



BEST BEST & KRIEGER ^{LLP}
ATTORNEYS AT LAW

The Internet of Things

SEATOA 15th Anniversary Conference

St. Augustine, FL, March 14, 2016

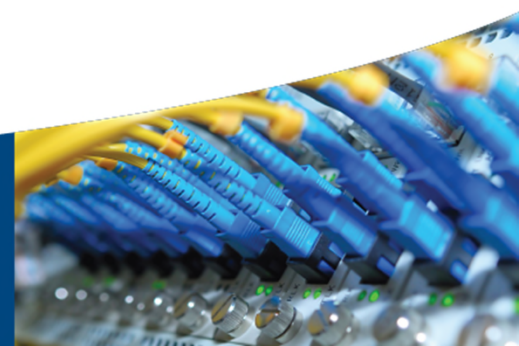
Gail A. Karish

Best Best & Krieger, LLP

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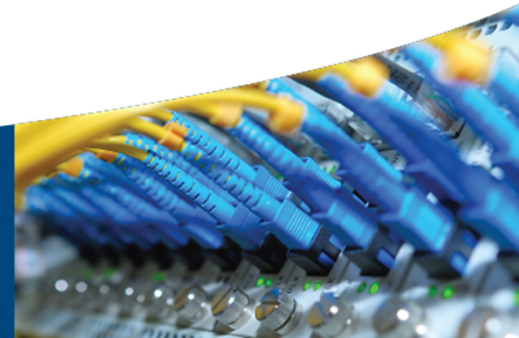


Telecommunications Law

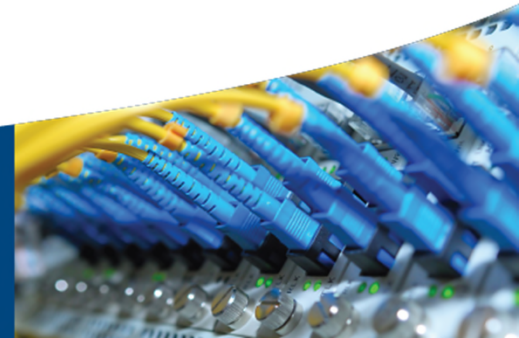


Agenda

- What's Collecting Data?
- What Do Cities Need to Worry About?
 - Privacy Issues
 - Retention and Security
 - Public Records Act Requests
 - Liability Issues

