

FCC Issues Guidelines for Marketing Mobile Applications

by Dan Brecher on October 1, 2012

As the number of smartphones and tablets continues to grow, mobile application development has become a multi-million dollar business. However, many of the start-ups behind these applications are not familiar with the applicable truth-in-advertising and privacy laws.

To address these concerns, the Federal Communications Commission recently issued a guide entitled *Marketing Your Mobile App: Get It Right from the Start*. The publication highlights that the FCC is closely monitoring the industry to ensure compliance with its regulations and is prepared to pursue violators.

Below are a few important do's and don'ts detailed by the agency:

Tell the truth about what your app can do. Whether it's what you say on a website, in an app store, or within the app itself, you have to tell the truth. False or misleading claims, as well as the omission of certain important information, can tick off users and land you in legal hot water. One rule of thumb: Look at your product and your advertising from the perspective of average users, not just software engineers or app experts. If you make objective claims about your app, you need solid proof to back them up before you start selling. The law calls that "competent and reliable evidence." If you say your app provides benefits related to health, safety, or performance, you may need competent and reliable *scientific* evidence.

Build privacy considerations in from the start. The FTC calls this "privacy by design." What does it mean? Incorporating privacy protections into your practices, limiting the information you collect, securely storing what you hold on to, and safely disposing of what you no longer need. Apply these principles in selecting the default settings for your app and make the default settings consistent with what people would expect based on the kind of app you're selling. For any collection or sharing of information that's not apparent, get users' express agreements. That way your customers aren't unwittingly disclosing information they didn't mean to share.

Keep user data secure. At minimum, you have to live up to the privacy promises you make. But what if you don't say anything specific about what you do with users' information? Under the law, you still have to take reasonable steps to keep sensitive data secure. One way to make that task easier - If you don't have a specific need for the information, don't collect it in the first place. The wisest policy is to:

- Collect only the data you need;

- Secure the data you keep by taking reasonable precautions against well-known security risks;
- Limit access to a need-to-know basis; and
- Safely dispose of data you no longer need.

If you have any questions about the new FCC guidelines or would like to discuss this issue, please contact me, Dan Brecher, or the Scarinci Hollenbeck attorney with whom you work.