

# PRIVACY HORIZONS: TERRA INCOGNITA

29<sup>th</sup> International Conference of  
Data Protection and Privacy Commissioners

September 25 to 28, 2007  
Montreal, Canada



## LES HORIZONS DE LA PROTECTION DE LA VIE PRIVÉE : TERRA INCOGNITA

29<sup>e</sup> Conférence internationale des commissaires  
à la protection des données et de la vie privée

du 25 au 28 septembre 2007  
Montréal, Canada

# Dealing With Privacy and Security Issues When Providing Location-Based Services

Eloïse Gratton  
Partner, McMillan Binch Mendelsohn

**McMILLAN BINCH MENDELSON**

# Introduction

## - Wireless Privacy Issues

- **Collection of personal / location data**

- Static Profiling
- Dynamic Profiling
- Location-specific Profiling

- **Wireless spam**

## - Legal Framework

- Canada : PIPEDA and provincial laws
- United States : Safe Harbor Agreement
- Europe : EC Directives

# Who should provide/be provided with the disclosure?

*Disclosure: Data collector should disclose to data subjects what kind of data is collected about them and the purpose / use of collection.*

**Recipient of the disclosure : The data subject**

Issues :

- Status of anonymous location data
- Ownership of the location data

**Provider of the disclosure : The data collector**

Issue :

- Different parties involved : LBS provider, content provider, network operator, etc.

# How should disclosure be provided?

## Method :

- Legal Framework :
  - Orally or in writing
  - Depends on the nature of the business
  - On the wireless device, when technically feasible
- Suggested method: In a service contract

## Timing :

- Legal Framework :
  - Prior to the use or collection of such data
- Suggested timing : Prior to the collection

# The content of the disclosure

- Collection of data :
  - Type and quality of data collected
  - Way of collecting the data and purpose
  - Collector's identity, place of business and procedure to complain
- Security of data, storage and transfer
- Access to data
- Choice and consent :
  - Period of validity of consent
  - Withdraw of consent / Implications of opt-out
  - Update in privacy policy

# Obtaining the Consent

*Consent: Data collector should obtain the data subject's consent before collecting or using his/her personal data.*

## From whom do you get the consent?

- Wireless users being tracked (anonymously or not) :
  - Each device transmits a unique identifier
  - Device usually belongs to an individual
- Wireless users receiving location-based content

## Who should obtain the consent?

The operator :

- Already relationship with wireless users
- Incentive to protect location data

# Content of the Consent

- Issues relating to the data collection, use of location data, etc.
- Issues relating to messages :
  - Number and frequency of messages
  - Provider of message and type of messages
  - The timing of messages
  - The location of messages

## - Absence of consent :

Should individuals who refuse any type of tracking be legally entitled to equivalent non-tracking-based services and products?

# Security Issues

*Security : Data collected should be protected by reasonable security measures against accidental loss, theft, disclosure, etc.*