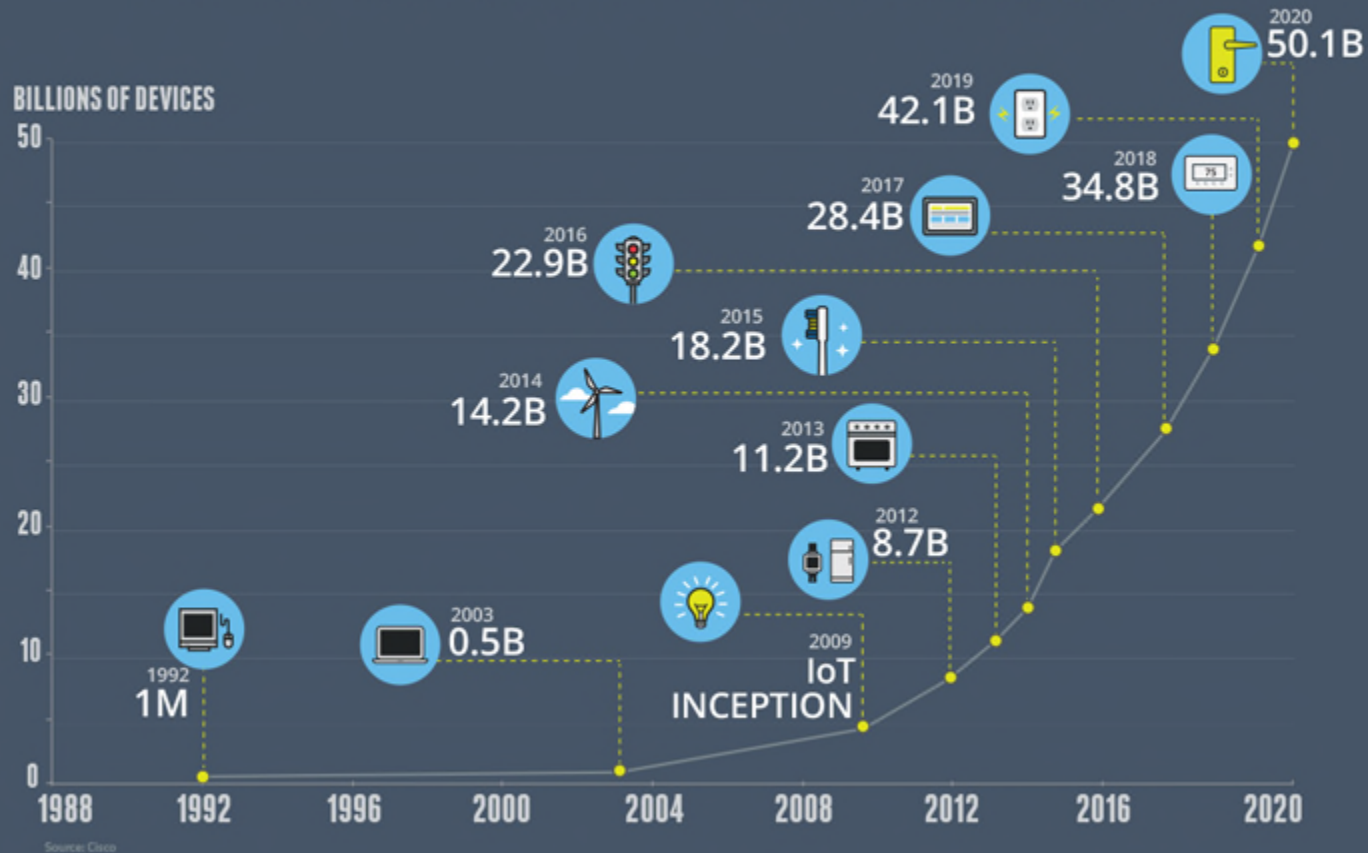


What's Collecting Data?

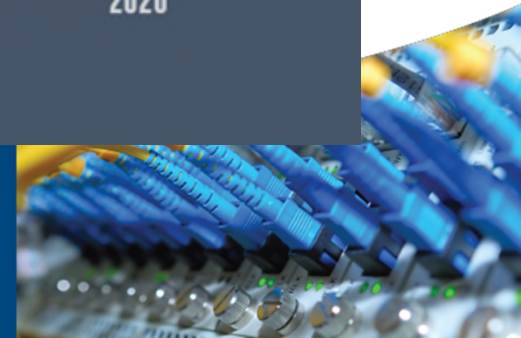


GROWTH IN THE INTERNET OF THINGS

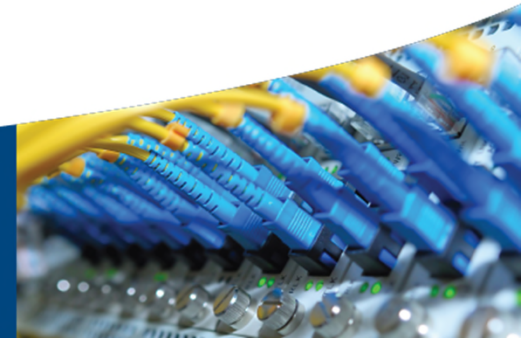
THE NUMBER OF CONNECTED DEVICES WILL EXCEED **50 BILLION** BY 2020



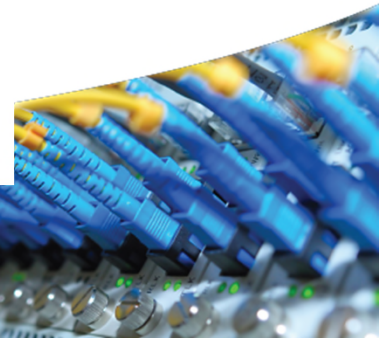
Source: NCTA.com



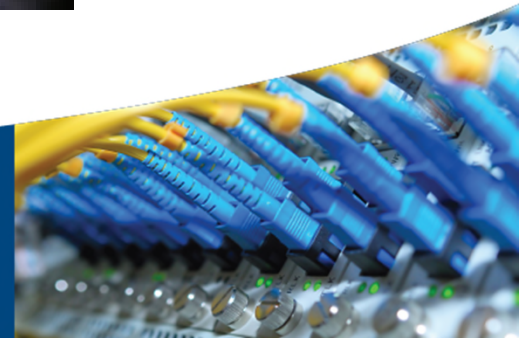
Handheld Devices



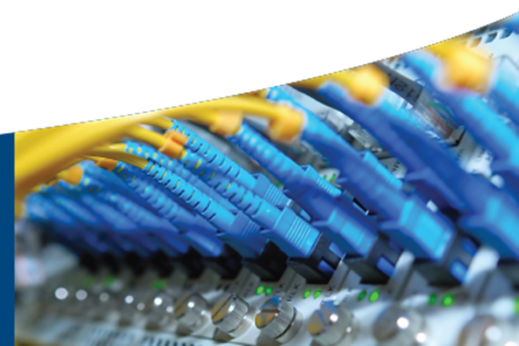
Automated License Plate Readers



Body Worn Cameras



Smart Meters



Drones



Parking systems

A parking sensor to zero-out meters?

