

# **Privacy in Public Space: Google Latitude, Location- Based Applications, and the Reasonable Expectation of Privacy**

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# Privacy in Public Space

- Privacy law has typically distinguished between “public” and “private” spheres
- Significantly lower expectation of privacy in “public” contexts
- What implications do location-based applications have for privacy where they track or record data about individuals as they move through “public” space?

# Location-Based Applications

- Mobile device provides co-ordinates used in delivery of services
  - Examples:
    - Location-based advertising (coupons, etc.)
    - Finding friends
    - Identifying services (hospital, gas station, library, etc.)
    - Navigation to a physical address
    - Traffic congestion notices

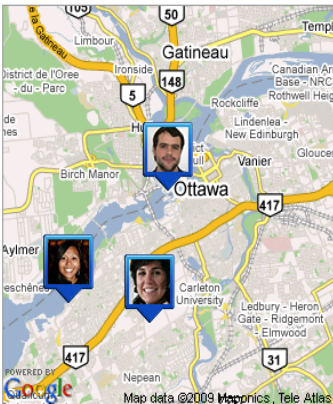
Google Latitude - Mozilla Firefox

File Edit View History Bookmarks Tools Help

http://www.google.com/latitude/intro.html

google latitude

## Google Latitude Introducing Google Latitude



**See where your friends are on a map**  
Enjoy Google Latitude on your phone, computer, or both.

**Start using it on your phone**  
See your friends' locations and status messages and share yours with them.

Enter your number or visit [google.com/latitude](http://google.com/latitude) on your mobile web browser.

United States

**Send a link to my phone**

[Will it work with my phone?](#)

**View it on your computer**  
See your friends' locations and status messages on a full screen even without a compatible phone or data plan.

[Add Latitude to iGoogle >](#)

This service is free from Google; carrier charges may apply. The number entered on this page will only be used to send you a text message. It will not be linked to any Google services unless you've given us permission elsewhere.

*Fred wants to hang out with his friends, and checks to see where they are.*

[Learn more about Google Latitude](#)

[Watch a video](#)

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# Google Latitude

- Feature is part of **Google Maps**
- **Opt-in feature**: Must sign up for feature
- **Control** over circulation of information: Invite friends who must also accept
- **Reciprocity?** Group shares locations with each other

## Google Latitude and Privacy Controls

- “You can share, set, or hide your location - or turn off Google Latitude - from the privacy menu. You can also hide your location or share only a city-level location with certain friends.”

# Google Latitude and Privacy Risks: Friends and Family

- **Circle of friends and family**
  - They are not legally or contractually restricted from further disseminating the information except through social norms
  - Functions similarly to gossip

# Google Latitude and Privacy Risks: Google

- Google Privacy Policy:
- “**Location data** – Google offers location-enabled services, such as Google Maps for mobile. *If you use those services, Google may receive information about your actual location . . .*”



