

Geolocational Privacy Law Evolved Slowly in 2012

The law of geolocational privacy continued to evolve in 2012 even though the Supreme Court sidestepped the issue in a potential landmark case.

Despite the lack of clarity from the Supreme Court, there will be more attention to geolocational privacy in 2013 both in courts and through legislation, according to a legal survey article appearing in *The Business Lawyer* published by the American Bar Association. The article was co-authored by Richard C. Balough of Balough Law Offices, LLC, in Chicago, and Theodore Claypoole of Womble Carlyle Sandridge & Rice, in Charlotte.

Geolocational privacy issues arise from the use of tracking or locating technology to pinpoint more accurately the physical location of a person. Generally this tracking is performed using a mobile device or a beacon with global positioning system (GPS) capability.

The article noted that the most anticipated geolocational privacy case in 2012 was *United States v. Jones*, a case involving a criminal conviction based on GPS technology. While the court “had the opportunity to address whether nearly constant monitoring of a person’s location was a violation of the person’s expectation of privacy,” the court instead “decided the case on a narrower ground, leaving for another day a full review of geolocational privacy.”

Private plaintiffs in 2012 addressed geolocational privacy by suing mobile device manufacturers for breach of promises or for violating consumer protection laws.

In addition to litigation, geolocational privacy was addressed by the Federal Trade Commission, which sought comments and proposed changes to rules governing the Children’s Online Privacy Protection Act (COPPA). A bill entitled the Geolocational Privacy and Surveillance Act was introduced in Congress but did not pass. The bill would have prohibited any person from intentionally intercepting or disclosing location data and the use of location information if the information was obtained through interception.