

Mobile Technology Under The FTC Spotlight

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The Federal Trade Commission recently issued its “Annual Highlights Report,” which provides a snapshot of the agency’s work in 2014. The FTC report illustrates the agency’s growing focus on mobile technology issues, emphasizing many notable enforcement actions and policy initiatives involving mobile purchases, privacy and data security, and mobile cramming issues. In fact, over one-third of the staggering \$642.4 million in total redress and disgorgement ordered across all FTC enforcement actions in 2014 were settlement amounts arising from mobile technology related matters. We highlight some of the FTC’s notable work in this area below.

In-App Purchasing

Google Inc., Apple Inc. and Amazon.com Inc. all drew the attention of the FTC, who complained that the tech giants had used unfair commercial practices by making it too easy for children to make “unauthorized” purchases while using their parents’ devices. In some cases, kids had racked up hundreds of dollars in in-app charges without the knowledge or permission of their parents.

Google and Apple settled their FTC actions to the tune of \$19 million and \$32.5 million, respectively. Refusing to follow suit, Amazon has chosen to litigate the matter instead. In a motion to dismiss that was denied in December of 2014, Amazon argued that it had provided parental controls to block or require passwords for in-app purchases, given refunds to customers that had requested them, and provided sufficient notice of the possibility that charges could be made by those with access to their devices. The case is still pending.

In a related report called “What’s the Deal? An FTC Study on Mobile Shopping Apps” the FTC examined how mobile shopping apps handled payment disputes and consumer data. The study found that the apps failed to provide important pre-download information and disclosures. To improve transparency, the report recommended that companies, prior to download, clearly disclose consumers’ rights and liability limits for unauthorized, fraudulent or erroneous transactions and also disclose to consumers how consumer data is collected, used and shared.

Data Privacy and Security

The annual report also emphasized the agency’s efforts to protect consumer data and privacy in the mobile technology sector. For example, the FTC charged TinyCo Inc., a developer of popular children’s mobile games with the improper collection of children’s information in violation of the Children’s Online Privacy Protection Act. A similar action was brought against Yelp Inc. for a faulty age screening

mechanism used on the mobile app version of their online review site. The companies agreed to settle \$300,000 and \$450,000 in civil penalties for the violations.

Snapchat, Fandango, and Credit Karma were also targeted by the FTC for making misleading claims about the security and privacy practices of their mobile apps and for using lax data security measures. Though the settlements with these three companies did not result in monetary penalties, they are prohibited from making future misrepresentations about the security of their apps, required to implement a comprehensive privacy program, and undergo independent security assessments for the next 20 years.

The FTC has continued to send the message that strong data security promises should not be just promises — they should translate into strong security practices, and that relates to mobile apps in addition to more traditional methods of collecting personal information. Consumers should be able to make informed decisions about the apps they install based on an accurate and reliable understanding of what data is collected and how it is used and protected.

Mobile Cramming

The FTC filed complaints against T-Mobile and AT&T Mobility for their roles in “mobile cramming” or the unlawful practice of billing consumers for unauthorized third-party charges on their mobile phone accounts. These included charges for digital “snacks” like ringtones, wallpapers, and text message subscriptions to horoscopes and celebrity gossip. To settle the claims the mobile carriers agreed to pay at least \$90 million and \$80 million, respectively, as refunds for amounts charged to customers.

The FTC also released a report to provide marketers and mobile carriers with guidance to protect consumers against unwanted charges. In “Mobile Cramming: An FTC Staff Report” the agency provided steps that mobile carriers and other companies could take to make it easy for consumers to see what they are being charged for and to allow them to decide if they want to opt-in for these charges. The recommendations included (1) ensuring that third-party advertising and opt-in policies are not deceptive, (2) making clear and conspicuous disclosures of all charges for third-party services and (3) obtaining consumers’ express informed consent to charges.

Looking Ahead in 2015 and Beyond

There is little doubt that the mobile technology sector will continue to remain a primary area of concern for the FTC. In fact, the annual report provides a list of top consumer complaints received in 2014 broken down by category and a close look at the numbers reveals that mobile technology related complaints make up a significant portion of consumer complaints. Identity theft led all categories with 13 percent of all complaints. Telephone and mobile service related complaints ranked fourth at 7 percent but this category is growing at a remarkable rate — complaints are up 359 percent since 2010. Internet service related complaints ranked tenth with 2 percent of all complaints. Together, these numbers provide strong indicators that the FTC will continue to focus in this area in the remaining months of 2015 and beyond.

Furthermore, as mobile technology continues to permeate our lives, regulators will become increasingly interested in new payment and billing practices, how and what types of data will be collected, what that data is used for and how it is stored. Whether it is a wearable device (e.g., smart watches, fitness trackers, wearable cameras, GPS devices) or products built for our homes (e.g., thermostats, refrigerators, dishwashers, security systems) or made for other uses, the onslaught of new connected

devices creates amazing opportunities for retailers and marketers to learn about their consumers and ultimately sell more products and services. At the same time, however, staying on the right side of the law will become more and more complex.

With the above in mind, app developers and device manufactures must take “privacy by design” into account and also incorporate fair and secure billing practices when developing their products and services. Now that the FTC has made recommendations to ensure protection, control and transparency to consumers, companies should implement these recommendations as the FTC will seek to take action against companies that do not follow their guidelines.

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