Children’s location tracking and their right to privacy in a mobile media world

Ingrida Milkaite & Eva Lievens
Ghent University, Belgium
8 July 2019, IAMCR, Madrid, Spain
Children’s location tracking

While you track Pokémon, Pokémon Go tracks you

Smart devices
Wearables
Apps

(Real-time) sharing of personal information, including location

- Commercial, tracking, such as (targeted) advertising
  - Parental tracking
  - Other
Smart devices
Wearables
Apps

(Real-time) sharing of personal information, including location

- Commercial, tracking, such as (targeted) advertising
  - Parental tracking
  - Other
Location tracking. So what?
Children’s Right to Privacy

UN Convention on the Rights of the Child

Article 16
You have the right to privacy.

Article 3
BEST INTEREST OF THE CHILD

International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966
Council of Europe

**European Convention on Human Rights**

**ARTICLE 8**

*Right to respect for private and family life*

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

**Convention 108 +**

Convention for the protection of individuals with regard to the processing of personal data
CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION
2012/C 326/02

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.
European Union

Article 4 GDPR – location is personal data

Article 9 GDPR – processing of special categories of personal data
  (e.g. political opinions, religious or philosophical beliefs)

Recital 38 GDPR
  Children merit **specific protection** with regard to their personal data
  
  **Less aware** of the risks, consequences, safeguards, rights
  
  Particular protection in cases of **marketing** or **profiling**
  
  No parental consent in the context of **preventive** or **counselling** services
What is the legal status of the code?

This is a statutory code of practice prepared under section 123 of the DPA 2018:

“The Commissioner must prepare a code of practice which contains such guidance as the Commissioner considers appropriate on standards of age-appropriate design of relevant information society services which are likely to be accessed by children.”

9. Geolocation

Switch geolocation options off by default (unless you can demonstrate a compelling reason for geolocation, taking account of the best interests of the child), and provide an obvious sign for children when location tracking is active. Options which make a child’s location visible to others should default back to off at the end of each session.
Requirements for operators of online services directed at children under 13 years

Requirements for operators that **have actual knowledge** that they are collecting personal information online from a child under 13 years

Younger than 13 years: **verifiable parental consent** needed
Personal information under COPPA

- Geolocation information
- Video and audio file
- Photograph
- Persistent identifier online
- E-mail address
- Screen or user name
- Social security number
- Phone number
- First and last name
- Address, town, city
- Other information which can be combined
COPPA enforcement by FTC

InMobi to pay nearly $1 million following FTC charges of location tracking deception

The mobile ad platform continued to infer and capture location data on users who had not consented to use of location services.

Greg Sterling on June 22, 2016 at 8:21 pm
Food for thought

(Geo)location – turned off?
Special protection from commercial, governmental and parental tracking?

Article 5. Principles relating to data processing

- Lawfulness, fairness and transparency
- Purpose limitation principle
- Data minimization
- Data accuracy
- Storage limitation
- Data integrity and confidentiality

BEST INTEREST OF THE CHILD
Ingrida Milkaite
PhD researcher

ingrida.milkaite@ugent.be

@ingridamilkaite

Prof. dr. Eva Lievens
Assistant Professor in Law & Technology

e.lievens@ugent.be

@evalieve

Universiteit Gent
Ghent University
@ugent