FTC ANNOUNCES NEW MOBILE PRIVACY GUIDELINES ON SAME DAY SOCIAL NETWORKING APP SETTLES PRIVACY CHARGES

The Federal Trade Commission (FTC) issued a report containing specific recommendations on improving mobile privacy disclosures for mobile platforms, app developers, advertising networks, and other third parties.

If it is possible to have any doubts about the FTC’s strong and continuing focus on mobile privacy issues, it is worth noting that the new report was issued on the same day that the Path social networking app agreed to pay $800,000 to settle FTC charges that it deceived users by collecting personal information from their mobile device address books without their knowledge and consent, and that it illegally collected personal information from children without their parents’ consent in violation of the Children’s Online Privacy Protection Act (COPPA).

REPORT’S RECOMMENDATIONS
The FTC report notes that because mobile platforms offer app developers and others access to user data from mobile devices (e.g., geolocation information, contact lists, calendar information, and photos) through their application programming interfaces (APIs), platforms have an important role in conveying privacy information to consumers. Accordingly, the report recommends that mobile platforms:

* Provide so-called “just-in-time” disclosures to consumers and obtain their affirmative express consent before allowing apps to access sensitive content such as geolocation;
* Consider providing just-in-time disclosures and obtaining affirmative express consent for other content that consumers would find sensitive in many contexts, such as contacts, photos, calendar entries, or the recording of audio or video content;
* Consider developing a one-stop “dashboard” approach to allow consumers to review the types of content accessed by the apps they have downloaded;
* Consider developing icons to depict the transmission of user data;
* Promote app developer best practices by, for example, (i) adding provisions to contracts with app developers to require them to provide just-in-time privacy disclosures and to obtain affirmative express consent before collecting or sharing sensitive information; (ii) reasonably enforcing these requirements; and (iii) educating

THE BOTTOM LINE
The report’s recommendations are best practices – not rules or regulations. However, they offer a glimpse into the FTC’s likely enforcement stance under Section 5 of the FTC Act, so these are guidelines that the industry certainly should follow. The guidelines should be considered together with prior FTC pronouncements regarding privacy by design and online data collection. The industry’s stakeholders should pay close attention to future announcements regarding guidance, recommendations, initiatives, and significant enforcement proceedings in this area.
app developers on privacy and making important information about consumer privacy considerations available to them as they craft their apps;

- Consider providing consumers with clear disclosures about the extent to which platforms review apps prior to making them available for download in the app stores and conducting compliance checks after the apps have been placed in the app stores; and

- Consider offering a Do Not Track (DNT) mechanism for smartphone users.

It is important to keep in mind that a mobile DNT mechanism already has been endorsed by a majority of the Commission, which believes that it would “allow consumers to choose to prevent tracking by ad networks or other third parties as they navigate among apps on their phones.”

Specifically with respect to app developers, the report recommends that they should:

- Have a privacy policy and make sure that it is easily accessible through the app stores;

- Provide just-in-time disclosures and obtain affirmative express consent before collecting and sharing sensitive information (to the extent that platforms have not already provided these disclosures and obtained such consent);

- Improve coordination and communication with ad networks and other third parties (such as analytics companies) that provide services for apps so the app developers can better understand the software they are using and, in turn, provide accurate disclosures to consumers; and

- Consider participating in self-regulatory programs, trade associations, and industry organizations, which the report said can provide guidance on how to make uniform, short-form privacy disclosures.

In addition, the report recommends that advertising networks and other third parties should:

- Communicate with app developers so that the developers can provide truthful disclosures to consumers; and

- Work with platforms to ensure effective implementation of DNT for mobile.

Finally, the report suggests that app developer trade associations, academics, usability experts, and privacy researchers could:

- Develop short-form disclosures for app developers;

- Promote standardized app developer privacy policies that will enable consumers to compare data practices across apps; and

- Educate app developers on privacy issues.

The FTC’s recommendations – including its continuing emphasis on DNT – complement California’s recently issued mobile privacy guidance, and likely will be considered by the Department of Commerce’s National Telecommunications and Information Agency in connection with its efforts to develop a code of conduct on mobile application transparency. For more information on mobile marketing and privacy and the latest update, please click here for our previous Alert.

PATH SETTLEMENT

In its complaint against Path, the operator of a social networking app that allows users to share personal journals with up to 150 friends, the FTC alleged that the user interface in Path’s iOS app was misleading and did not provide consumers with meaningful choice regarding the collection of their personal information. The FTC also alleged that Path’s privacy policy deceived consumers by claiming that it automatically collected only certain user information such as IP address, operating system, browser type, address of referring site, and site activity information but that version 2.0 of the Path app for iOS automatically collected and stored personal information, including first and last names, addresses, phone numbers, and email addresses, from the user’s mobile device address book.

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The FTC also charged that Path, which collects birth date information during user registration, violated the COPPA by collecting personal information from approximately 3,000 children under the age of 13 without first obtaining their parents’ consent.

In addition to agreeing to pay an $800,000 civil penalty to settle the COPPA charges, Path agreed to establish a comprehensive privacy program and to obtain independent privacy assessments every other year for the next 20 years. The settlement also prohibits Path from making any misrepresentations about the extent to which it maintains the privacy and confidentiality of consumers’ personal information.

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