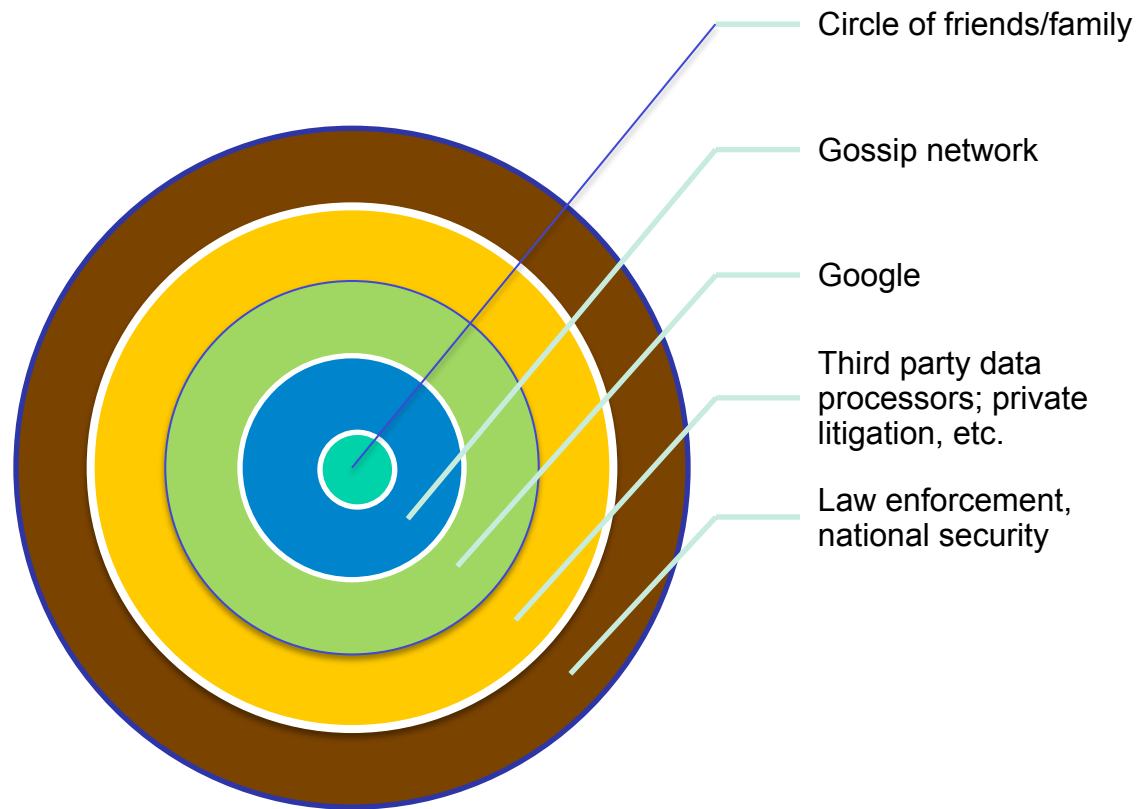
# Google Latitude and Privacy Risks: Google

- Google's privacy policy identifies fairly broad and open-ended uses for personal information:
  - Providing our services, including the display of customized content and advertising; . . .
  - Protecting the rights or property of Google or our users; and
  - Developing new services
- Data security is also always an issue

# Google Latitude and Privacy Risks: The State

- Law enforcement and national security officials may access data in the hands of third parties without the knowledge or consent of the data subject
  - E.g.: U.S.A. PATRIOT Act
  - Canada: *Personal Information Protection and Electronic Documents Act*

# Location data & privacy



# Legal Framework for Privacy Protection

- Constitutional provisions
  - Personal, territorial, informational privacy
- Data protection legislation
- Tort liability
  - Invasion of privacy, negligence, breach of confidence
- **Reasonable expectation of privacy**
  - Explicit in constitutional and tort contexts
  - Implicit in data protection context

# Reasonable Expectation of Privacy (REP) in Public Space: Traditional View

- Paradigm: Individual who can be observed (by unaided eye) on public street has no reasonable expectation of privacy
- They either waive their right to privacy or implicitly consent to observation

