

3/28/13 Revisions proposed by Consumer Federation of America, Consumer Watchdog, the Center for Digital Democracy, the Electronic Privacy Information Center, Privacy Times, and Privacy Rights Clearinghouse.

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## **MOBILE APP TRANSPARENCY**

### **I. Preamble: Principles Guiding App Transparency**

This is a voluntary code of conduct for mobile application short notices developed through the Multi-stakeholder Process on Application Transparency convened by the United States Department of Commerce. The purpose of these short form notices is to enhance transparency about apps' data collection and sharing practices.

This code builds on best practices implemented by other industries and incorporates guidance from consumer advocates, app developers, and other entities across the mobile ecosystem. The transparency created by consistently displaying information about application practices as set forth in the code is intended to help consumers compare and contrast data practices of apps, with the goal of enhancing consumer trust in application information practices. This code is drafted to reflect the current state of application practices. As app technology and practices change, transparency practices should evolve to reflect such changes.

This code is intended to balance the objectives of transparency, brevity, and functionality.

- The code is designed to offer meaningful explanations of an app's data collection and ~~third party~~ data-sharing practices.
- Short form notices should be brief, succinct, and in context that a consumer will understand in order to help to enhance app transparency and understanding in the context of the app.
- App transparency standards should be available in a manner that does not interfere with or diminish the user experience.
- Readily implementable: Short notices should be easy for developers to implement in the context of an app.
- Consumers have a variety of perspectives regarding app data practices. Apps should provide transparency ~~to consumers~~ that allows consumers to understand the data practices of apps with which they engage.
- 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.
- ~~Privacy and consumer advocates recognize s~~Some consumers' may choose choice to share data with apps in exchange for a wide variety of tools, content, entertainment.
- Some apps will evolve over time and offer fixes, enhancements, and changes to their original functionality. When apps' data policies evolve in material ways, the apps shall promptly update their disclosures to consumers. The updated disclosure should be presented either in bold, at the top portion of the short notice, or in a similarly prominent means.

- App developers recognize that transparency is just one of the fair information practices, and that the app developer should also adhere to the other FIPPs.
- App developers who adhere to this code of conduct and provide short form notice as described in Section II, are engaging in a practice that is intended to enhance transparency of data practices.
- Some app developers may elect to offer short form notice in multiple languages.

## II. Short Form Notices

Application developers may voluntarily elect to enhance transparency by adopting such notices. Participating application developers and publishers that implement the Mobile App Code shall detail:

- (i) data as listed in II. A as defined below that consumers may or may not know is being collected;
- (ii) the fact that a description of the types of uses of such data can be found in the app's privacy policy;
- (iii) the sharing of ~~such~~ data that can be linked to the app user or user's mobile device with the types of entities listed in II. B -with third parties, if any; and
- (iv) the identity of the company providing the app.

These practices shall be outlined in "short form notices" that shall convey information to app consumers in a consistent manner that is easy for consumers to read and understand.

Participating apps should display this information in a single screen where possible. The following elements must be accompanied by the text that may also include an icon.

### A. Data Collected

Apps shall inform consumers when they collect the types of data as specifically listed below:

- **Biometrics** (information about your body, including fingerprints, facial recognition, signatures and/or voice print.)
- **Browser History and Phone or Text Log** (A list of websites visited, or the calls or texts made or received.)

- **Contacts** (including list of contacts, social networking connections or their phone numbers, postal, email and text addresses.)
- **Financial Information** (Includes credit, bank and consumer-specific financial information such as transaction data.)
- **Health, Medical or Therapy Information** (including health claims and information used to measure health or wellness.)
- **Location (precise past or current location and history of where a user has gone.**
- **User Files** (files stored on the device such as calendar, pictures, text, and video.)

App developers shall employ a mechanism that facilitates ready consumer access to expanded definitions of each data element.

#### B. Data Shared

Apps shall state whether they share data that can be linked to the app user or user's mobile device with any affiliates and/or third parties that fit the definitions in ~~entities~~ ~~from~~ the following list:

- **Ad Networks** (Companies that display ads to you through apps.)
- **Carriers** (Companies that provide mobile connections.)
- **Consumer Data Resellers** (Companies that buy and/or sell consumer information to other companies for multiple purposes including offering products and services that may interest you.)
- **Data Analytics Providers** (Companies that collect and analyze your data.)
- **Government Entities** (Any sharing with the government except where required by law.)
- **Operating Systems and Platforms** (Software companies that power your device, app stores, and companies that provide common tools and information for apps about app consumers.)
- **Other Apps** (The company that built, owns, or controls Other apps that the consumer may not have a relationship with)
- **Social Networks** (Companies that connect individuals around common interests.)

