

Tracking people: controversies and challenges

Tagging and Data Ownership

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One of the ethical issues which has arisen in our discussions in the workshops on tagging has been the collection, storage, and use of personal data. By "personal data", I mean data which can be used to identify a living person (loosely following the definition given in the General Data Protection Regulation of 2016). Naturally, companies operating wearable tracking devices collect a significant amount of data about a person who is wearing such a device. Who owns that data?

It seems that there are at least three possible answers to this question. Firstly, it may be that the person wearing the tag is the rightful owner of the data produced by that tag. However, does this make sense? If an offender is wearing a tag, do they own the data which is produced by that tag? Ownership generally implies the right of disposal and destruction, but surely the point of tagging an offender is, at least in part, for a person in authority to monitor the activities of that offender. It seems, then, to make little sense to allow the offender to have control over the data which is produced by the device they are wearing.

A second possibility is that the data is owned by the company which operates the tag. In this case, a company may design, develop, and take to market a new tracking device, and then operate that device on behalf of a client. Should this company then have ownership rights over the information produced by the tag? Once more, this seems counterintuitive. In many cases tags may produce extremely sensitive and private information, which may be relevant to the client and the person wearing the tag, but not to the company who made the tag.

The third possibility is that it is the client who owns the information returned by the tag. In this case, by "client" I mean somebody such as the prison service in the case of offenders, or a care home in the case of somebody living in that home, which has purchased the tag and placed it on the individual (presumably with that person's consent). Once more, though, this might lead to feelings of discomfort. Would we be happy with such an organisation having the freedom to dispose of or destroy data relating to an offender or somebody in a care home?

Alternatively, it may be that ownership is simply the wrong paradigm through which to be viewing the way in which we treat personal data. There are, after all, other grounds by which we may exercise control over things that might otherwise harm us. The most common of these is the exercise and recognition of a duty of care. In this case, the person who owns data is not relevant (if, indeed, anybody "owns" it), but the person who has control of that data is not free to dispose of it or destroy it. Rather, they have a duty of care to the person who may be harmed by the release of that data to treat the data accordingly.

This is not to say that a duty of care approach is necessarily better than thinking about personal data in terms of ownership, nor that this approach is unproblematic, but it would seem to be important that we consider all the alternatives, rather than finding ourselves stuck on a track which leads only to ownership.