

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct

Docket No. 120214135-2135-01

COMMENTS OF THE APPLICATION DEVELOPERS ALLIANCE

Dated: April 2, 2012

I. INTRODUCTION

In a remarkably short period of time, mobile application (“app”) developers have become a significant part of the U.S. economy and a very important segment of the technology industry. App developers bring unique entertainment, important information, and critical alerts to our mobile phones. Millions of Americans are downloading billions of apps that have changed the way we interact with one another, and continue to create new economies and forms of entertainment.³ The strength of the apps economy cannot be overstated. As the Chairman of the Federal Communications Commission has recognized, apps mean jobs.¹ A recent TechNet sponsored study found that the app economy represented 460,000 jobs, up from zero in 2007.² Many app developers are start-ups, which are widely recognized as the best means of job creation.³ Many app developers are also global corporations, like Google and Apple, which employ tens of thousands of Americans in high tech jobs.

The swift growth in the app economy, which has been fueled by innovation and entrepreneurs, has meant that privacy practices and policies may need to catch up with this technological growth. Thus, NTIA’s focus on mobile apps to start the proposed multistakeholder

¹ Speaking at an event in San Francisco on November 4, 2011, Chairman Genachowski stated that a conservative estimate of one job per app meant that thousands of jobs had been created during the recent mobile app boom. See <http://techcrunch.com/2011/11/04/ron-conway-fcc-chairman-genachowski-and-other-tech-stars-team-up-to-fight-the-spectrum-crunch> (last visited March 30, 2012).

² TechNet.org, New TechNet Sponsored Study: Nearly 500,000 “App Economy” Jobs in United States (Feb. 7, 2012), available at <http://www.technet.org/new-technet-sponsored-study-nearly-500000-app-economy-jobs-in-united-states-february-7-2012> (last visited March 30, 2012).

³ Robert J. Samuelson, *The Real Jobs Machine*, Newsweek, Oct. 2, 2010, available at <http://www.newsweek.com/2010/10/02/samuelson-startups-create-most-new-jobs.html> (last visited March 30, 2012); Thomas Friedman, Op-Ed, *Start-Ups, Not Bailouts*, N.Y. Times, April 3, 2010, available at <http://www.nytimes.com/2010/04/04/opinion/04friedman.html> (last visited March 30, 2012).

process is appropriate, although it should not supplant existing and ongoing industry efforts to address privacy practices. If NTIA respects the role of industry in the multistakeholder process, the process could have a positive role to play in assisting the industry in developing voluntary, robust, but workable privacy practices. And, of course, any government proceeding should be transparent in its process.

II. THE APPLICATION DEVELOPERS ALLIANCE

The Application Developers Alliance (the “Alliance”) is a newly formed industry association (www.appdevelopersalliance.org) that serves the unique needs of app developers as entrepreneurs, innovators and creators. Our goal is to help the industry grow and flourish. The Alliance supports developers of every type, across all languages and platforms. Our members include more than 4,400 individual developers and nearly 40 companies, including leading publishers (*e.g.*, CBS, Interactive, TMSoft), service providers (*e.g.*, appMobi, Locaid and The Echo Nest), and platforms (*e.g.*, Google and RIM).

Privacy is the Alliance’s foremost public policy issue because of its broad impact on app creation and marketplace success. The Alliance aims to help the industry and relevant government agencies understand and address the challenges unique to mobile privacy without hobbling the extraordinary success of the market. Through our efforts to educate and collaborate with large and small app developers, the Alliance will assist the industry to address the challenges of implementing privacy policies that protect consumers. The Alliance is cautiously optimistic that NTIA’s multistakeholder process may lead to advances in voluntary privacy practices and policies, and, therefore, files these comments to ensure that the process is transparent and open to a diverse range of interests, as well as to highlight the existing and ongoing privacy efforts by the industry.