Notwithstanding the disclosure requirement stated in this section, apps shall not be required to disclose such sharing ~~with third party entities~~ where a contract or corporate policy is in place that ~~between the app and the third party~~ explicitly:

- (i) limits the uses of any consumer data provided by the app to the affiliate and/or third party solely to services rendered to the app; and,
- (ii) prohibits the sharing of the consumer data with subsequent affiliates and/or third parties.

### **III. Short Form Design Elements**

Given the different screen sizes, form factors, User Interface (“UI”) options and range of sensors available on devices, short form notice implementations may vary. To adhere to this code, app developers must ensure the following are implemented consistent with the design of the app:

- A. All data elements as described in II.A, and all entities as described in II.B are listed in text that may also include an icon or symbol that conveys the information;
- B. Apps shall differentiate between data that is collected and data that is not collected.
- C. Text and font shall be distinct so as to easily stand out from the page background.
- D. The short notice is readily available from the application. Nothing in this code shall be construed to require a click-through screen prior to installation or use of the application.
- E. Apps that materially change their data collection or data sharing practices shall inform consumers.

### **IV. Linkage to Data Usage, Terms of Use and/or Long Form Privacy Policies**

In addition to implementing short form notices, participating app developers and publishers shall provide ready access for consumers to each participating app’s data usage policy , terms of use, or long form privacy policy where legally required. These documents should include explanations of:

- i. how consumers may request deletion of their data collected by the app, if such deletion is available;
- ii. identification of those business affiliates if any, where the data elements identified in this code are being shared; and,
- iii. ~~any the~~ data retention policies, ~~if any exist~~.

### **Explanation of Proposed Revisions**

Above are proposed revisions to the draft code from Consumer Federation of America, Consumer Watchdog, the Center for Digital Democracy, the Electronic Privacy Information Center, Privacy Times, and Privacy Rights Clearinghouse.

We hope that these revisions will receive favorable consideration by the drafters of the code and the larger stakeholder group. With the exception of the first suggested revision, which is purely for grammatical purposes, the other changes are crucial to our decision whether to endorse the code. Explanations for the other revisions are provided below.

In regard to the second revision, all of the other bullet points in this section are either general principles or principles that are specifically directed to app developers. There is no reason why this bullet point should specify consumer/privacy advocates or any other particular stakeholder constituency; it should be stated as a general principle.

In light of our concern (shared by some industry representatives) that limiting disclosure of data sharing in the short notice to sharing with third parties would be unfair, incomplete, and potentially misleading, we have struck references to third parties in several places throughout the document.

In II. (iii), the reference to “such data” has been changed to “data that can be linked to the app user or user’s mobile device” in order to clarify what type of data II. B. is intended to cover. In checking with the consumer groups who are working directly with the ADA to draft this document, we have confirmed that no exact correlation is intended between the data collected in II. A. and the data shared in II B. Rather, II. B. is intended to cover more broadly the sharing of any personally identifiable data with the specified types of entities. We have thus used the language that has been recently employed by the FTC and others to express this concept and we have also clarified that this only relates to the sharing of this data with the types of entities listed in II. B.

In II. B. we have repeated the revised description of the relevant data and changed “third parties” to “third parties and/or affiliates.” The goal is to ensure that the short notice discloses sharing of this data with *any* entities, no matter whether they are third parties or affiliates, if they fit the descriptions in this section. We have carried these changes through the rest of this section, adding a reference to “corporate policy” to cover situations in which “contract” might not make sense.

We would like to note that we thought about simply adding another category, “affiliates,” to the list of entities in II. B. , but that made no sense. II. B. does not cover *all* sharing of personally identifiable data, only sharing of that data with specific types of entities. Listing “affiliates” as a type of entity would be too broad and would not provide meaningful information to consumers, since they would have no way of knowing what the affiliates do.

We appreciate the addition in IV. of the names of affiliates with which the data may be shared. This is a good idea, but it cannot be a substitute for the revisions in section II. First and foremost, we all know that consumers are unlikely to read the longer notices or terms of service. That is precisely why the MSH effort is focused primarily on the short notices. Furthermore, a list of affiliate names, without any explanation of what they do, is not very meaningful consumers. While the information in the longer notices will be useful for advocates, regulators, academics, and others who might actually read it, it can’t be used as the sole means of making the important disclosures about data sharing that consumers need and that are the point of this entire exercise.

Finally, we suggest changing IV. iii to clarify that however long the data is retained, that information should be included in the longer notices or terms of service. It would be a mistake to allow app developers to think that not having a specific length of time that they keep the data means that no explanation is needed. If the data is kept indefinitely, that is just as important to state as when it is kept for a specific period of time.