

World Data Protection Report

International Information for International Businesses

Monthly news and analysis of data protection and privacy issues from around the world

Volume 11, Number 1

January 2011

BELGIUM

DPA Issues Guidance On Mobile Mapping Applications

By Wim Nauwelaerts and Cédric Burton, of Hunton & Williams LLP, Brussels.

On December 15, 2010, the Belgian data protection authority (“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 by 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.

In its Recommendation, 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 this context in order to assess the lawfulness of the application.
- The Recommendation highlights the need for industry to develop tools, products and applications in accordance with the **privacy by design principle**. Some privacy measures (*e.g.*, blurring of faces and license plates or adjusting camera angles) should therefore be implemented at an early stage in the development process.

- 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 providing a general notice via the data controller's website or a press release. In addition, individuals whose images are recorded should be able to receive an information note if they approach the image capturing vehicle with questions. A proper notice should include at least the following information:
 - the name of the data controller;
 - the purpose of the processing;
 - the type of personal data processed;
 - a summary of the privacy impact assessment;
 - the measures taken to mitigate privacy risks (*e.g.*, implementing an online tool that enables individuals to opt out from the processing); and
 - information on how to contact the data controller. This information could perhaps also be displayed on the vehicle recording the images.
- In terms of **data retention**, personal data collected through mobile mapping should be retained for no longer than necessary to fulfill the purpose specified

at the time of collection. Images that are no longer useful for the specific purpose for which they were collected should be deleted.

- Data controllers should implement the necessary technical and organizational **security measures**. In this specific context, the Privacy Commission recommends that data controllers:
 - perform a privacy impact assessment;
 - appoint a person in charge of monitoring the proper implementation and efficacy of the selected security measures; and
 - provide a summary of the privacy impact assessment to the relevant supervisory authority at least six weeks before putting the application into use.
- Finally, data controllers must **register** their mobile mapping applications in Belgium with the Privacy Commission prior to capturing images through mobile mapping.

The text of the Privacy Commission's Recommendation, in French, can be accessed at http://www.privacycommission.be/fr/docs/Commission/2010/recommandation_05_2010.pdf.

Wim Nauwelaerts is Counsel and Cédric Burton is an Associate in the Brussels office of Hunton & Williams LLP, where they focus their practice on privacy and data protection. Wim Nauwelaerts is also a member of the World Data Protection Report Editorial Board. The authors may be contacted at [wnauwelaerts@hunton.com](mailto:w nauwelaerts@hunton.com) and cburton@hunton.com.