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RSR Research: Privacy and the Public Domain

By [Nikki Baird, Managing Partner \(http://www.retailwire.com\)](http://www.retailwire.com)

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Through a special arrangement, presented here for discussion is a summary of **an article** (<http://www.retailwire.com/document/summary/1377>) from *Retail Paradox*, Retail Systems Research's weekly analysis on emerging issues facing retailers.

In late November, there was a big flap in the U.S. about Footpath by Path Intelligence, a tracking software that detects the signal coming out of your mobile phone and uses it to track your path through a location, typically a mall but also potentially in a large format retailer. It requires the location to install hardware to do the tracking, but nothing is installed on the shopper's mobile phone, not even a chance to opt out. Theoretically, the location is supposed to put up signs notifying shoppers that this is happening, but it's not exactly a requirement.

The signal that comes out of the mobile phone does include identifying information about the phone itself, but Path Intelligence says that it scrambles that data right away so that no one ever knows anything personally identifiable about the owner or carrier of the phone.

Proponents say nothing personally identifiable ever gets used and it ultimately benefits shoppers because retailers can be better at serving them from the insights they get from the data. Critics claim shoppers don't get to opt out except to turn off their phones, the only benefit falls on retailers looking to sell more stuff, and retailers will only eventually be tempted to use that private information.

I get the outrage. If you have an expectation of privacy, then you have every right to be upset.

The problem is that whole expectation thing. An example: Google provides an easy search of the web — for free. In exchange, it collects information about you that it uses to make money. Offline has similar tradeoffs.

But is it reasonable to have an expectation of privacy in a public space? If I'm in a store, I'm not in my house. I'm not on my private property. Someone who knows me could easily recognize me and flag me down. Should I object that she waved at me because she's invading my privacy?

Should a consumer, in a public venue like a mall, have the ability to opt out of footpath tracking? If a mall really wanted to, it could achieve the same end with people following you around or by using cameras. As long as they're not harassing you, they have just as much right to be there as you do — more so, since they're acting on behalf of the location's owners.

So why not mobile phones? If you're out and about and letting your phone spill its unprotected data everywhere all the time, where anyone can see your face just as easily, it seems difficult to me to make a case for an expectation of privacy.

If you don't like it, don't take it out on Path Intelligence and their breed of analytics. Direct your outrage where it belongs: the handset manufacturer and your wireless carrier. The solution begins at the source of the problem — your mobile phone.

Or, you could always buy some tin foil.

- **[Privacy and the Public Domain - RSR Research](http://www.retailsystemsresearch.com/document/summary/1377)**
<http://www.retailsystemsresearch.com/document/summary/1377>

Instant Poll

Should a consumer, in a public venue like a mall, have the ability to opt out of footpath tracking via their mobile phone?**Comments:**

This isn't much different than being watching via LP cameras. It will get really interesting when this technology is used in a crime investigation. I smell a "Law and Order" episode.

BRAINTRUST +

David Dorf, Sr. Director of Technology Strategy, Oracle Retail (/profile/114584/david-dorf)

Absolutely consumers should have an opt-out, or even better, have to opt-in. Malls using this technology should clearly post signs at all entrances with opt-out instructions. We are seriously approaching "1984" here, and what makes it more insidious is that it's all through the willing use of technology.

BRAINTRUST +

Dan Berthiaume, Editor, Independent consultant (/profile/165379/dan-berthiaume)

The consumer should absolutely have the ability to opt out of this type of tracking. The ability to opt out should be done at the device level as Nikki suggests. My biggest complaint is that these technologies and tracking capabilities are always touted to bring more value to the shopper. Rubbish! Most of this data and its insight are about flogging the shopper with forcing more impressions of stuff to buy under the guise of being more 'relevant'. Brands should respect their customers and be using these insights for establishing a meaningful dialog, not just looking over their shoulder to see what else I can shove into your hands.

BRAINTRUST +

Adrian Weidmann, Principal, StoreStream Metrics, LLC (/profile/77671/adrian-weidmann)

The worry is in the thought of tracking, not in actually doing it. By bringing up the topic, Path raised consumer anxiety. Anything that causes consumer to become anxious in this economy spells trouble for the retail location causing it.

