

NTIA Privacy Multistakeholder Process
Mobile Application Transparency
Outstanding Issues – Final List
 Updated ~~May 22~~ **June 10**, 2013

Following the April 4, 2013 meeting, stakeholders submitted the following issues to NTIA for inclusion in the final list of outstanding, unresolved issues concerning the draft code of conduct. Duplicate submissions are combined and related submissions are grouped. A few out-of-scope issues were submitted; those issues are not included on the list. Several issues were submitted by multiple stakeholders. The list is ordered from most-submitted to least-submitted.

The intent of this list is to identify open issues that, when resolved, will signal that the code of conduct is final. The list has been updated to reflect stakeholder decisions through ~~May 22~~ **June 10**, 2013.

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| 1. | Should the code require that all data categories listed in Sections II.A and II.B be displayed in the short-form notice, or should the code permit apps to display only the data categories that are collected/shared by the app? |
| 2. | <p>In the short form disclosures described in Sections II.A and II.B, should the code permit apps to add additional, explanatory language to the parenthetical text?</p> <p><i><u>On May 23, 2013 stakeholders resolved this issue, agreeing by consensus that the code should permit apps to add additional, explanatory language to the parenthetical text, so long as the additional language is more specific.</u></i></p> <p>A. Related issue: should the code permit apps to use a portion of the parenthetical text if the app collects only some elements listed in the code parenthetical (e.g. “this app collects your pictures” vs. “this app collects files stored on the device that contain your content, such as calendar, pictures, text, and video”).</p> <p><i>On April 30, 2013, stakeholders resolved this issue, agreeing by consensus that the code should permit apps to use a portion of the parenthetical text if the app collects only some elements listed in the code parenthetical.</i></p> <p>B. Related Issue: should the code permit apps to substitute alternative words that are more specific than the parenthetical text as replacements for the parenthetical text? (e.g. “this app collects your iris scan” vs. “this app collects information about your body, including fingerprints, facial recognition, signatures and/or voice print.”)</p> <p><i>On April 30, 2013, stakeholders resolved this issue, agreeing by consensus that the code should permit apps to substitute alternative words that are more specific than the parenthetical text as replacements for the parenthetical text.</i></p> <p>C. Related issue: should Section III.E be revised to clarify whether: 1) the parenthetical text must be presented beside the bold terms; or 2) whether the bold terms may be presented in a list, with the parenthetical text readily accessible to consumers?</p> |

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| | <p>C.</p> <p>D. Related issue: should the code permit apps to substitute alternative words for the bold terms (e.g. “friends” instead of “contacts”)?</p> <p>D.</p> <p>E. Related issue: should Section II be revised to permit apps to represent the bold terms with icons but no text (an “icons only” approach)?</p> <p><i><u>On May 23, 2013, stakeholders resolved this issue, agreeing by consensus that the code should not permit apps to represent the bold terms with icons but no text (an “icons-only” approach).</u></i></p> <p>F. Related issue: should the code be revised to permit apps to change disclosure formats to adapt to future changes in technology, laws, consumer expectations, and business practices?</p> |
| 3. | <p>In Section IV, should the code: 1) require ready access to an app’s long-form privacy policy; 2) require ready access to a long-form privacy policy “where legally required;” or 3) not require an app to have a long-form privacy policy?</p> <p>A. Related issue: should the code mandate that certain elements be included in an app’s long form privacy policy (e.g. cross site behavioral tracking or data retention policies)?</p> <p><i><u>A. On May 23, 2013, stakeholders resolved this issue, agreeing by consensus that the code should not mandate that certain elements be included in an app’s long-form privacy policy.</u></i></p> <p>B. Related issue: should Section IV’s reference to “data usage policy” and “terms of use” be deleted?</p> <p><i><u>B. On May 23, 2013, stakeholders resolved this issue, agreeing by consensus that Section IV’s reference to “data usage policy” and “terms of use” should not be deleted.</u></i></p> <p>C. Related issue: should Section IV mandate how an app must “provide ready access” to a long form privacy policy, or should the current code language be retained?</p> <p><i><u>On May 23, 2013, stakeholders resolved this issue, agreeing by consensus that Section IV should not mandate how an app “provides ready access” to a long-form privacy policy.</u></i></p> <p>D. Related issue: should the title of the code be revised to indicate that code is primarily focused on short-form privacy notices?</p> |
| 4. | <p>In Section II, should the language regarding de-identification be revised?</p> |

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| 5. | <p>Should the code of conduct include provisions concerning just-in-time-notices?</p> <p>A. Related issue: Should the code permit just-in-time notices to substitute for disclosures in the short notice?</p> |
| 6. | <p>How should data disclosures to business affiliates be treated in the code, specifically in light of the language in Section II.B and Section IV?</p> <p>A. Related issue: should the term “business affiliate” be defined in the code?</p> |
| 7. | <p>Should the code include language stating that the code does not displace obligations under existing regulatory or statutory schemes?</p> <p><i><u>On May 23, 2013, stakeholders resolved this issue, agreeing by consensus that the code should include language stating that the code does not displace obligations under existing regulatory or statutory schemes.</u></i></p> <p>A. Related issue: should the code include a provision stating that the code does not apply to the extent that companies’ data collection or sharing practices are regulated by existing laws (e.g. COPPA, Gramm-Leach Bliley, HIPAA)?</p> |
| 8. | <p>Should the code be revised to clarify the code’s application to direct collection of data by mobile ad networks or other third-parties?</p> <p>A. Related issue: when third-party service providers collect information directly from mobile app users, should the code limit the app’s disclosure obligations to data collection authorized by the app?</p> <p>B. Related issue: should Section II.B be revised to require disclosure only when apps “affirmatively share” with third-parties?</p> <p>C. Related issue: should the code be revised to clarify whether data transfers between app developers and app providers pursuant to a contract qualify as “sharing” under Section II.B?</p> |
| 9. | <p>In Section I, should the language “app developers should make a good faith effort to provide consumers with access to the short notice prior to download or purchase of the app” be revised?</p> <p><i><u>On May 23, 2013, stakeholders resolved this issue, approving by consensus the language in the May 16, 2013 draft code – “Where practicable, app developers are encouraged to provide consumers with access to the short notice prior to download or purchase of the app.”</u></i></p> <p>A. Related issue: Should the code address the disclosure practices of mobile app platforms?</p> |