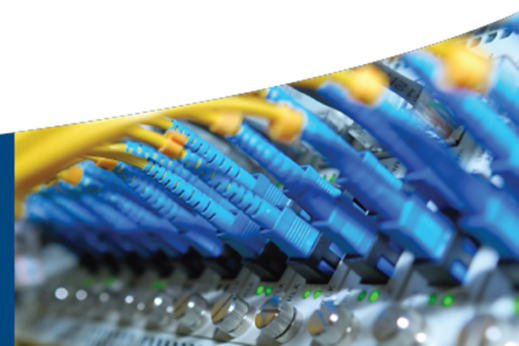
1- Zeroes out the meter



Or a complete parking solution to improve your entire parking ecosystem for all space types?



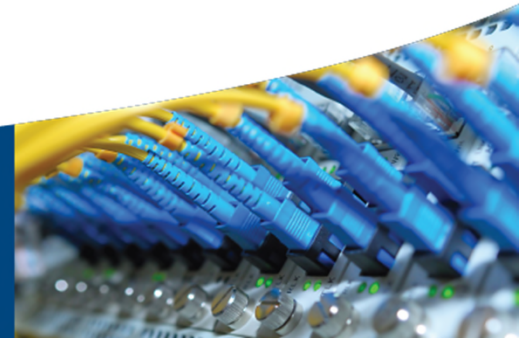
Source: Streetline.com



Driverless Cars



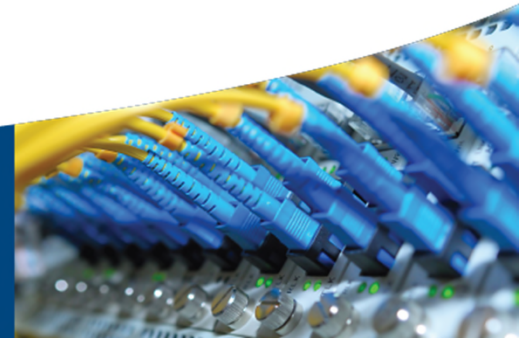
What Do Cities Need to Worry About?



Data Privacy

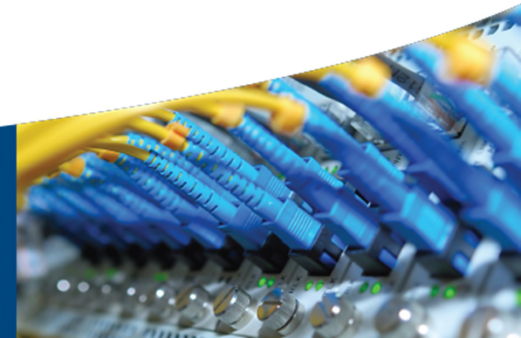
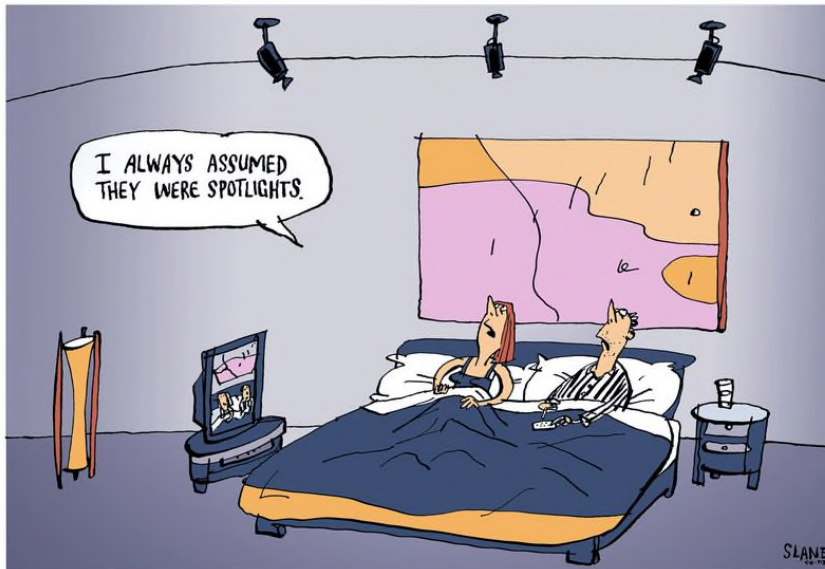