In actuality, consumers lose little privacy the way Path tracks their movements. If retailers and malls can improve their offerings through tracking traffic, consumers will benefit.

This is a public relations issue more than a practical one.

BRAINTRUST +

Max Goldberg, Founding Partner, The Radical Clarity Group (/profile/17470/max-goldberg)

Consumers should be made aware that this is occurring at their mall and have the opportunity to opt out. It appears everyone wants to know every movement made and the cell phone is the tool. Every day there are more announcements about people be tracked by their cell phones. It a little behind schedule but is appears 1984 has finally arrived.

BRAINTRUST +**[Steve Montgomery, President, b2b Solutions, LLC \(/profile/127312/steve-montgomery\)](/profile/127312/steve-montgomery)**

There's a difference between tracking devices and tracking people, and a greater difference still in then sending communications or offers. I think people should be able to opt-out of their personal data being shared, and should opt-in to communications but feel less concerned about malls tracking devices to observe non-personal traffic patterns.

BRAINTRUST +**[Matthew Keylock, Senior Vice President, New Business Development and Partnerships, dunnhumbyUSA \(/profile/136830/matthew-keylock\)](/profile/136830/matthew-keylock)**

I am in agreement with most of the prior comments. Yes, we should be afforded the ability to opt out of footpath tracking. I wonder if we will be given that option?

BRAINTRUST +**[Ed Rosenbaum, CEO, The Customer Service Rainmaker, Rainmaker Solutions \(/profile/161200/ed-rosenbaum\)](/profile/161200/ed-rosenbaum)**

This is a philosophical question that not so much focuses on the ability and the fact of tracking, but not having an easy way to opt out. If someone follows me with a camera, as the story says, I think I have the right to call a police officer to stop the harassment because that is what it is. If someone waves to me, I have the options of cutting them short or ignoring them. If my phone signal is being tracked, I should, in view of my rights of privacy, know about it and be able to opt out. We justifiably in the area of medical information go to great lengths to ensure privacy of data; the same applies to a program that tracks you in a mall -- it just should not be allowed if I don't want to be tracked.

BRAINTRUST +**[Roy White, Business Development Executive, RetailWire \(/profile/128280/roy-white\)](/profile/128280/roy-white)**

I'm all for opt-in. That way, only the customers who've opted in can see the clear benefits to being tracked. Oh, wait...what benefits?

BRAINTRUST +**[Cathy Hotka, Principal, Cathy Hotka & Associates \(/profile/125228/cathy-hotka\)](/profile/125228/cathy-hotka)**

YOU opted in when you bought a device that YOU allowed to send out the signals. As Nikki pointed out, your face is also an "emanation" that YOU elect to put in a public place. The problem here is that much of society has not yet come to grips with what technology has done. Much like primitive peoples who thought that cameras captured their souls, modern society is in varying stages of learning that as Scott McNealy of Sun Microsystems said, "You have no privacy, get over it."

It has been noted that young people often have no concept of the "privacy" that seems to be so treasured by older folks. Social media has played a role here. So it will likely take a long time for this particular issue to find resolution in any society, much less across societies.

A related way of seeing this issue is the fear engendered by the thought, "Big brother is watching you!" This fear is being stood on its head by the reality that technology -- the internet and assorted tools available to the public -- is now WATCHING BIG BROTHER! This is causing fundamental unrest in society with things like Wikileaks on the fringes. But the rapid dissemination to any who are interested, of minute details about things like Fast and Furious, are having a profound impact on government.

It is true that government (and big business) has greater resources to "spy" on the citizenry, but the fundamental tools (web, cameras, phones and other devices) are so widely available that individual citizens can collect, analyze and disseminate information that the CIA could have only dreamed of 50 years ago.

In some ways, the advantage is to the citizenry, because government is a concentrated mass, more easily focused on, while the citizenry is generally more diffuse -- choking Big Brother with data. Here is where Google and other search/data structurers hold the winning cards.



