

## Cell Phone Privacy vs. Personal Safety - Let the Consumer Decide

July 22, 2016 - As consumers become increasingly tied to their cell phones, it shouldn't surprise anyone that the battle over personal privacy and cell phone tracking still continues to grow. As Americans, we tend to love our freedom. That includes our freedom to tell all forms of government that it isn't any of their business where we travel or what we are doing in our travels. But there are times when there is a flip side to those freedoms. When the police may need to locate us quickly in order to make sure we are safe or to rescue us when they know we are in danger. It's a balancing act between our privacy and personal safety. And it is a decision that we believe should ultimately be left to individual consumers.

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If you have never heard of the Kelsey Smith Act, you are not alone. It is a bill moving slowly through congress that is named for the late daughter of Kansas State Senator Greg Smith. Kelsey was kidnapped and murdered in 2007.

At the time of her kidnapping, Kelsey had a cell phone with her. Law enforcement agencies tried to get her cell phone provider to turn over records of where the cell phone was located, but getting the cooperation of the phone company took four days. Once they had that information, it took less than an hour to locate her body.

The bill named after her would change that. If it ever gets signed into law, it would allow law enforcement agencies gain access to cell phone locating data quickly and with minimal resistance. But therein lies the problem. How do you define an emergency? And who gets to define an emergency? The devil is in the details.

A large number of groups that advocate for privacy have been fighting against the Kelsey Smith Act, including the ACLU and the Electronic Frontier Foundation. They believe that the law would give police too much power to invade the privacy of ordinary cell phone users. And there is certainly enough history of law enforcement agencies at local, state and federal levels abusing their surveillance powers to warrant some concern.

But it would seem that there is a very simple way to address this. That is to leave the decision to share information with the police in the hands of individual consumers. And we believe there are ways to do this that would encourage participation but also protect privacy. Here are just a couple of suggestions.

When signing up for cell service, service providers could ask subscribers to provide a list of people who would have the ability to demand their cell phone location data immediately, upon request. They could also be asked if they wanted this

information provided to law enforcement upon request. In both cases, these would be opt-in programs.

Cell service providers could deliver new or upgrade customers with phone that came pre-loaded with software to notify contacts and police with location information at the push of a button. NOTE: Many phones already have this ability but it is often buried in the phone settings.

It should also be noted that consumers already have the ability to install programs on virtually any smart phone that can allow family members or close friends to see where there phone it at any time. Parents who provide their children with smart phones should consider installing this type of program prior to giving their children the phone. And they should make it clear to their children that they are doing this for purposes of safety and that any attempt to disable the tracking will result in loss of the phone. Your kids may not like that but they'll get over it. And if there ever is an emergency, they'll thank you.

There is not telling whether or not Kelsey's law ever gets passed. It has died in committee several times since it was first introduced but it keeps coming back. There is no doubt that the law could save lives, but at what cost to individual liberty? It really isn't right to force a law like this upon everyone. But if you allow consumers to make the decision for themselves, and property present the argument for asking them to make such a decision, we think there is a pretty good chance that most people will opt-in. If not for themselves, then for their kids.

byJim Malmberg

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