- The contours of privacy and when a “reasonable expectation” of privacy exists are evolving to account for new data collection technologies



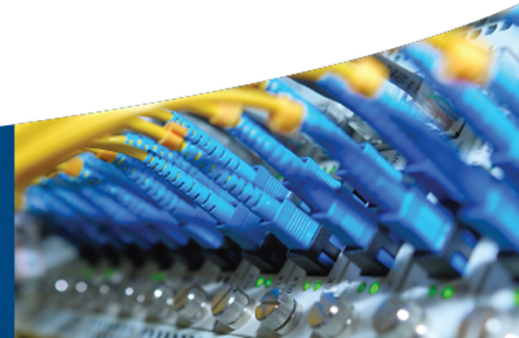
Privacy and Surveillance

- Fourth Amendment
 - *California v. Ciraolo* (US 1986)—chartered plane at 1,000 feet over backyard *not a search*
 - *Florida v. Riley* (US 1989)—helicopter at 400 feet over backyard *not a search*



Privacy and Surveillance

- Fourth Amendment
 - *United States v. Jones* (US 2012)—GPS mounted to car violated 4th on trespass theory
 - *U.S. v. Vargas* (E.D. Wash 2014)—pole mounted camera surveilling front yard for 6 weeks violated 4th
 - *U.S. v. Houston* (6th Cir. 2016)—pole mounted camera surveilling front yard for 10 weeks *not* a violation of 4th



Privacy and New Technologies

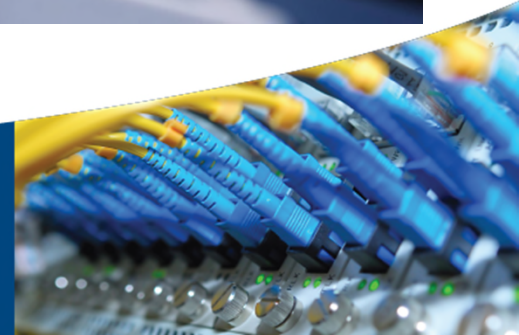


- Drones—can fly/record over homes
- BWCs—officers can record when lawfully present
- ALPRS—Arstechnica has shown how data can be used to pinpoint where people live and work
- Driverless cars—if connected, may retain data on all trips
- Smart meters—how much electricity, gas, water you use and when



Data Retention and Security

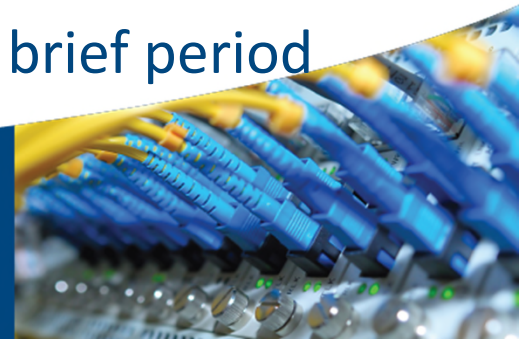
- What you capture, you have to keep (and keep secure)
- Data retention policies for any and all technologies collecting data are essential
- What is being kept?
- For how long?
- Who has access? When?



Retention and Security

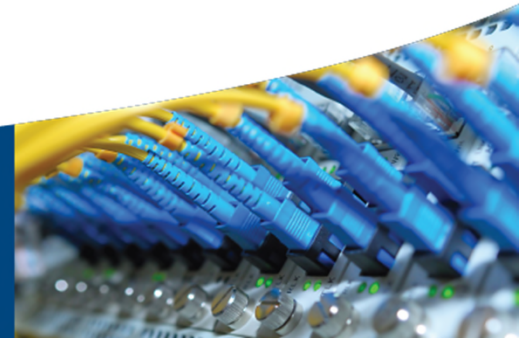


- All data should be stored and retained in accordance with applicable retention laws (In CA, see Gov. Code §§ 26202, 34090)
- Data should be retained for no longer than useful for agency purposes
- Data with no value should be destroyed within an appropriately brief period