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| | <u><i>A. On May 23, 2013, stakeholders resolved this issue, approving by consensus the treatment of this issue in the May 16, 2013 draft code.</i></u> |
| 10. | In Section II.A, should the language regarding data that is “actively submitted by a user through an open field” be revised? |
| 11. | In Section III.E, should the code reference consent obligations established by existing laws and regulations concerning material, retroactive changes to data collection/sharing practices? A. Related issue: should the code be revised to indicate that a notice of material, retroactive changes needs to be presented for a reasonable period of time? B. Related issue: should the code clarify whether apps must provide a notice of material, retroactive changes if the change is made by a third-party plug-in? C. Related issue: should the code require notice of all retroactive changes, or only changes that result in expanded or unexpected collection or use of data? D. Related issue: should the code be revised to focus disclosures concerning changes to privacy policies on existing app users when feasible? E. Should the code reference other consent obligations? |
| 12. | Should the Section II.A be revised to include notice when an app collects a user’s email address, phone number, name, date of birth, or device ID? |
| 13. | Should Section II(c) be revised to clarify the disclosure obligations regarding apps that share device-specific data? A. Related issue: should the disclosure obligations be different if the app uses persistent device IDs vs. pseudonymous device IDs? |
| 14. | Should the code be revised to make a distinction between: 1) data collection and sharing that is within the expected context of the app; and 2) collection and sharing that is not within the expected context? |
| 15. | Should the code be revised to clarify whether the preamble is operational? <u><i>On May 23, 2013 stakeholders resolved this issue, agreeing by consensus that the preamble should not be operational.</i></u> A. Related issue: should the preamble be retained, revised, or deleted? <u><i>On May 23, 2013 stakeholders resolved this issue, agreeing by consensus that the May 16, 2013 draft preamble should be retained, with a single edit – replacing the first word of the draft “this” with “below.”</i></u> |

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| 16. | In Section II.A should “browser history” be split from “phone or text log?” |
| 17. | Should the language in Section II.A be revised to clarify whether “collected” includes data that is accessed, but not stored, by an app? <u><i>On May 23, 2013 stakeholders resolved this issue, agreeing by consensus that data is not “collected” when it remains local to the device.</i></u> |
| 18. | Should the code be revised to require disclosure of data sharing under Section II.B only when the data categories specified in Section II.A is shared? A. Related issue: In Section II.B, should the code be revised to clarify to users how the Section II.A categories and II.B categories are (or are not) linked? |
| 19. | Should the code be revised to clarify whether data collected for crash reporting triggers disclosure obligations? <i>On April 30, 2013, stakeholders tentatively supported the language in Section II.C (“Companies may collect and use data for purposes that are integral to the app’s operations...”) as resolving this issue, requested the opportunity to further review and possibly revise the language, and flagged this issue for resolution at the May 23, 2013 meeting.</i> <u><i>On May 23, 2013 stakeholders resolved this issue, agreeing by consensus that the May 16, 2013 draft code sufficiently clarifies whether data collected for crash reporting triggers disclosure obligations.</i></u> |
| 20. | In Section IV, should the code require or suggest that companies’ long-form privacy disclosures identify specific business affiliates with whom data is shared? |
| 21. | In Section II.A, should “financial information” be limited to financial account information? |
| 22. | In Section II.A, should “location” specify device location? |
| 23. | In Section II.A, should the definition of “consumer data resellers” be revised? |
| 24. | In Sections II.B.ii and IV, should the phrase “services rendered” be clarified? A. Related issue: should Section IV be clarified regarding the relationship between affiliates, third-parties, app developers, and the contractual relationships between these entities? |
| 25. | In Section III.D, should the code be revised to clarify whether apps are required to present full screens or request a click-through at any point? |
| 26. | Should the code be revised to clarify whether the code imposes obligations concerning consumer access to data collected or shared by apps? |

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| 27. | Should the code be revised to limit adopters' potential liability exposure? |
| 28. | How does the code incorporate the concept of privacy by design? |
| 29. | Should the code be revised to actually address the contemporary mobile app marketing environment? |
| 30. | Should the code be revised to establish a process for updating the code in the future? |
| 31. | In Section II.B, should entity types be disclosed to consumers, or should the degree of third party sharing be disclosed instead? <i>E.g.</i> "no third party sharing," "sharing directly with third parties but no further disclosure," or "sharing directly with third parties plus further disclosure by those third parties to others." |
| 32. | Should the applicability of the code of conduct to "mobile" applications, and the potential applicability of the code to other (<i>i.e.</i> non-mobile) applications, be discussed in Section I? |
| 33. | In Section I, should the code's reference to Fair Information Practice Principles other than transparency be revised? |