Travel Data and Privacy

I. Conceptual overview:

A. Importance of travel data

B. Past limitations on capability of abuse (lack of abuse not due to lack of government or commercial desire):
   1. Potential for anonymous travel (no domestic passport in many countries)
   2. Lack of PNR indexing

C. Shared interest of (1)industry and (2)government surveillance agencies in indexing travel records into comprehensive personal travel dossiers.

D. What CALEA and laws requiring mobile phone location information are to communications, CAPPs-II and other proposals are to transportation (mandating transformation of travel infrastructure, especially airline reservations, into a global infrastructure of surveillance of the movements of people).

II. Special complicating factors for travel data privacy:

A. Fear of air travel disproportionate to actual risk: selling surveillance programs in the guise of security
See <http://hasbrouck.org/articles/fear.html>
   1. travel agencies and agents
   2. CRS's (Computerized reservation Systems), a/k/a GDS's (Global Distribution Systems)
   3. PNR processors (e.g. Airline Automation)

C. Patriot Act, etc. blurring distinction between corporate and government databases (biggest danger of partial victory: government data retention limited, but same data retained by commercial entities and readily available to governments on request)

III. Current proposals for government and commercial uses of travel data and the conversion of the travel reservation infrastructure into a traveller surveillance infrastructure

A. APIS (Advanced Passenger Information systems)
   1. Limited to intl. flights (passport required)
   2. ICAO standard limited to data on passport)
   3. API was first govt.-mandated data collection

B. US-VISIT (fingerscan, digital facial photo)
   1. exempt only if biometric passport
   2. biometric and biographic travel history

C. TWIC (Transportation Worker Identification Credential)
   1. biometric, RFID (bar code considered but rejected)
   2. designed to be readily extensible to "users of the transportation system"

D. CAPPS-II (Computer-Assisted passenger Prescreening, v. 2)
   1. 3 directives to require:
      a. Reservation for each passenger
      b. "Name +3": home address, home phone, DOB
      c. Evidence/credential of identity
   2. Imposed through security directive:
      a. secret
      b. airlines forbidden to transport if don't comply -- no direct burden on individual
      c. How to get standing to challenge CAPPS-II? (1st Amendment: freedom of assembly?)
E. Biometric and RFID passports and travel documents
1. ICAO (International Civil Aviation Organization) working group on MRTD (Machine Readable Travel Documents)
2. IATA (International Air Transportation Association) working groups on:
   a. Passenger Reservations (RESCOM)
   b. CRS Harmonization (CRSHWG)
3. Simplifying Passenger Travel
   <http://www.Simplifying-Travel.org>
4. "Registered Traveller" (a/k/a "trusted traveller")

IV. Commercial travel data handling, use, retention and sharing
See: <http://hasbrouck.org/articles/travelprivacy.html>
and <http://hasbrouck.org/blog>

A. Bulk PNR (Passenger Name Record) archive transfers:
   1. jetBlue Airways -> Torch Systems (TSA request)
   2. Northwest Airways -> NASA (DOT role/request?)
   3. American Airlines (and others) -> CAPPS-II contractors (via Airline Automation; DOT role?)

B. Current practices for commercial uses of travel reservations fail to meet any norm of data protection:
   1. Usually no privacy policy at all
   2. No oversight – policies routinely violated
   3. Flagrant violation of EU and Canadian law
   4. Who owns the data?
   5. Purpose restrictions on use/disclosure
   6. Access by the data subject

V. Regulatory and legislative activity and litigation

A. USA
   1. CAPPS-II oversight (DHS Privacy Office; Congress)
   2. Travel privacy legislation (not yet introduced)

B. European Union (Committee on Citizens' Freedoms and Rights, Justice, and Home Affairs, ("LIBE Committee"); EDRi.org (European Digital Rights); Statewatch.org

C. Canada -- Bill C-17; see
   <http://hasbrouck.org/blog/archives/000127.html>

VI. Gilmore v. Ashcroft, Hiibel v. Nevada, and anonymous travel