Herb Sorensen, Ph.D., Scientific Advisor TNS Global Retail & Shopper, Adjunct Senior Fellow, Ehrenberg-Bass Institute (/profile/7814/herb-sorensen-ph-d)

The devil in the details of the current approach to cell phone tracking is the phrase "is not currently being used to...".

History is pretty clear -- if the ability TO do something exists, eventually someone will exploit that ability to their advantage.

Consumers are absolutely correct in their outrage -- at the phone companies. As Nikki concludes, that's who we should be upset with. Consumers should have the ability to opt out of the signal emitting from the phone, period. The time to be informed of this and of the consequences (lost service options like navigation) should be explained when the consumer purchases the phone. That way the phone companies are at least giving the consumer the ability to make an informed choice.



Ben Ball, Senior Vice President, Dechert-Hampe (/profile/3237/ben-ball)

I'm with Max, Matthew and Herb on this one. Sure, people should be able to opt out if they want to. But I don't really understand what all the uptightness is about. That an unidentified person who happens to be stopped and looked at socks for four minutes at Macy's and then went to the grocery store to look at cereals for five? I like the argument that cell phone technology is giving us tools against "Big Brother," although I confess that I never much feared Big Brother in the first place. I also like the number of kidnappings, murders and crimes that have been solved by the ability to track cell phones. If your spouse or partner were a victim and their phone was tracked to a specific location and it helped save them, wouldn't that be a good thing?

BRAINTRUST +**Warren Thayer, Editor & Managing Partner, Frozen & Dairy Buyer (/profile/54/warren-thayer)**

You know, most of us really don't have anything to hide, including me, but I'd be opposed to in store tracking simply to prevent the marketers from figuring out how to get into the few blind spots (otherwise known as decompression zones) that exist any more. Stop it! Leave us alone!

BRAINTRUST +**Lee Peterson, EVP Creative Services, WD Partners (/profile/115396/lee-peterson)**

Along with saying "good-bye" to a variety of things to which we have had in our lives -- a daily newspaper, certain network television content, a landline phone, how (and, when and if) we receive our U.S. postal mail, the content and frequency of our magazines, payment methods for goods and services, etc. -- so too will consumers be modifying their lives in the area of privacy.

Frustrating? Perhaps, as each of us will have to lay plans as to how we choose to deal with it. Government bureaucrats are not going to figure it out, as they have their own issues in providing privacy.

Technology takes us to a brave new world. At the same time, it provides a window that, at times, we wish remained closed. Privacy will be one of the major social topics of discussion over the next 10 years. And, as in most instances, people will line up on topically different sides of a line.

BRAINTRUST +**Roger Saunders, Managing Director, PROSPER BUSINESS DEVELOPMENT / BIGinsight (/profile/154006/roger-saunders)**

Shoppers should have the ability to opt out of this type of footpath tracking. Sure, there are some very grey areas when it comes to privacy, but a friend waving me down in the mall is a far cry from a retailer collecting personal info from my cellphone. And most consumers are likely to have serious concerns about whether an overly ambitious merchant will eventually tap into that personal info, as well as what could potentially happen if the info falls into the wrong hands.

In this case, retailers need to be transparent about what they're doing, allow shoppers to opt out and help keep their brand trust intact.

BRAINTRUST +**Tim Henderson, Independent Retail Consultant, Independent (/profile/54998/tim-henderson)**

If they want to spend their money to observe my shopping patterns in their stores, I say be my guest. The benefits of this technology in tracking criminal activities is far greater than any loss of privacy about shopping behavior. The biggest shame is that the stores don't use the acquired data better.

BRAINTRUST +**Art Williams, Retail Marketing Consultant/Analyst, Independent (/profile/73/art-williams)**

I find this "analysis" -- it's really more like a pro-tracking editorial -- either naive or disingenuous (take your pick): most people wouldn't find being shadowed by someone all day, or someone sitting outside their window staring at them as OK, simply because public exposure is involved; nor is the "you agree to this when you buy a phone" comeback...you're paying for a phone to make private calls, not a tracking device. Opt-out seems like the least that can be offered.

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