Electronic Frontier Foundation

Meet CO-TRAVELER: The NSA's Cell Phone Location Tracking Program

By April Glaser and Kurt Opsahl December 5, 2013

An article yesterday in the *Washington Post* disclosed the NSA's massive cell phone location program. The program, codenamed CO-TRAVELER, is designed to track who meets with whom and covers everyone who carries a cell phone, all around the world.

With neither public debate nor court authorization, CO-TRAVELER collects billions of records daily of cell phone user location information. It maps the relationships of cell phone users across global mobile network cables, gathering data about who you are physically with and how often your movements intersect with other cell phone users. The program even tracks when your phone is turned on or off.

The trillions of collected records, which add up to twice the amount of data in the Library of Congress' print collection, are saved and stored in the NSA's mammoth database called FASCIA. While allegedly aimed at foreigners and mobile phones overseas, the NSA admits that it has "incidentally" collected location information on U.S. persons.

CO-TRAVELER ignores fundamental values in the Constitution the NSA has sworn to uphold, including the right against unreasonable search and seizure as well as freedom of association. Thinking globally, the program disregards international human rights law, which is currently in the process of being reaffirmed in a draft resolution by the UN General Assembly.

The Fourth Amendment Protects Cell Phone Location Data

EFF has been working for years to get the courts to recognize that the government must get a warrant before seizing cell phone location records. The court decisions are split. In 2008 the Third Circuit federal appeals court correctly held that federal magistrates have the discretion to require the government to get a search warrant based on probable cause before obtaining cell phone location records. But the Fifth and Sixth Circuit have approved the seizure of cell phone location records without a warrant. The Supreme Court has yet to rule on cell phone location, but did hold that planting a GPS device on a car requires a warrant, without reaching a decision on whether the warrantless tracking itself would violate the Fourth Amendment.

CO-TRAVELER does not simply collect location information. It creates a portrait of travel times and people who crossed paths, revealing our physical interactions and relationships. The cell site

information goes beyond email and phone calls and ordinary telephony data, allowing the U.S. government to know who we are with in-person and where. This is information that would be impossible to collect using traditional law enforcement methods.

An NSA official said that the agency's collection methods are "tuned to be looking outside the United States." This appears to be an attempt to assert that U.S. law does not apply because they are not "targeting" U.S. persons. Without the protections of U.S. law, the spying is regulated only by Executive Orders–orders by the President that are not subject to substantive oversight, and can be modified at any time. It's likely that this program falls under Executive Order 12333. EO 12333 has few limits on surveillance overseas, even if it is a U.S. person.

CO-TRAVELER Violates the First Amendment

The CO-TRAVELER program is based on guilt by association, tracking location to determine our relationships and where we meet. The First Amendment protects our right to associate with individuals and groups without disclosing that information to the government. This is an essential right because it allows people to discuss their ideas, concerns, and feelings with others without the shadow of government surveillance. And this is not just a right recognized in the United States: the right to freely associate with individuals or groups has also been recognized in the UN Universal Declaration of Human Rights, the European Convention on Human Rights, and in countless other human rights charters.

EFF is currently representing 22 organizations from across the political spectrum who sued the NSA for violating their First Amendment right of association by illegally collecting their call records. The case, *First Unitarian v. NSA*, brings to light the real implications of mass surveillance–people are afraid to associate and meet based on likeminded interests.

Equally threatening to the rights guaranteed by the First Amendment are the speech-chilling effects of cell phone location tracking. Even if you use encryption online, when you meet someone in person and aren't even on the phone, your movements may be tracked and recorded and stored. The *Washington Post* article reports that the NSA tracks when a cell phone has been turned off, for how long, and what nearby devices are also being used and shut off. The NSA provides further scrutiny of people who switch their phones on and off for brief periods or use throw-away phones.

Yet these security practices are common methods that journalists (or anyone else who might be privacy conscious) use to ensure security and trust when they meet with confidential sources and conduct investigations. Under this program, it is harder than ever for a journalist to guarantee a reasonable degree of privacy and security to their sources.

Privacy is an Internationally Recognized Human Right

While the NSA likes to claim it takes great care in not collecting the data of U.S. persons, the billions of people tracked by their programs have a basic human right to privacy. Right now the United Nations General Assembly is discussing a resolution that reaffirms that the human right to privacy is carried over and effective in the digital age.

EFF is part of the global movement demanding the protection of our most basic right to privacy, no matter the country or citizenship of a person. We signed on to a list of thirteen principles that a state should use to determine whether or not a surveillance program will encroach on fundamental human rights. Join us by adding your name to the global petition for privacy today.

We will continue to fight against the NSA's unconstitutional and overbroad surveillance programs in the courts and in Congress, and advocate for deeper oversight of the NSA from all branches of government.