TRUSTe

February 18, 2012

John Verdi
Director of Privacy Initiatives – NTIA/OPAD
U.S. Department of Commerce
National Telecommunications and Information Administration
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Comments to App Developers Alliance discussion draft dated February 4, 2013

Dear John,

TRUSTe applauds the NTIA's efforts to convene stakeholders around a common code of practices for mobile application transparency ("Code"). We believe in the goal of the MSH - to identify a Code that will provide consumers needed privacy disclosures, while also giving developers the ability to continue innovating on the dynamic mobile web. We also appreciate the opportunity to engage in the multi-stakeholder ("MSH") process, and we recognize the many hours of deliberation and discussion that have already gone into the MSH process.

A. Scope of Code, Privacy Dashboard
With regards to the most recent discussion draft dated February 4, 2013 provided by the ACLU, Application Developers Alliance, Consumers Union, and other organizations ("ADA – privacy advocates draft"), we have provided specific comments below.

We also want to make two additional points:
- **Scope of Mobile App Transparency Code** – Discussions around the ADA – privacy advocates draft have also highlighted an important, unanswered question: whether the Code is intended to identify which data elements should be included in a short notice format, or whether the Code should also prescribe how those categories should be represented within the short notice. We believe that a Code should identify data categories and elements, but not prescribe how these categories should be represented (whether through text, or icons, or both) within a privacy notice. Otherwise, the Code runs into the danger of being too prescriptive and may stifle innovation around privacy notices. We hope that the NTIA will take the opportunity at the upcoming MSH meeting on February 21st to clarify this question on the scope of the Code. Additional commentary on this point is included below.
- **ACT Privacy Dashboard** - We also think it's important to continue discussion of the other draft short notice that has been under discussion during the MSH process: the privacy dashboard proposed by ACT that includes icons and language from

TRUSTe, Privacy Choice and others). We look forward to the additional discussion scheduled for the February 21st meeting. We think the privacy dashboard is a more realistic example of how mobile app transparency can be implemented by today's mobile app developer. The dashboard incorporates elements from short notice formats that are already in use in today's mobile app marketplace.

B. Comments on ADA – privacy advocates draft dated Feb. 4th, 2013
For the purposes of a mobile short notice, TRUSTe agrees with the recommendations in the ADA-privacy advocates draft that require that the categories of data (II.A), as well as the types of entities with whom collection and sharing occurs (II.B), be identified within a short notice format. However, we are concerned about language in Section II, as well as Section III, that prescribes the specific ways developers should describe the collection and sharing of identified data elements in a mobile short notice.

Specifically the language in Section II states:
> "Participating apps should display this information in a single screen where possible. The following elements *must be included in the standardized text, which should not change*; icons may be added to the standardized text listed but may not replace text. (text italicized for emphasis*)*."

TRUSTe is strongly opposed to any mobile app transparency code that specifically prescribes how data elements must be represented within a short notice. While we agree that the Code should identify the required data elements, the decision on how to express those elements within the short notice should be left to the individual mobile app developer. In this way, the Code will spur creativity by giving developers the flexibility to incorporate a short notice into their mobile app's design in a way that is consistent with the app's unique look and feel.   This in turn will encourage true competition on privacy notices, while also not binding the developer to a single (and possibly outdated) standard.

TRUSTe research suggests that consumers are already evaluating, and potentially rejecting, online services (including apps) based on its privacy disclosures. So we think it's particularly important to preserve all incentives to compete on privacy in the mobile app marketplace. For instance, in our most recent survey conducted with Harris Interactive, we found that 89% of consumers avoid doing business with companies that they believe do not respect their privacy online; in addition, 72% of smartphone users are more concerned about their privacy now than they were a year ago.[1]

An additional concern stems from the requirement that the ADA-privacy advocates draft include several lines of standardized text – representing this standardized text will be a challenge on the small screen of most mobile devices.

---

[1] See TRUSTe Privacy Index – 2013 Consumer Confidence Edition, available at: http://www.truste.com/us-consumer-confidence-index-2013/

[2] TRUSTe's short notice format also provides the opportunity to link to the text of the full privacy policy. See http://www.truste.com/products-and-services/enterprise-privacy/TRUSTed-mobile-apps .
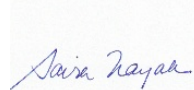
Finally, the ADA-privacy advocates draft does not envision the use of icons - unless the standardized text is also included with the icons. We respect the opinion of the authors of the ADA-privacy advocates' draft (as expressed in several recent MSH meetings) that does not find icons useful in providing privacy notice.   However, our own consumer and usability research demonstrates otherwise – and finds that on their own, icons are an effective way to represent information on the small screen of mobile and wireless devices, especially when they link to additional descriptions about the collection and use of the data that the icon represents. Indeed, this same research supported TRUSTe's own decision to use icons in our proprietary short notice format, which is already implemented by several mobile apps today.[2]

Icons are also recommended in the FTC's most recent report on mobile app privacy disclosures – which found that icons provide the "ability to communicate key terms and concepts in a clear and easily digestible manner.[3] Clearly, icons (that are appropriately tested) can and should be included in the Code as one of the ways developers can provide notification about how an individual's personal data is being collected, shared or used by a mobile app. In such instances, a picture can indeed be "worth a thousand words," allowing developers to provide notification about complicated data collection and sharing - such as the use of analytics or social data by a mobile app – by using a single symbol.

C. Conclusion

TRUSTe appreciates the opportunity to comment on the ADA-privacy advocates' draft. We support development of a Code that gives developers the flexibility to truly compete on privacy and does not stifle innovation for mobile short notice formats. We also appreciate clarification around the scope; especially given the FTC's (Christopher Olsen) comments to the MSH group on Friday, February 15th around the effect that compliance with the Code could have under Section 5 of the FTC Act.

Sincerely,

Saira Nayak
Director of Policy

---

[2] TRUSTe's short notice format also provides the opportunity to link to the text of the full privacy policy. See http://www.truste.com/products-and-services/enterprise-privacy/TRUSTed-mobile-apps .

[3] See discussion on p. 17 – 18 (noting the comments of Facebook, as well as experts Jennifer King and Ilana Westerman), FTC Mobile Privacy Disclosures: Building Trust through Transparency, available at: http://www.ftc.gov/os/2013/02/130201mobileprivacyreport.pdf