

Little chip evokes Big Brother

High-tech tracking brings privacy fears.

By Tresa Baldas

STAFF REPORTER

A TINY TRACKING chip that can do everything from detect spoiled milk to monitor consumers' shopping habits has caught the ire of privacy advocates and lawmakers who fear the technology will further erode privacy rights.

And that fear has prompted a half-dozen states in the last year to introduce legislation that would limit the use of the technology, known as Radio Frequency Identification, or "RFID." The technology uses tiny chips affixed to products to track items from the factory through distribution and eventually to the store shelf.

Privacy lawyers assert that as RFIDs get smaller and cheaper—about a penny a piece—they will start popping up in the near future on everyday items, such as razors, lipsticks and blue jeans.

A big concern is that data gathered from RFID, which is based on the same technology used in the E-ZPASS toll booth system, will wind up in the hands of the government and ultimately be used to spy on people.

In statehouses in California, Utah, Virginia, Maryland, Massachusetts and Missouri, lawmakers introduced bills that called for either limiting the use of RFID, or researching the technology to determine its impact on people's privacy.

"It's an ingenious technology, but I don't think people have any idea the degree to which it can be used to invade their lives and really rob them of their personal privacy," said California State Senator Debra Bowen, a lawyer who introduced a bill that would require businesses that use RFID

to tell customers about it and get express consent before tracking and collecting any information.

"Right now, the use of it is fairly limited, but in the not too distant future, we're going to see RFID chips being woven into clothes, placed on shampoo bottles, and everything else people buy," Bowen noted.

"It's one thing if stores use it for inventory control, but it's a whole different ball game if they can check out everything a person buys, tie it to their name, address, and credit card number, then use it for tracking and marketing purposes," Bowen added. "That's going to invade people's personal privacy in ways that a lot of folks haven't fully thought through."

The California bill died, as did several other state proposals, but legislators are planning to repolish and reintroduce them in the next year.

Meanwhile, the American Civil Liberties Union (ACLU), the Electronic Frontier Foundation (EFF) and the World Privacy Forum are asking for a voluntary moratorium on RFID technology in consumer goods, mainly because there is no regulation of the RFID industry, or federal or state laws that would limit its use.

Scott Blackmer, an attorney with Chicago's Potter Group law firm who has specialized in technology standards and privacy in the last two decades, said RFID raises Big Brother fears. "Before 9/11, it wasn't so much about Big Brother, but a lot

of little brothers. It was Safeway, and the university or the hospital you visited that had information about you...but after 9/11 it's the big brother who has access to what all the little brothers have. And in a democratic society, that has to be a concern," Blackmer said.

The RFID bandwagon

While fears of RFID abuse loom, many large retailers, including Wal-Mart, and the U.S. Department of Homeland Security, have jumped on the RFID bandwagon and are working to get the technology in full swing within the next few years.

For example, Wal-Mart and the U.S. military have told their hundred largest suppliers that cartons and pallets must be equipped with RFID tags by January 2005. MasterCard and American Express also have been testing RFID-enabled credit

cards. Gillette plans to put RFID tags into packages of razors and blades.

Benetton also announced similar plans last year to weave RFID tags into its designer clothes, but met opposition from consumer groups.

Interest in RFID, however, goes beyond consumer goods. The U.S. government has plans to begin testing American passports with computer chips by late October, and it wants to have all new passports containing biometric data by 2006, according to federal officials. Biometrics is the use of biological properties, such as fingerprints



LISA SOTTO: *Business use of RFIDs does not alarm her, but government use does.*

or retina scans, stored on a “smart card,” to identify subjects.

For the ACLU, the use of RFID technology on identity documents is the most troubling aspect of the issue.

“It’s one thing to track goods, it’s another to track people,” said Barry Steinhardt, director of the ACLU’s Technology and Liberty Program. “We went from Wal-Mart’s boxes to people’s passports in the blink of an eye.”

Steinhardt testified against the use of RFID chips on American passports at a July hearing in Washington before the U.S. House Committee on Energy and Commerce.

During his testimony, Steinhardt noted that “if we at the ACLU have learned anything over the past decade, it is that seemingly distant privacy invasions that sound right out of science fiction often become real far faster than anyone has anticipated.”

Science fiction is becoming reality at the San Francisco Public Library, which plans to embed RFID tracking devices into its books and other library materials—something that has met opposition from privacy advocates.

“The eventual tracking threat of RFIDs is bad enough, but library materials are informational goods that raise intellectual freedom issues. We’re concerned that libraries won’t be the only ones who can find out what books you read,” said Lee Tien, a lawyer for the EFF, which is protesting the library’s RFID plan.

“We’re also concerned that library RFID use will add to the already significant momentum behind RFIDs. How bad can they be if your friendly neighborhood library uses them?” Lee said.

Many privacy lawyers say RFID technology has created a buzz in the business world, with many companies becoming eager

to use it. Companies see RFID as a useful marketing tool and a way to keep better track of sales and inventory.

“It’s an amazing technology. It can really change the way business is done,” said **Lisa Sotto, a privacy lawyer who advises businesses with New York’s Hunton & Williams.** “I personally as a consumer am not concerned about the use of RFID technology at the consumer level. But I am concerned about it with regard to government uses of the data.”

Here’s how these RFID tags work: By matching a tag’s unique electronic product code to a customer’s credit card or store discount card, a retailer could track a shopper’s movements, and tailor its marketing pitches to what a customer is wearing or to the items in his or her cart. Every RFID chip has a unique serial number, which allows stores to track each customer’s comings and goings.

A key sticking point in the RFID debate is whether companies should keep RFID tags active after checkout, or disable them with “kill machines.” Keeping them active makes it easy for companies and government investigators to establish the whereabouts of people by reading the active tags on their clothing and other items in private and public places.

For example, a small tag embedded into the heel of a shoe or the inseam of a jacket for inventory control could be activated every time a customer enters or leaves the store where the item was bought. That tag could also be read by any other business or government agency that has installed a compatible reader.

Lawyers doling out advice

Robert Jackson, a telecommunications law specialist with Reed Smith in Washington, said many lawyers are talking

to their clients about this hot new technology, telling them: “You need to start thinking about this because, if you don’t, you’re either not going to be using it and get beat by your competitors. Or, you’re going to be using it and somebody’s going to sue you.”

To avoid possible lawsuits, lawyers offer these following tips to companies interested in using RFID:

- Am I telling people what’s going on?
- Am I keeping their information secure?
- Am I giving people an option?

“What you certainly can’t get away with is introducing something like this covertly, because when people do find out that you’re carrying a [RFID] card...you’re going to have a backlash,” Blackmer said.

Meanwhile, privacy advocates are calling for federal legislation that would require all RFID users to label items that contain the RFID problems.

“We absolutely must have labeling. It is crucial...if someone desired to hide an RFID tag in a product, there is no way a consumer could visually protect themselves from that,” said Katherine Albrecht, director of Consumers Against Supermarket Privacy Invasion and Numbering (CASPIAN), sponsor of the RFID Right to Know Act of 2003, which hasn’t been acted on by Congress for 16 months.

Many privacy attorneys, however, said the RFID industry is too young for regulation. “I’m not sure that we’re quite ready for regulation yet,” Jackson said. “We just don’t know that much about how the technology and where the markets are going.” **NLJ**

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