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## FTC Emphasizes Privacy Protections, Truth in Advertising in Business Guide for Mobile App Developers

### Privacy/TechComm Client Alert

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On September 5, 2012, the Federal Trade Commission (FTC) released a new Business Guide for mobile application developers, [Marketing Your Mobile App: Get it Right from the Start](#). This guide is intended to help mobile app developers observe truth-in-advertising and basic privacy principles. It has broader application, as this plain-English guide summarizes fundamental advertising, marketing and privacy principles applicable to all formats and media.

This FTC guide highlights several common privacy themes that are now emerging across a spectrum of FTC initiatives, thus demonstrating the Commission's increasing attention and likely direction in this area. The guide reiterates the principles of the FTC's Privacy Report, [Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers \(March 2012\)](#). That Privacy Report established a Privacy Framework of three basic principles: Privacy By Design, Simplified Consumer Choices, and Transparency, applicable to consumer data collected both online and offline. While the new guide applies these principles in the mobile app development context, its guidance applies to all advertisers and collectors of consumer data. In the new guide, the FTC advises mobile app developers (and others) to:

- 1. Tell the Truth.** "Whether it's what you say on a website, in an app store, or within the app itself, you have to tell the truth" about what the app can do – and everything else. That is a very fundamental reiteration of the FTC's mission to prevent unfair and deceptive acts and practices, under Section 5 of the FTC Act.
- 2. Disclose Key Information Clearly and Conspicuously.** "If you need to disclose information to make what you say accurate, your disclosures have to be clear and conspicuous." While the FTC did not specify type or font size, its guidance is unambiguous: "clear and conspicuous" means "big enough and clear enough that users actually notice [the disclosures] and understand what they say."
- 3. Address Privacy Protections from the Start.** Reiterating guidance from its March 2012 Privacy Report, the FTC urges developers to consider privacy issues from the very start: incorporate privacy protections into the app's functions, limit the information collected, securely store the data maintained and safely dispose of the data when no longer need.
- 4. Obtain Consumer Consent for Privacy Sharing or if Practices Change.** The FTC urges the app developer or deployer to get the "express consent of users before any information collection or sharing "that is not apparent" or if the privacy practices change. Again, those suggestions echo the FTC's recommendations in its 2012 Privacy Report.
- 5. Offer Consumers Clear and Simple Choices.** "Make it easy for people to find the tools you offer, design them so they're simple to use, and follow through by honoring the choices users have made." This suggestion also reiterates the FTC Privacy Report's emphasis on "simplified choices" and transparency of privacy policies and practices.

**6. Honor All Privacy Promises.** The new FTC guide states: “Chances are you make assurances to users about the security standards you apply or what you do with their personal information. App developers – like all other marketers – have to live up to those promises.” This again is a recurring FTC theme – if a company makes a promise about what data it collects (or does not collect), or other aspects of its privacy standards, the FTC will react harshly if the company acts otherwise. Companies that violate or ignore their own privacy standards have experienced the full wrath of the FTC.

**7. Protect Children’s Privacy.** The FTC reminds app developers (and others) that the law requires enhanced privacy protections for children’s data: “If your app is designed for children or if you know that you are collecting personal information from kids, you may have additional requirements under the Children’s Online Privacy Protection Act (COPPA).” The FTC is currently revising its COPPA standards, and we will report on those updates when they happen.

**8. Obtain Affirmative Consent Before Collecting Sensitive Information.** The FTC urges app developers to obtain users’ affirmative consent before any sensitive data is collected from consumers. As examples, the FTC cites “medical, financial, or precise geolocation information” – a tip-off that the FTC views geolocation data as personally identifiable information. That view was foreshadowed in the FTC’s March 2012 Privacy Report, where the FTC noted that privacy protections should be given to “consumer data that can be reasonably linked to a specific consumer, computer, or other device.” See FTC Privacy Report at 15.

**9. Keep User Data Secure.** The FTC reminds businesses that “Statutes like the Graham-Leach-Bliley Act, the Fair Credit Reporting Act, and the Federal Trade Commission Act may require companies to provide reasonable security for sensitive information.” Indeed, the FTC has brought cases asserting that failure to maintain the security of consumer personal data, or to destroy it after the data is no longer needed, is an unfair and deceptive practice under Section 5 of the FTC Act. The FTC’s new guide cites to its publications giving specific guidance on developing a data privacy and security policies and procedures: [Protecting Personal Information: A Guide for Business](#).

The FTC’s concern about protecting the privacy of app users apparently is shared by consumers. A recent study released by the Pew Internet and American Life Project concluded that over 50% of cell phone app users had rejected apps when they learned how much personal data would be collected by the app. The study reported that a third of app users have uninstalled apps upon learning that the app was accessing more personal information than the user wanted to share. For more information, view the study here: [Privacy and Data Management on Mobile Devices](#).

If mobile app developers and online marketers follow the FTC’s new guide, consumers can be more confident in the security of personal information when using apps. The guides make it clear that the FTC expects both high- and low-tech companies to observe basic FTC standards of truthful advertising and protection of consumer privacy.

Please contact any authors listed with questions on any of the FTC recommendations and how they may apply to specific practices and campaigns

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