

Date: 9/27/12

To: NTIA Multistakeholder Process Participants

FROM: Susan Grant, Consumer Federation of America

RE: comments on Mobile Application Transparency Code of Conduct draft dated 9/10/12

These comments have been prepared in consultation with the ACLU, the Center for Digital Democracy, Consumer Action, Consumer Watchdog, Common Sense Media, The Electronic Privacy Information Center, and Privacy Rights Clearinghouse. This draft provides a good starting point for thinking collectively about how to improve the transparency of data collection and use in connection with mobile applications. We appreciate the acknowledgement by key participants in this process that transparency is only one element of fair information practices and the commitment to address the other elements in due course. Indeed, it is impossible to think about transparency without considering issues such as what the data practices are and how the code should be enforced. Progress on the other fair information practices regarding mobile apps will be a factor in our final assessment of the work on transparency.

I. Entities Providing Transparency

A. The term “individually identifiable data” is not defined. We suggest that it should mean “any data linked to a person or mobile device.” Other definitions, such as that proposed by the FTC in relation to COPPA, might be useful to look at. The data cannot be limited to information collected “from a consumer through a mobile app.” The mobile application provider should provide transparency about its practices regarding data linked to a person or a mobile device regardless of the source of the data or the means by which it is collected. The mobile application provider should also provide transparency about the data linked to a person or a mobile device that any third party collects from the app.

B. a. App markets should require all app providers that wish to offer apps through their platforms to provide consumers with transparency about their data practices as set forth in this code. A hyperlink to this information is not adequate as consumers are unlikely to click on it. We would like to propose a tiered approach. On the app market where the app is offered, there should be a clear and concise summary of the app provider’s key data practices, presented in a standardized format (much like the well-known nutrition label). This would enable consumers to easily compare the data practices of apps that provide similar functions. Second, there should be a link from that summary to information labeled something like “What this means in practice.” This would explain the data practices in more detail, in simple language, and give some examples of how these practices actually work. Finally, there could be a link to the app provider’s formal privacy policy. We note that this subsection applies only to app markets; we suggest that it should be made clear if an app provider adopts this code and offers its app in another manner, such as from its own website, it should provide transparency in the same format.

B. c. It should be made clear that an app market can decline to carry any app that does not comply with the transparency requirement. There should be a separate section in the code that addresses accountability; further comments in that regard are provided later in this document.

B. d. We support the first sentence (to be consistent, it should refer to mobile application providers, not developers). The second sentence, however, is absolutely inappropriate for inclusion. The liability of an app market or other intermediaries is a question of law; it cannot be dictated by a voluntary code of conduct.

II. Elements of Transparency – We suggest changing this to Transparency of Data Practices

B. This information should include the sources of the data.

C. Transparency requires an explanation of all uses of data that is linked to a person or mobile device. The code should also make clear that the app provider and any parties with which it shares the data can only use it for the purposes that have been described.

D. Transparency requires making clear what types of data are shared with third parties and the types of third parties with which that data is shared. We do not believe that any distinction between affiliated or non-affiliated parties is meaningful to consumers when data linked to a person or mobile device is shared with another party.

E. In addition to telling consumers how they can exercise choice, the means of exercising choice should be designed to be quick and easy to do directly from the mobile device. For data that is collected but not used for the *technical* functionality of the application (for instance, data that is used to generate revenue to help financially support the app provider), the code should require the app provider to give the consumer choice with respect to the collection, use and sharing of that data. That choice should include the ability to delete data that has already been collected.

F. Consistent with FTC policy, if there are material changes to app provider's data practices or the data practices of any entity with which it shares the data, the app provider should notify the consumer at least 30 days in advance and such changes should not apply to previously collected data without the consumer's express, affirmative consent.

G. In indicating that the entity has pledged to follow this code of conduct (we would avoid the word "adheres" because an entity could say it has adopted the code but not adhere to it) information should also be provided about to whom one would complain about non-compliance, including the Federal Trade Commission and the Code Administrator (see the accountability section later in this document).

There are several other important data practices that should be made transparent: how long the data is retained; to what degree data collected through the app is mixed with data from other sources; how the data is secured; and whether the consumer can access, correct or delete the data, and if so, how.

Ensuring that consumers have greater control over sensitive data, including apps collecting information related to their finances and health (as well as other areas to be discussed) requires providing them with greater transparency and the ability to make informed decisions. We support the FTC and other expert agencies holding a workshop on sensitive data to help identify the issues and best practices.

Ultimately for transparency to be effective, it must provide consumers with information in very simple and straightforward terms about how data is collected and linked by others in the ecosystem, including collection by advertisers or publishers in the app, and disclose how information is linked to others. Vague statements such as “to improve our service” or “to enhance your experience” are not adequate. Technical jargon and acronyms should be avoided, and more descriptive phrases should be used instead of terms such as “3rd parties” (for instance, “other companies that are related to ours,” if sharing only with affiliates, or “other companies” if sharing more broadly). The code should provide guidance about how to describe data collection and use clearly, including examples of “Do’s and Don’ts.” The NTIA should retain experts to help the stakeholders develop such guidance. Providing transparency in multiple languages should also be encouraged.

III. Availability of Transparency

A. Are there any mobile application providers that do not have a website? It seems that it would be very important to have a website where basic information about the provider and the app could be found.

B. In addition to “just in time” transparency about data practices, this information should always be accessible on the mobile device and on a website for review anytime.

It should be made clear that availability of transparency also extends to the consumer’s ability to access the covered information that has been collected about him or her.

IV. Definitions (this is mistakenly labeled as section V in the draft)

B. We are concerned that “sends or receives data over the Internet” in the definition of mobile application may be too limiting considering the fact that data may be transmitted in a number of different ways. It should also be made clear that the code covers apps that can be installed in laptops and automobiles.

Accountability

Provisions for accountability must be included in this and any other voluntary code developed through the Multistakeholder Process. While the Federal Trade Commission may take action in some circumstances, it will not intervene to resolve every question, issue or complaint that may arise. There should be an independent Code Administrator and an Advisory Board with representation from all stakeholders to help provide guidance and enforce the code. There should also be provisions for independent monitoring, especially since consumers may not be in the best position to determine when code violations occur. In addition, there should be provisions for meaningful penalties for noncompliance. We are working on more specific suggestions concerning accountability.