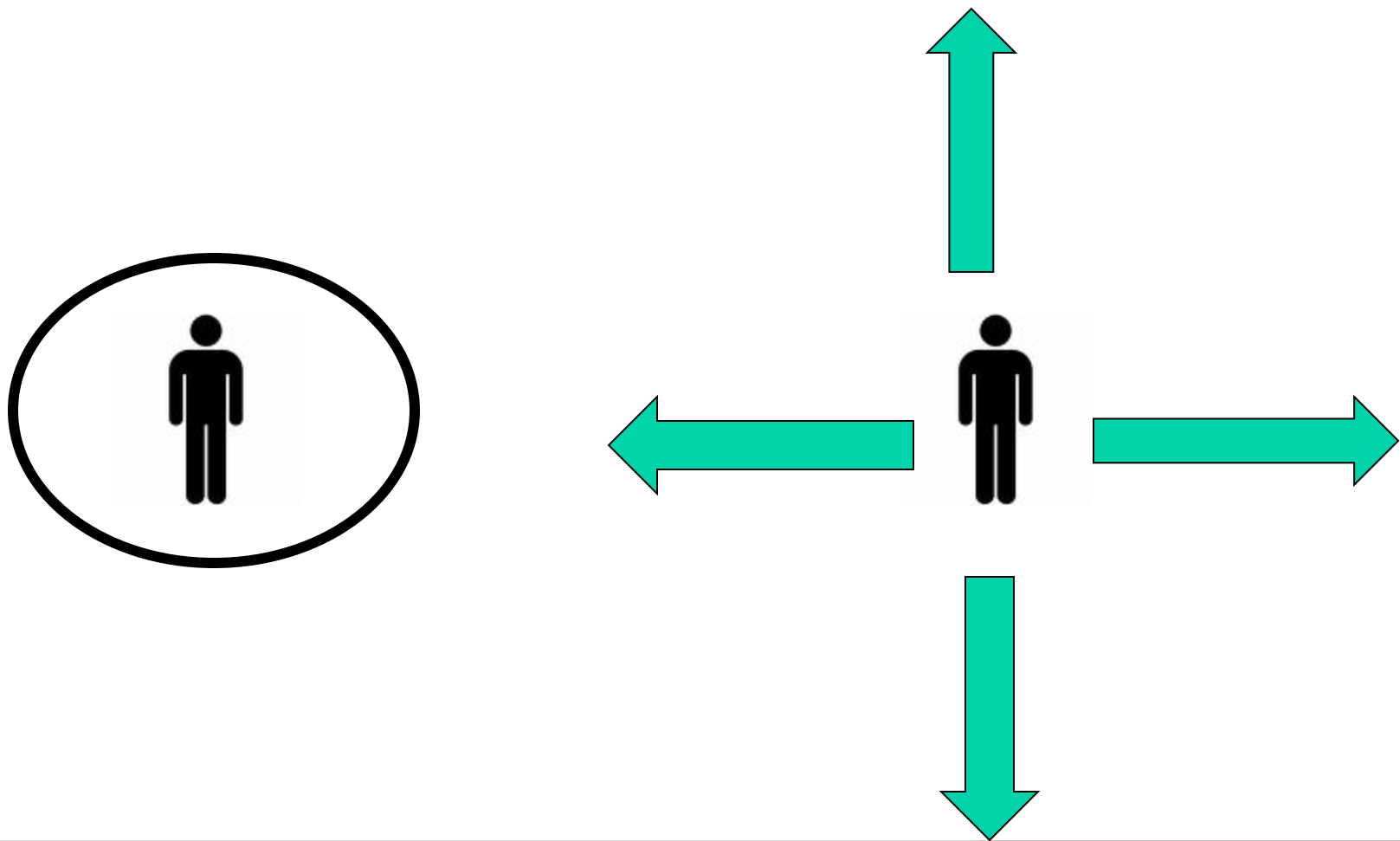
“*Where* the action occurs becomes relevant to the nature and degree of privacy to which an individual is entitled and which is reasonable in the circumstances. Arguably overt actions and behaviours occurring in public are not really ‘private’ in nature at all. Observation, where authorized, ... can hardly be seen to be offensive.”

*Druken v. R.G. Fewer & Associates* (NF Sup Ct 1998), para 43.

# REP and Location-Based Applications

- Are location-based applications equivalent to observing activities in public space?
  - Qualitatively different from ordinary observation
    - Data recorded and archived
    - Scope of observability
      - Remote observation
      - Identification and data matching
      - Greater dissemination (time and space)
  - Consent—individual unable to understand and be aware of extent or nature of observation

# Territorial/spatial privacy v. informational privacy



# Issues with informational privacy

- What is “core biographical” information?
  - Information that is considered trivial or non-core biographical will receive little protection
  - Is information about location in public space equivalent to “observation”?
- By using location-based services or mobile devices, does one *consent* to the collection, use and disclosure of location information?
  - Does the scope of consent depend on whether the issue is one’s presence in public space (i.e. actual movements which one has chosen to make public to circle of friends) or a data record in the hands of a third party company (i.e. Google)?



# Does REP Change Over Time?

- Concept is inherently dynamic: “reasonable expectation”
- Problem is, is it “reasonable” to “expect” privacy when:
  - Personal activities are increasingly monitored and recorded
  - People increasingly are willing to share intimate information
  - Governments have greatly increased access to third party data
- Legal standard may need to change: i.e. what is “reasonable privacy”, or “what is reasonable to expect in a free and democratic society”

# Conclusions

- Consent and opt-in do not address all of the privacy issues raised by applications like Google Latitude
- Protection for users of location-based applications such as Latitude under existing law may be unsatisfactory
- Weak data protection, take-it-or-leave-it contracts, vague privacy policies may erode “reasonable expectation of privacy”

# Recommendations

- Need to recognize that location-based applications raise **informational** and not **territorial** privacy issues
- Need stronger data protection laws to create/bolster expectations of privacy
- Need concept of “reasonable expectation of privacy” that does not focus on current practices but rather on privacy values

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Public Protection and Ethical Geospatial Data Dissemination:  
Social and Legal Aspects