



January 28, 2011

The Honorable Gary Locke, Secretary
Department of Commerce
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

RE: Public Comments on December 16, 2010 Preliminary Report

Dear Mr. Secretary:

MAPP'S (www.mappls.org) is the only national association exclusively comprised of private sector firms in the remote sensing, spatial data and geographic information systems field in the United States. Current MAPP'S memberships span the entire spectrum of the geospatial community, including Member Firms engaged in satellite and airborne remote sensing, surveying, photogrammetry, aerial photography, LIDAR, hydrography, bathymetry, charting, aerial and satellite image processing, GPS, and GIS data collection and conversion services. MAPP'S also includes Associate Member Firms, which are companies that provide hardware, software, products and services to the geospatial profession in the United States and other firms from around the world.

MAPP'S is deeply concerned that the December 16, 2010, Department of Commerce "green paper" or preliminary report, *Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework*, would result in a serious threat to the geospatial community. The report is very broad in its application. Ostensibly, the report is targeted at internet-based cyber tracking of personal data. However, through the use of terminology without definition, and a failure of the report to limit its scope to specific problem areas, the restrictions suggested in the report would hamper the ability of firms, agencies and organizations to collect, use, share, or apply geospatial data. MAPP'S respectfully urges the Department of Commerce to use extreme caution and not implement any enforcement or broad regulation that would have a harmful affect on the broad geospatial community.

On page 74 of the Commerce Department report, the "Task Force invites comments that discuss whether privacy protections for access to location information need clarification in order to facilitate the development, deployment and widespread adoption of new location-based services." As a result, MAPP'S appreciates this opportunity to provide the following feedback and comments.

In a December 16, 2010 news release, the Department of Commerce indicated that "The report recommends that the Obama Administration review the Electronic Communications Privacy Act (ECPA) to address privacy protection in cloud computing and location-based services. A goal of this effort should be to ensure that, as technology and market conditions change, ECPA continues to appropriately protect individuals' privacy expectations and punish unlawful access and disclosure of consumer data."

**1856 Old Reston Avenue, Suite 205
Reston, Virginia 20190
P (703) 787-6996 F (703) 787-7550**

While the report is focused on the internet, it includes “Recommendation #10: The Administration should review the Electronic Communications Privacy Act (ECPA), with a view to addressing privacy protection in cloud computing and location-based services” (p63), “we seek further comment and data from the public concerning ECPA’s effects on the adoption of cloud computing and location-based services” (p65), “The social importance and economic value of recent digital communications innovations and new types of information, such as geolocation data collected from cell phones and content (text, voice, and video) stored in cloud computing systems, cannot be overstated” (p65), and “The Task Force also seeks input on whether the current legal protections for transactional information and location information raise questions about what commercial data privacy expectations are reasonable and whether additional protections should be mandated by law. The Task Force also invites comments that discuss whether privacy protections for access to location information need clarification in order to facilitate the development, deployment and widespread adoption of new location-based services” (p67).

Specifically, we are concerned that such Department of Commerce regulation, which inexactly uses and regulates the term “geolocation data” will result in serious and harmful unintended consequences for consumers, geospatial firms, and government programs our member firms serve. We are particularly concerned that this term is *not defined* in the Department of Commerce preliminary report. The use of the term “geolocation” or other geospatial relevant terminology, as it is used in this or possible future Department of Commerce regulation, could thwart legitimate and desirable business activities; deny consumers the products, technologies and services they are demanding in the marketplace; impose a significant new liability on our members; and inhibit economic growth and job creation.

On one hand, the term could mean actual street/house address or on the other hand, the actual location of the individual at any given time, i.e. location provided by cell phone triangulation or some other method. If the geolocation refers to a person's name and address being private, then it is inconsistent with virtually every “open records” law in the United States, and could potentially shut down the nation’s commercial aerial and remote sensing satellite market, as well as value-added services and applications, and prevent our member firms from collecting, and our member and their clients from hosting or distributing such information.

We believe such geolocation activities should be excluded. Failure to do so would thwart some common, justifiable, and emerging uses of geospatial data for emergency response/post disaster remediation, insurance, environmental protection, E-911 & ambulance services, fleet management, broadband mapping, home security, navigation, mortgage foreclosure monitoring/early warning system, and others. Moreover, many geospatial activities, technologies, and applications development could be deemed illegal. For example, it would be impractical, if not impossible, for our member firms to obtain prior approval or consent from individual citizens prior to acquiring or applying data such as satellite imagery, aerial photography, or parcel, address, or transportation data. A Department of Commerce regulation of this nature would effectively ban our member firms, or their clients, from important collection, value-added, integration and application activities.

For the purposes of the regulations and privacy efforts currently under consideration by the Department of Commerce, MAPPS submits the following proposed definition of what are NOT “location-based services” and “geolocation data” and thereby exempt from the scope of such regulation:

1. Any information about the location and shape of, and the relationships among, geographic features, including remotely sensed and map data;
2. Any graphical or digital data depicting natural or manmade physical features, phenomena, or boundaries of the earth and any information related thereto, including surveys, maps, charts, remote sensing data, and images;
3. Collection, storage, retrieval, or dissemination of graphical or digital data to depict natural or manmade physical features, phenomena, or boundaries of the earth and any information related to such data,

including any such data that comprises a survey, map, chart, geographic information system, remotely sensed image or data, or an aerial photograph by surveyors, photogrammetrists, hydrographers, geodesists, cartographers, or other such mapping and geospatial professionals; and

4. Data originating from commercial satellite systems licensed to operate by the U.S. government, global positioning systems, geographic information systems, and airborne or terrestrial mapping equipment.

The geospatial community is one of the fastest growing in the marketplace. It has been identified by the U.S. Department of Labor as one of the “high growth” sectors of the U.S. workforce. There are numerous legitimate geospatial applications, in a rapidly growing market, that fit the aforementioned scenario. We are concerned that unintended consequences of such Department of Commerce regulation will stymie economic growth, job creation, and introduction of new consumer products enabled by geospatial technologies.

Many states define a number of geospatial or geolocation activities (also referred to as location-based services) as the practice of professional surveying. Therefore, practitioners are licensed and regulated by the government -- state licensing boards. Consumers are already protected. Moreover, commercial satellite remote sensing firms are licensed to operate by the Federal Government (Department of Commerce). Therefore, there are already statutory standards for such individuals and firms, and the public health, welfare and safety, as well as national interests are already protected by a governmental authority. Further regulation is unnecessary, and would create conflict and confusion among such regulatory schemes. Finally, any such Department of Commerce regulation could put U.S. companies at a significant and insurmountable competitive disadvantage against foreign firms that may not be covered by that regulation, or for which enforcement would be impractical.

In conclusion, MAPPS urges the Department of Commerce to either remove any reference to “location-based services” and “geolocation data”, more specifically and exactly define the term; and/or include the exemption we have suggested herein.

We look forward to working with you and the Department of Commerce to provide the necessary and desirable privacy protections to individual citizens, while permitting the geospatial community to grow, prosper, bring to the market those technologies and applications that meet the economic demands of consumers and citizens; and contribute to quality of life, economic growth and job creation.

If you have any questions, or if we can be of any assistance, please do not hesitate to contact John “JB” Byrd, MAPPS Government Affairs Manager at jbyrd@mapps.org or 703-787-6996.

Sincerely,



John M. Palatiello
Executive Director