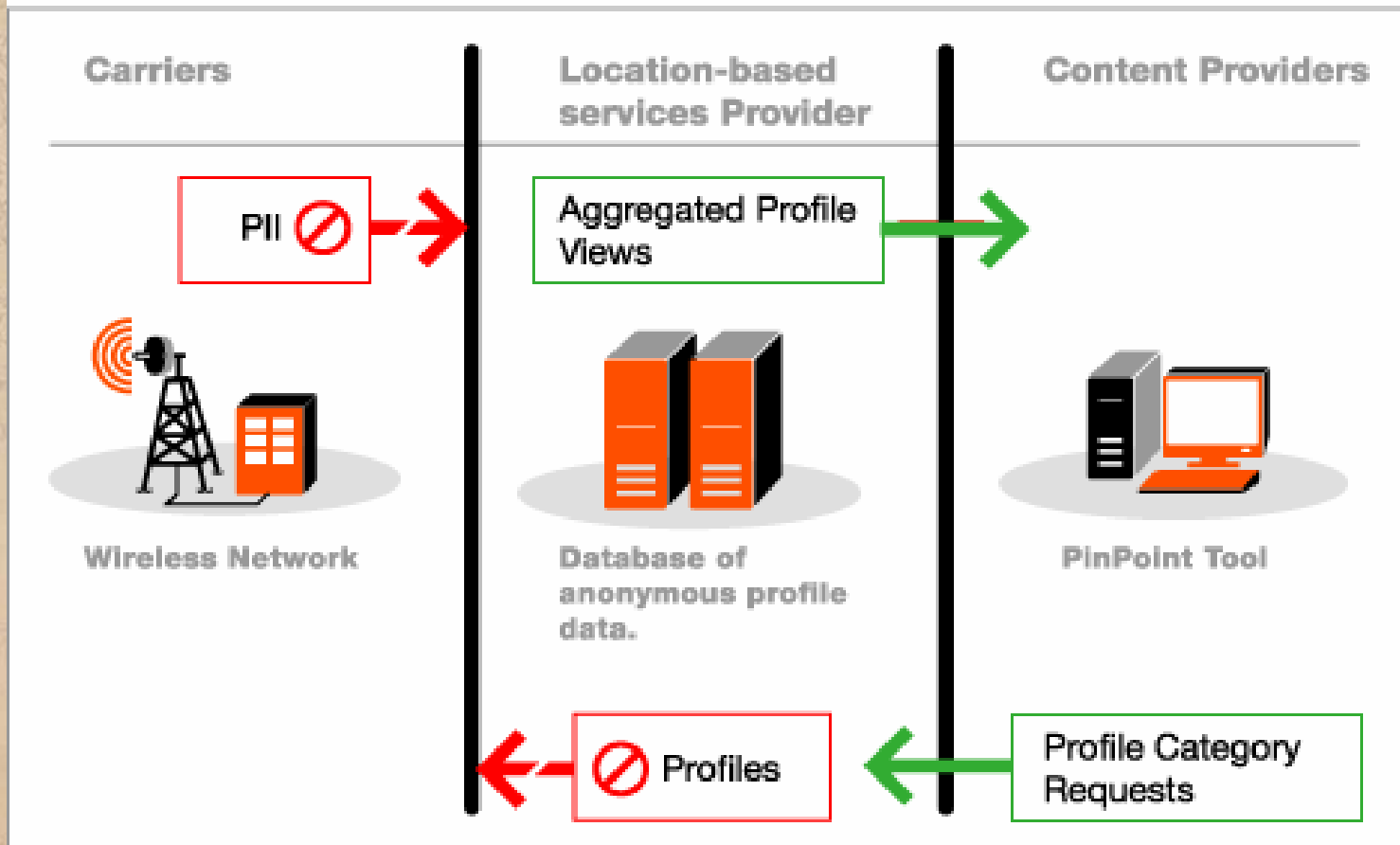
## Issues :

- What is the most secure location tracking technology?
- What is a “reasonable” technical security system?
- What is the appropriate business model?
- Storage related issues.

# Security System: Case Study



## Technical Security System



# Other Privacy Principles

- **Data Quality :**
  - Data used and collected shall be accurate and relevant for the purpose of the collection
- **Data Transfer :**
  - Under what conditions should location data be made available to third parties, including law enforcement agencies?
- **Data Access :**
  - The data collector shall provide to the data subject reasonable access to the collected data in a form intelligible to him/her

# Conclusion

- Voluntary guidelines or existing laws may not be sufficient to govern the use of location data
- Privacy laws are drafted in general terms, therefore the industry needs to translate the privacy legal framework into business practices taking into account :
  - The interest of the industry and wireless users
  - Wireless privacy issues
  - Jurisdictions issues: using the most stringent privacy framework

**McMILLAN BINCH MENDELSON**

---

**Questions?**

Email : [eloise.gratton@mcbm.com](mailto:eloise.gratton@mcbm.com)

Tel: (514) 987-5093