and Tribal governments to create zones for experimental use of remote-controlled aircraft (drones). These zones would allow testing of controversial drone operations including deliveries, agricultural surveys, and other operations that require traffic-management systems to avoid dangerous crashes. The stated goal is to hasten the development of commercial use of drone technology. There are presently over 1 million FAA-registered drone operators in the United States. The number of commercial drone operators are expected to increase to over 5 million by 2021. Drone operations pose significant threats to privacy and safety, but the FAA has so far failed to provide adequate guidance or regulation to protect users and bystanders. Some states have been more active, passing drone privacy and safety bills to protect their citizens, but the FAA has previously argued that federal law preempts these state regulations. The new initiative could be beneficial if states take the opportunity to develop laws that protect against the privacy and safety threats posed by drones.

FISA Section 702 Reforms: Section 702 of the FISA Amendments Act is set to expire on December 31, 2017. Section 702 authorizes warrantless surveillance of non-U.S. persons abroad, commonly referred to as the “PRISM” program, but has also been found to sweep up the communications of innocent Americans. The Foreign Intelligence Surveillance Court, which oversees FISA surveillance, found in 2011 that NSA surveillance under Section 702 swept up large volumes of domestic communications and likely violated the Fourth Amendment. Revelation of these and other violations in 2013 and 2014 led to the passage of the USA FREEDOM Act by Congress. Since then, Senator Ron Wyden (D-Oregon) and others have highlighted the need for further reform of Section 702.

The Government is currently pushing for the permanent extension of Section 702 authorities, but there are several bi-partisan bills that would reform and temporarily reauthorize the program. The House bill, H.R. 3989 - USA Liberty Act of 2017, is a bipartisan proposal introduced in the
Judiciary Committee, but it has raised concerns from many Civil Rights organizations. The primary concern relates to the failure to address the so-called “backdoor search loophole,” whereby the FBI and other law enforcement agencies can search data collected under Section 702 for information of U.S. persons without a warrant. The groups are also opposed to more permissive rules around the collection of metadata. The ACLU and 39 other Civil Right groups signed a letter sent to the House Judiciary Committee voicing their concerns and stating that they would not support H.R3989 in its current form.

The Senate Bill, S.1997 - USA RIGHTS Act of 2017, introduced by Senator Wyden includes a broader range of reforms that would limit how and when law enforcement can search the Section 702 data. S.1997 has garnered support from Civil Rights group such as Free Press Action Fund and the Sunlight Foundation.

Some have raised concerns that the reauthorization of Section 702 would significantly degrade Fourth Amendment privacy protections, but the FBI Director, Christopher Wray, and other intelligence officials have argued that reauthorization is a top priority. The Senate Intelligence Committee recently recommended a bill that would reauthorize and extend Section 702 authorities, and change the scope of those authorities in significant ways.