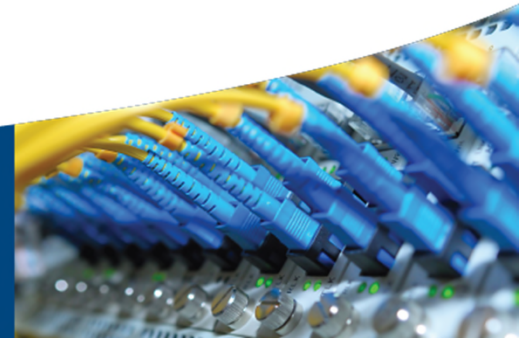
Data Retention and Security

- Apple and FBI locked in court battle over unlocking County-owned phone used by San Bernardino attacker
- Dispute could have been avoided if the County policy had required all departments to install “mobile device management” software on County phones



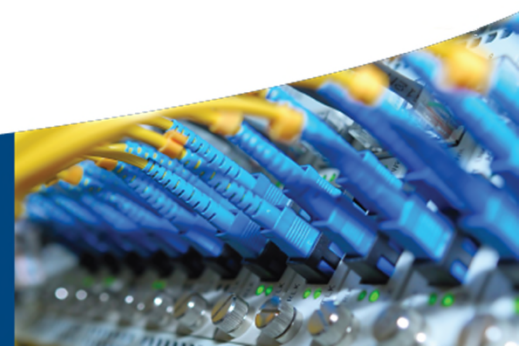
Public Records Requests

- Structure policies based on PRA disclosure requirements and exemptions.
 - For law enforcement data, Investigative exemption (CA Gov. Code § 6254(f))
 - *County of Los Angeles Board of Supervisors v. Superior Court* (2015, currently before CA Supreme Court on review)



Public Records Act

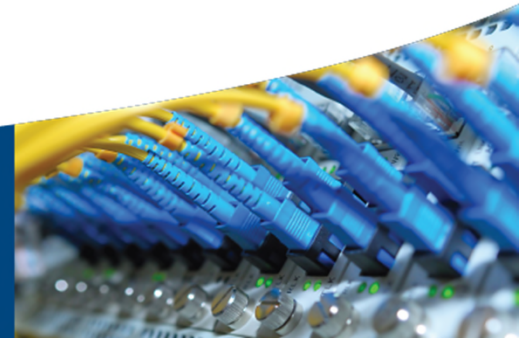
- Are there applicable exceptions?
 - Time, expense, editing and redactions, harassment
 - Personal information/invasion of privacy
 - Investigative records
 - 3rd party confidential information
 - Public interest
- Who will decide on release?
 - Designate who is to decide
 - Police
 - DA
 - civilian executive
 - court



Public Records Act

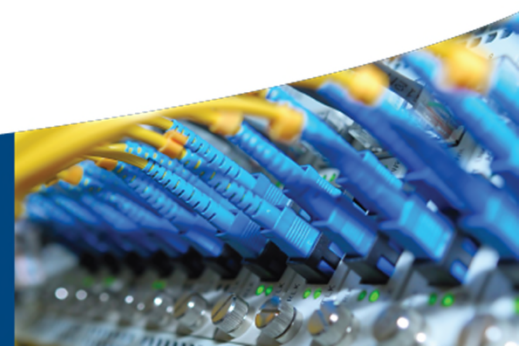


- Uniform disclosure policy is essential
- You cannot release only the information that makes the agency look good



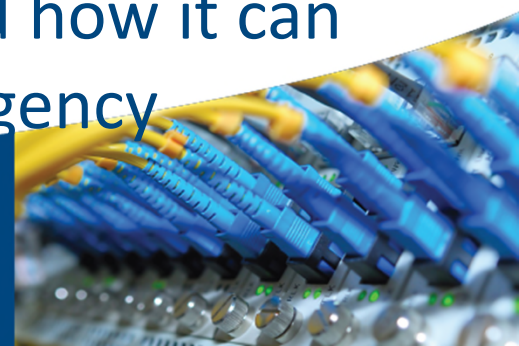
Liability Issues

- Invasion of privacy?
 - Improper Collection
 - Improper Retention
 - Improper Security of data
- Inadvertent/
Inappropriate
disclosure?
- Misuse of data?



Suggested Actions

- Catalogue what *technologies* you are using to collect data
- Catalogue what *data* is being collected and how it is used
- Do you have a policy covering collection? retention? disclosure? If not, establish one.
- Consider policy in light of new technologies *before* they are adopted
- Review policies often to keep them up-to-date as laws develop
- Know what you are using, when you are using it, and how it can help your agency



Questions?



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