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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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October 13, 2014

The Honorable Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Holder:

I am writing to urge the Department of Justice (DOJ) to continue and expand its efforts to combat stalking apps. These dangerous applications for mobile devices enable stalkers and domestic abusers to secretly monitor the communications and locations of their victims. In recent years, I have worked to bring attention to this problem and improve protections for mobile users. I appreciate the DOJ's responsiveness to the concerns I have raised. But we need to strengthen our efforts to stop stalking apps once and for all. That will require both congressional action and DOJ's expanded efforts beyond what it has done so far.

On October 24, 2011, I led a group of senators who called on the DOJ to investigate and, if possible, prosecute developers and distributors of stalking apps. I was very pleased to learn recently that, shortly after we sent our letter, an investigation of the stalking app StealthGenie began. Now, after three years of investigation, the maker of StealthGenie has been indicted – the DOJ's first criminal case related to the advertisement and sale of a stalking app.

This is a very important and welcome development, and it highlights the danger of stalking apps. StealthGenie allowed users to monitor victims' calls, text messages, emails, and location. Assistant Attorney General Leslie R. Caldwell of the Criminal Division rightly observed, "Apps like StealthGenie are expressly designed for use by stalkers and domestic abusers who want to know every detail of a victim's personal life – all without the victim's knowledge."¹

At the same time, this case underscores the need for stronger tools to go after the makers and marketers of these applications. The developer of StealthGenie was indicted for development and sale of a "surreptitious interception device" that recorded call, text messages, emails, and other electronic communications. However, federal officials have few tools to stop the secret collection of location data – a key feature of StealthGenie and other stalking apps. In June 2014 testimony before the Senate Judiciary Subcommittee on Privacy, Technology, and the Law (Privacy Subcommittee), Cindy Southworth of the National Network to End Domestic Violence detailed how GPS stalking is used to commit acts of violence against their victims. As Ms.

¹ Press Release, Department of Justice, Pakistani Man Indicted for Selling 'StealthGenie' Spyware App (Sept. 29, 2014), *available at* <http://www.justice.gov/opa/pr/pakistani-man-indicted-selling-stealthgenie-spyware-app>.

Southworth noted in her testimony, stalking is a crime in all fifty states, but federal law does not clearly prohibit the secret collection of location data used to commit these crimes.²

As Chairman of the Privacy Subcommittee, I have been working to make sure that the federal government has the necessary tools to fully address the proliferation of stalking apps, and this will require that Congress pass new legislation. I have introduced the Location Privacy Protection Act, which was reported by the Judiciary Committee to the full Senate in December 2012. The Location Privacy Protection Act would ban the development, operation, and sale of stalking apps, and the proceeds seized from sales of stalking apps would be directed toward anti-stalking efforts. The bill would also enhance the data and law enforcement training available regarding these apps.

While Congress ultimately must enact such legislation to fully strengthen our federal efforts to protect Americans' location privacy, there remains more that the DOJ can do under current law to stop those that develop and market stalking apps. More specifically, there are at least three steps that the DOJ can and should take. First, while the indictment of StealthGenie was an important milestone, I hope to see such efforts replicated against makers of similar applications.

The DOJ also plays an important role in supporting state and local efforts against GPS stalking. The DOJ's Office on Violence Against Women has funded anti-stalking efforts for several years, but more must be done. Detective Brian Hill of the Anoka County Sheriff's Office in Minnesota testified before the Privacy Subcommittee that local law enforcement "do not have the resources, staffing time, training, or forensic equipment to examine mobile devices for GPS stalking apps operating in stealth mode."³ State and local law enforcement need further support from the federal government to address the specific issue of stalking apps.

Finally, we know that stalking apps are a major problem, but official statistics on their use are outdated. Relying on 2006 data, before the proliferation in the use of smartphones, the Bureau of Justice Statistics estimated that more than 26,000 persons are victims of GPS stalking annually. In May 2011 testimony before the Privacy Subcommittee, Jason Weinstein of the DOJ's Criminal Division warned about the increasing use of mobile devices for stalking.⁴ Several news organizations, including a local television station in Minneapolis, have reported that stalking apps have contributed to an increase in stalking and are presenting a new challenge for domestic violence shelters.⁵ Based on such reports, coupled with the growth in mobile technology, I expect that the number of GPS stalking victims has increased exponentially since

² *Location Privacy Protection Act of 2014: Hearing on S. 2171 Before the Subcomm. on Privacy, Technology and the Law of the S. Comm. on the Judiciary*, 113th Cong. 2 (2014) (statement of Cindy Southworth, V.P. of Dev. and Innov. at the Nat'l Network to End Domestic Violence), available at <http://www.judiciary.senate.gov/imo/media/doc/06-04-14SouthworthTestimony.pdf>.

³ *Id.* (statement of Detective Brian Hill), available at <http://www.judiciary.senate.gov/imo/media/doc/06-04-14HillTestimony.pdf>.

⁴ *Protecting Mobile Privacy: Your Smartphones, Tablets, Cell Phones and Your Privacy: Hearing Before the Subcomm. on Privacy, Technology and the Law of the S. Comm. on the Judiciary*, 112th Cong. 1 (2011) (statement of Jason Weinstein, Deputy Asst. Att'y Gen.), available at <http://www.judiciary.senate.gov/imo/media/doc/11-5-10%20Weinstein%20Testimony.pdf>.

⁵ See e.g., Jennifer Mayerle, *Cell Phones Have Made Stalking Easier, Scarier*, CBS MINNESOTA (WCCO) (Oct. 1, 2014), <http://minnesota.cbslocal.com/2014/10/01/cell-phones-have-made-stalking-easier-scarier/>.

2006. It is vital that we have accurate information about the scope and nature of the problem in order to address it most effectively.

Given the risk of stalking apps to Americans' privacy and safety, I ask that you respond to the following questions regarding DOJ's plans to address this issue:

1. Is the DOJ investigating and pursuing the prosecution of additional developers and marketers of stalking apps beyond StealthGenie?
2. What resources is DOJ directing to state and local authorities to support and train law enforcement officers as they fight crimes related to stalking apps?
3. Does the Bureau of Justice Statistics, or another agency within DOJ, plan to provide an updated estimate of the number of victims of stalking apps, including victims of GPS stalking?

Location-based services can offer many benefits for consumers, such as helping them navigate the roads to their destination or locate lost items. However, stalking apps are a dangerous abuse of this technology. Ending the proliferation and use of these apps is vital to protecting victims of stalking and domestic violence. I look forward to working with you further to strengthen protections for Americans' location privacy.

Sincerely,



Senator Al Franken
Chairman, Senate Judiciary Subcommittee
on Privacy, Technology and the Law