

July 20, 2022

Anindya Datta
CEO and Chairman, Mobilewalla
5170 Peachtree Road
Atlanta, GA 30341

Dear Anindya Datta,

On June 17, 2022, the Supreme Court of the United States ended the constitutional right to safe, legal abortion, overturning the landmark reproductive rights rulings of *Roe v. Wade* and *Planned Parenthood v. Casey*.¹ As of July 20th, 13 states have already banned abortion, though judges have currently blocked those bans in five states. Over the next few weeks, we could see a number of additional states criminalize abortion in all or some circumstances.²

Following this, law enforcement agencies and prosecutors in states that have criminalized abortion will likely seek to subpoena access to geolocation and other data to identify people who have sought abortions, including, potentially, those who travel to other states to access reproductive services, or who seek to access virtual clinics that provide medication abortion by providing safe and effective drugs such as mifepristone and misoprostol.³

The geo-location data collected by your company could easily be used by law enforcement to prosecute those who seek to exercise their reproductive rights. According to the Center for Democracy and Technology, law enforcement agencies already purchase information from data brokers: “[L]aw enforcement and intelligence agencies are among the customers of some data brokers, spending millions of dollars to gain access to private sector databases which often contain very sensitive and very personal information on individuals.”⁴ Further, law enforcement agencies are able to access this data without due legal process or a search warrant.⁵

¹ *Dobbs, State Health Officer of the Mississippi Department of Health et al. v. Jackson Women’s Health Organization et al.*, US Supreme Court, 2022 at: https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

² See, e.g., *Tracking the States Where Abortion Is Now Banned*, New York Times, 2022 at: <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>

³ *The Abortion Pill*, Planned Parenthood, at: <https://www.plannedparenthood.org/learn/abortion/the-abortion-pill>

⁴ Bradford Franklin, Sharon; Nojeim, Greg and Thakur, Dhanaraj, *Legal Loopholes and Data for Dollars: How Law Enforcement and Intelligence Agencies Are Buying Your Data from Brokers*, Center for Democracy & Technology, December 2021 at: <https://cdt.org/insights/report-legal-loopholes-and-data-for-dollars-how-law-enforcement-and-intelligence-agencies-are-buying-your-data-from-brokers/>

⁵ Bradford Franklin, Sharon and Thakur, Dhanaraj, *New Report Documents How Law Enforcement & Intel Agencies Are Evading the Law and Buying Your Data from Brokers*, Center for Democracy & Technology, December 2021 at: <https://cdt.org/insights/new-cdt-report-documents-how-law-enforcement-intel-agencies-are-evading-the-law-and-buying-your-data-from-brokers/>. According to this article, “In general, when government agencies want access to Americans’ electronic information, existing statutes such as the Electronic Communications Privacy Act (ECPA) require them to seek legal process, or the Fourth Amendment of the Constitution requires them to obtain a search warrant. However, law enforcement and intelligence agencies have taken advantage of legal ambiguities to purchase data from brokers in an end-run around otherwise applicable legal requirements.”

The data collected by your company can also be used by private actors seeking to identify and harass people who seek to exercise their reproductive rights. In states that provide private citizens the ability to sue abortion providers, this information could also be used as part of judicial proceedings. For instance, a recent report described how a private citizen was able to purchase data on people who visited Planned Parenthood clinics.⁶

Furthermore, the data provided by companies such as yours can be easily de-anonymized. According to the Electronic Frontier Foundation, “Data brokers sell rich profiles with more than enough information to link sensitive data to real people, even if the brokers don’t include a legal name. In particular, there’s no such thing as ‘anonymous’ location data. Data points like one’s home or workplace are identifiers themselves, and a malicious observer can connect movements to these and other destinations.”⁷ App IDs can also be used to identify someone’s identity.⁸

We are concerned about the significant privacy and security risks posed by the sale or other disclosure of geolocation data collected and made available by your company in the context of the Supreme Court decision overturning *Roe v. Wade*. In states where abortion is criminalized, and in the case that abortion is criminalized nationally, as anti-abortion advocates have signaled they are seeking to do, prosecutors will use various means to hunt down, prosecute and jail people for obtaining critical reproductive health care, while private individuals will likely use this same information to harass people seeking to exercise their reproductive rights, and in some states pursue legal action against them.

To that end, we ask you to respond to each of the following questions:

1. Has your company conducted a human rights impact assessment or other due diligence to identify and address human rights risks associated with collecting data that can be used to prosecute people seeking to exercise their reproductive rights?
2. What steps, if any, has your company taken to protect the privacy rights of those seeking to exercise their reproductive rights in the context of the Supreme Court decision to overturn *Roe v. Wade* and the ensuing criminalization of abortion in a number of states?
3. Has your company adopted any policies to restrict the sale and disclosure of data that could be used to prosecute or otherwise harass those seeking to exercise their reproductive rights to law enforcement or private actors?
4. Who is authorized or can be authorized to access the data you collect? Are there any limits on who can purchase or acquire access to data that can be used to prosecute people seeking to exercise their reproductive rights?

⁶ Cox, Joseph, *Data Brokers are Selling Location Data of People Who Visit Abortion Clinics*, Vice, May 2022 at: <https://www.vice.com/en/article/m7vzjb/location-data-abortion-clinics-safegraph-planned-parenthood>

⁷ Gebhart, Gennie and Cyphers, Bennett, *Data Brokers are the Problem*, July 2021 at: <https://www.eff.org/deeplinks/2021/07/data-brokers-are-problem>

⁸ Gebhart, Gennie and Cyphers, Bennett, *Data Brokers are the Problem*, July 2021 at: <https://www.eff.org/deeplinks/2021/07/data-brokers-are-problem>

5. What additional measures, if any, have you taken to limit the ability of state or private actors to use the data you collect to prosecute or harass those seeking to exercise their reproductive rights?
6. Does your company plan to comment publicly on any mitigation measures you may adopt in response to the risks outlined in this letter?

As outlined in the UN Guiding Principles on Business and Human Rights, all companies have a responsibility to respect human rights and should: (i) avoid causing or contributing to adverse human rights impacts through their own activities; and (ii) seek to prevent such impacts linked to their products and services. The corporate responsibility to respect human rights is independent of the State's own human rights obligations.⁹ Further, according to the International Covenant on Civil and Political Rights, Art. 17(1), ratified by the United States in 1992, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."¹⁰

As you may be aware, other location data brokers are starting to act. SafeGraph, for example, stopped selling information related to visits to abortion clinics after a *Vice* journalist reported on the dangers.¹¹ We encourage your company to take similar actions. In addition, we urge you to take steps to stop the collection and disclosure of data related to abortion and reproductive rights.

We request that you respond to this letter by August 3rd, 2022. Please note that we might quote or reference your response in our advocacy work. We would be pleased to meet with you or your team to explain our concerns further, and we look forward to your written response.

Sincerely,
Amnesty International USA
Access Now
Fight for the Future

⁹ *Guiding Principles on Business and Human Rights*, UN Office of the High Commissioner for Human Rights, 2011 at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf. See specifically UNGP Principles 11 through 14.

¹⁰ *International Covenant on Civil and Political Rights*, UN Office of the High Commissioner for Human Rights, 1966 at:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹¹ Mangan, Dan, *Data broker SafeGraph stops selling abortion-provider information*, CNBC, May 2022 at:

<https://www.cnbc.com/2022/05/04/data-broker-safegraph-stops-selling-abortion-provider-information.html>