

# Technology is trampling privacy rights, experts say

June 30 2011, By Gina Damron

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They're tools of convenience. Smartphones allow us to make calls, check e-mail, download music, browse the web and take pictures. GPS capabilities tell us where we're going. Facebook lets us reconnect with friends and show off pictures from tropical vacations. Many of those same tools are now being successfully used by police agencies to aid in investigations.

Law enforcement officials are increasingly employing technology, including tracking devices placed on suspects' vehicles and data-extraction tools for cell phones and computers.

Police say they use technologies within the confines of the law. But privacy-rights advocates worry about violations of the Fourth Amendment.

Nationally, the U.S. Supreme Court may take up a case concerning warrantless GPS use by law enforcement, and some experts say laws governing privacy rights need to be updated with the advancement of technology.

Rights advocates fear police violating privacy with advancing technologies

Investigators used Facebook photos to nab a Detroit man accused in a spree of bank robberies.

A Southfield, Mich., doctor suspected of a prescription drug scam was caught after officers put a GPS on her minivan and tracked her activities.

When three brothers from Morenci, Mich., went missing, investigators collected information from a [cell phone](#) belonging to their father - who has been charged in their disappearance - and determined some of his travel habits, leading to search efforts in Williams County, Ohio.

Those are just a few of the recent examples of how law enforcement is using technology to monitor the activities of suspects and solve cases. Investigators are mining [social networking sites](#) and e-mails, placing tracking devices on vehicles and purchasing sophisticated technology of their own - like devices that can extract information from cell phones. And with many cell phones now more characteristic of computers than basic talk-and-text phones, there's plenty of information to be found.

Privacy-rights advocates, though, worry about constitutional violations and say laws aren't keeping pace with changing technology.

"We worry that law enforcement sometimes employs new technology without regard to constitutional privacy protection," said Michael Steinberg, legal director for the American Civil Liberties Union of Michigan.

Police say they operate within the bounds of state law, obtaining search warrants where required.

"Because if you didn't go through the right channels and you did come up with evidence, it would either not be admissible or it would get thrown out" of court, said Detroit Police Deputy Chief Andre Simenauer of the Technical Services Bureau. "You could strike gold, but it would be worthless. It'd be fool's gold."

## **Tech-savvy criminals**

Police say another element is staying on top of technology, too: lawbreakers.

As criminals have become more tech-savvy, law enforcement agencies are working to keep pace. Many departments have computer-crime units or task forces.

"This technology has changed the way we do our investigations, and it also has changed the way the criminals do business and try to hide behind this technology," Macomb County, Mich., Sheriff Anthony Wickersham said.

The Michigan State Police has devices capable of extracting data from cell phones. In April, the ACLU revealed it had been battling the state for three years to get information about the devices and their use, arguing that people have the right to know whether their constitutional rights are being violated. State Police officials have said they use the devices only when they have a warrant.

Those devices aren't the only new technology police are employing.

Simenauer said one of the Detroit Police Department's new initiatives is license plate readers. They're cameras mounted to police vehicles that record license plates and match them against a list of wanted plates that includes, for example, stolen vehicles.

## **Redefining privacy**

Police can monitor a suspect's whereabouts with devices we use every day - cell phones, satellite radio systems and OnStar - or by using a more

controversial method: Tracking devices on vehicles.

In Michigan, experts say, state law doesn't require a warrant for police to do so.

The way technology is expanding, privacy advocates say it's possible for police to consistently monitor someone without their knowledge, particularly with tracking devices.

"We don't want to be in a situation where the [police](#) just decide to throw a tracker on everybody because it's easier," said Rebecca Jeschke, spokeswoman for the Electronic Frontier Foundation.

Several state courts have held that it's unconstitutional for law enforcement agencies to use tracking devices without warrants - including courts in New York, Washington, Oregon, Delaware and Massachusetts. The Ohio Supreme Court is currently considering the issue, according to the National Association of Criminal Defense Lawyers.

In a potentially precedent-setting case, the Department of Justice has asked the U.S. Supreme Court to allow [law enforcement](#) to use a tracking device on a suspect's vehicle without a warrant.

[Law enforcement officials](#) got a warrant to install a GPS unit on a cocaine dealing suspect's vehicle within 10 days, but didn't install the device until 11 days after the warrant was issued. The man was convicted and sent to prison for life, but a lower court reversed his conviction because the warrant had expired.

The government has asked the Supreme Court to reverse the lower court's decision. In its petition, the government says: "Electronic tracking of a vehicle as it moves on public roads offends no reasonable

expectation of privacy because it reveals only information that any member of the public could have seen, and it is therefore not a search within the meaning of the Fourth Amendment."

## **Update the laws**

One way to address privacy-rights concerns, some say, is to update the laws.

The Digital Due Process Coalition - a group of privacy advocates, companies and think tanks - is pushing for reforms to the Electronic Communications Privacy Act of 1986, which is criticized as outdated.

The challenge is to make sure laws and privacy rights keep pace with changing technology, said Jim Dempsey, vice president for public policy for the Center for Democracy and Technology, which helped create the coalition.

Just a few years ago, Jeschke said, cell phones didn't carry nearly as much personal information as they do now.

"This is not just things that happen to be in my pocket," she said. "This is not a receipt or two. This is a pretty comprehensive view of my life."

Staff writer Tresa Baldas contributed to this report.

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## **Privacy safeguards**

- Don't post information that would make you vulnerable, such as your address or information about your schedule or routine.

- Only post information you are comfortable with anyone seeing.
- Be wary of strangers.
- Be skeptical of what others post.
- Use privacy settings.
- Be wary of third-party applications.
- Use strong passwords.
- Check a site's [privacy](#) policy when it comes to sharing information, such as [e-mail](#) addresses or other user preferences with other companies.
- Keep your software, particularly your Web browser, up to date.
- Use and maintain antivirus software.

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