Reconsidering Location Tracking

by Greg Nojeim [1]
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Yesterday, we joined the ACLU, EFF and EPIC in calling on the 6th U.S. Circuit Court of Appeals to rehear *U.S. v. Skinner*, the GPS cell phone location tracking case [2]. A panel of the 6th Circuit ruled that tracking a cell phone's location by repeatedly "pinging" the phone over a three-day period did not require a warrant. The amicus brief [3] we filed yesterday asked the full Sixth Circuit to consider this issue in light of the concurring opinions filed by five justices in the *U.S. v. Jones* [4] U.S. Supreme Court case which came down earlier this year.

We also pointed out that the panel's legal conclusion was based on a material misunderstanding: that cell phones normally "give off" GPS location information. Instead, mobile providers have to take a special step -- sending a signal to the phone to direct it to produce the GPS data. Unless they take that step, there is no location data at the provider for the government to seize. As a result, the court should not have analyzed the case under the third party records doctrine, which says a person has no Fourth Amendment interest in information shared with a third party.

- warrant
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- location tracking
- gps
- Big Foot
- 4th Amendment

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