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DPA Issues Guidance
On Mobile Mapping Applications

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On December 15, 2010, the Belgian data protection authorities ("Privacy Commission") issued Recommendation 05/2010 ("Recommendation"), which provides guidance on mobile mapping applications that involve personal data processing. Although the Privacy Commission’s guidance is provided from a Belgian data protection law perspective, it may also prove useful in other jurisdictions where the data protection authorities have not (yet) opined on the use of mobile mapping.

The Recommendation defines mobile mapping as “technology by which a vehicle equipped with a camera and/or a scanner can digitally record all data regarding a specific (public) road, including by recording 360-degree images.” The technology in question is relatively recent, but it is already used in a wide range of applications. The Recommendation covers Google Street View as well as other mobile mapping applications, such as mapping for public authorities, mapping for tourism, real estate applications and mapping for GPS navigation services.

Mobile mapping raises privacy issues to the extent that the recorded images allow for individuals to be identified.

The Privacy Commission takes the position that the Belgian Data Protection Act applies to most mobile mapping applications, as they typically involve the processing of personal data. According to the Privacy Commission, pictures relating to identified or identifiable persons or their properties constitute personal data. In some cases, mobile mapping may even involve the processing of sensitive personal data (if the application records images of, for instance, an individual entering a doctor’s office or a church).

The Recommendation attempts to provide guidance to data controllers on how to apply general data protection principles to mobile mapping applications.

Main Points

The guidance can be summarized as follows:

- The main legal basis for the processing of personal data is the balance of interest test. The Privacy Commission notes, however, that in limited cases the data controller may also have to rely on another legal basis, such as individuals’ consent or compliance with a legal obligation.

- Since the balance of interest test is the primary legal basis for the processing of personal data in the context of mobile mapping applications, the proportionality principle is essential for the protection of individuals’ privacy. There must be a clearly defined purpose for processing personal data in order to assess the lawfulness of the application.

- The Recommendation highlights the need to ensure the processing of personal data is carried out in accordance with the principles of data minimization, accuracy, and security.

- The Recommendation stresses the importance of obtaining informed consent from individuals whose personal data will be captured by mobile mapping applications.

- The Recommendation encourages data controllers to implement privacy protection measures, such as blurring faces and license plates or adjusting camera angles, at an early stage in the development process.

- The Recommendation advises data controllers to regularly review and update their privacy policies to reflect any changes in the application’s use of personal data.
Data controllers should conduct privacy impact assessments and adopt a risk-based approach for the development of mobile mapping applications. Individuals affected by mobile mapping applications must be given proper notice about the processing of their personal data in the specific context of the application. Given the nature of mobile mapping applications, the Privacy Commission recommends that data controllers notify the Privacy Commission of the processing of personal data at the time of collection. Images that are no longer useful for the specific purpose for which they were collected should be deleted.


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