Chapter 92
Privacy Expectations in Passive RFID Tagging of Motor Vehicles: *Bayan Muna et al. v. Mendoza et al.* in the Philippine Supreme Court

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ABSTRACT

This paper describes Bayan Muna et al. v. Mendoza et al., a 2009 Philippine Supreme Court petition involving the first and ongoing certiorari challenge to the Philippine government's implementation of passive Radio Frequency Identification (RFID) technology in the registration of all motor vehicles in the Philippines. As a matter of constitutional jurisprudence and policy, the passive use of RFID technology in this context does not infringe constitutionally-protected privacy expectations, entirely consistent with the Executive Branch's law enforcement powers. The paper shows how the proposed RFID tagging of motor vehicles in the Philippines satisfies the tests of reasonable expectations, and by dealing only with already publicly available information, avoids spectral fears of data mining and government abuse.

I. INTRODUCTION

For a postcolonial and post-dictatorship democracy such as the Philippines (Desierto, 2009), governmental acquisition and use of information almost always conjures fears of reversion to a police state. In 1998, the Philippine Supreme Court struck down an initial governmental attempt to implement a national ID system *(Ople v. Torres et al.,* 1998) due to the lack of previous legislative enactment, but the Court also declared in *obiter dicta* that the proposed national ID system violated an already jurisprudentially-recognized *(Morfe v. Mutuc,* 1968) constitutional right to privacy. The same *obiter dicta* stressed provisions in the 1987 Philippine Constitution (CONST. (Phil) art. III, secs. 1, 2, 3(1), 6, 8, 17) and Philippine statutes (Civil Code Arts. 26, 32, 723; Revised Penal Code

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Arts. 229, 290-292, 280; Republic Act Nos. 4200, 1405, and 8293; Rule 130(C), Sec. 24, Revised Rules of Evidence) that explicitly recognized the right to privacy as well as its various facets. In 2006, however, the Court upheld an Executive Branch measure that created a multi-purpose uniform ID system applicable to governmental agencies and entities that had, up to then, issued separate ID cards to private citizens availing of basic governmental services such as health insurance (through Philhealth), pensions (through the Government Service Insurance System or Social Security System, or GSIS and SSS, respectively), and licensing of motor vehicles (through the Land Transportation Office or LTO) *(Kilusang Mayo Uno et al. v. The Director General et al.,* 2006). The unanimous Court in *Kilusang Mayo Uno et al. v. The Director General et al.* (2006) ruled that this multi-purpose uniform ID system did not violate the right to privacy, since the system would only consolidate information already publicly available in government agencies; there were adequate safeguards that already protected such information and controlled its use; and the system served an important public policy in promoting the efficient delivery of basic governmental services.

In the last quarter of 2009, the Land Transportation Office (LTO) commenced implementation of a passive Radio Frequency Identification (RFID) tagging system for all motor vehicles in the Philippines, as part of the LTO's ongoing comprehensive Information Technology (IT) Project involving centralized driver licensing, motor vehicle registration, law enforcement and traffic adjudication, among others (*The Philippine Star,* 2009). The passive RFID tagging system forms an intrinsic part of the automated processes for identifying motor vehicles, stopping colorum vehicles, and identifying motorists that do not comply with LTO's traffic and motor vehicle emissions regulations (Ruiz, 2010). It is a limited or "passive" implementation of RFID technology (Weinberg, 2007-2008, p. 782; Werbach, 2007, p. 2330; Quirk, 2006; Magid et al., 2009, p. 10), since the tags used do not have any internal battery or global positioning system (GPS) capability (Noda, 2010; Paredes, 2010; Pascual, 2009).

Likewise, these tags do not emit any signal. In the LTO's implementation of the passive RFID tagging system, non-battery powered identification tags or strips would be attached to a motor vehicle and a device called an RFID reader. The RFID reader would be used by LTO officers to identify vehicles by sending a radio frequency signal to the RFID tag. The tag then sends back via radio waves an identifying code to the RFID reader. The RFID reader then downloads pertinent information from the existing database of the LTO which identifies the motor vehicle. This process occurs almost instantaneously, with only the following information appearing on the LTO officer's RFID reader screen: the RFID unique code, Motor Vehicle File Number, Engine Number, Chassis Number, Plate Number, Motor Vehicle Type, Color, Make, Series, Year Model, Body Type, Motor Vehicle Classification, Franchise, Route, Owner/Organization Name, Last Registration Date, and Alarms (settled & unsettled) (Pascual, 2009). These data have long been publicly available at the LTO offices for physical inspection.

By end of 2009, however, several groups filed a petition before the Philippine Supreme Court (subsequently docketed as *Bayan Muna et al. v. Leandro R. Mendoza, Secretary of the Department of Transportation and Communications et al.,* under G.R. No. 190431) challenging the LTO's implementation of the passive RFID tagging system, alleging, among other grounds, the violation of motorists' rights to privacy (Ruiz & Panesa, 2010). An overwhelming majority of transport groups and organizations filed a motion for intervention with the Supreme Court, supporting the implementation of the RFID system (Punay & Ronda, 2010; Ronda, 2009; *Business Mirror Online,* 2009). Pending the dispute, the Philippine Supreme Court issued a temporary restraining order on LTO's nationwide implementation of the RFID tagging system (Dalangin-Fernandez,