III. THE ALLIANCE WELCOMES NTIA'S INVITATION TO PARTICIPATE IN A TRANSPARENT MULTISTAKEHOLDER CONSENSUS PROCESS THAT BUILDS ON EXISTING INDUSTRY PRIVACY EFFORTS

On behalf of the thousands of developers and many company members, the Alliance looks forward to participating in NTIA's multistakeholder process. The Alliance, among many others, recognizes that consumer privacy is critical to the continued success of the app economy. The Alliance believes that app developers should be encouraged to incorporate privacy by design as they create apps. This requires developers to embed privacy goals and analyses early in their development processes, which will not happen unless there is a substantial educational effort which the Alliance is already undertaking – beginning with our Mobile App Privacy Summit on April 25, 2012 (www.appdevsummit.org). The Alliance believes that the best privacy policies inform users about an organization's data collection and use practices, but are short and easy for the average user to understand. Even with plain English privacy policies, mobile screens provide unique challenges for app developers because disclosures must be conveyed in the small space of the mobile phone screen. The industry is addressing these design and engineering challenges in a way that provides utility to the consumer and preserves the usability of the app itself.

The Alliance urges the NTIA's multistakeholder process to consider existing government and industry initiatives, such as the Alliance's Mobile App Privacy Summit, and as further described below. NTIA acknowledges many of these existing and ongoing government and private sector efforts throughout its request for comment, such as efforts by the wireless industry trade group CTIA to establish best practices for location based services.⁴ The Alliance urges NTIA to build on these existing private sector efforts, rather than supplant them through the

⁴ CTIA, Best Practices and Guidelines for Location Based Services, *available at* http://www.ctia.org/business_resources/wic/index.cfm/AID/11300 (last visited March 30, 2012).

multistakeholder process to ensure wide participation and the overall success of the multistakeholder process.

NTIA should also consider how NTIA will ensure that its efforts are coordinated and consistent with existing private and government privacy initiatives. Many of the app developers that are part of the Alliance are small businesses. They are simply trying to create a compelling product, and, while they want to comply with applicable privacy standards, they don't have the resources to monitor or comply with a multitude of privacy practices, especially if there is inconsistency in the practices that are developed. Thus, the Alliance urges NTIA to ensure that the privacy practices that are developed are appropriate for small businesses and consistent and coordinated with other ongoing privacy efforts.

IV. THE ALLIANCE ENCOURAGES CERTAIN CONDITIONS BE PLACED ON THE MULTISTAKEHOLDER PROCESS

It is clear that as the NTIA's multistakeholder process moves forward, any consensus achieved in the process must be transparent and attributable to a wide range of stakeholders. Certainly, if the mobile apps industry does not agree with the consensus result, they will not adopt it and there will be no opportunity to enforce it. The Alliance looks forward to participating in the process, and encourages NTIA to address these issues at the outset to ensure success in creating voluntary codes of conduct that are adopted by the industry.

Specifically, the Alliance believes that certain conditions should be placed on the process. To encourage diverse participation by a variety of interests, NTIA should invite all interests to participate with no criteria on participation, and actively seek out stakeholders that do not appear to be participating. There should be no size restrictions, so that small players feel comfortable providing their perspective during the multistakeholder process. NTIA should also encourage geographically diverse participation by scheduling meeting and conferences at times that allow

participation from interests across the country so that the process does not become “Washington-centric.” Meeting and conferences should allow dial-in or other forms of remote participation. The app economy spans the country and the NTIA multistakeholder process should embrace that fact.

In addition to encouraging diverse participation, NTIA should ensure that the process is transparent. Transparency ensures the legitimacy of and support for any decisions that result from the process. The multistakeholder process should identify commenters and make comment summaries publicly available. Any proposals under consideration must be publicly available and subject to advance notice. NTIA should memorialize discussions and meetings, and consider whether an *ex parte* disclosure requirement, similar to that in the FCC’s *ex parte* rules, should be implemented to ensure that private meetings are publicly identified.

Finally, NTIA should consider rules that would encourage consensus-building and discourage extreme interests from blocking consensus. NTIA should allow a “rough” consensus that would allow less than complete agreement to prevent a veto by a single interest. Any stakeholder should be able to submit draft codes of conduct for consideration or inclusion in larger discussions. A party should not be able to delay consideration of a proposal, and NTIA should consider a “shot clock” as necessary to ensure the multistakeholder process moves forward expeditiously.

In sum, the Alliance encourages NTIA to structure the process to encourage participation by a diverse group of interests, while limiting the possibility of the process being derailed by an outlier. The process should also be transparent to make certain that the resulting consensus decision is supported by all relevant interests. It is critical that industry participates in this process, and the conditions outlined by the Alliance will encourage industry participation.

V. EXISTING PRIVATE SECTOR INITIATIVES ON PRIVACY ARE PRODUCING POSITIVE RESULTS, AND THE ALLIANCE IS COMMITTED TO FURTHERING THESE INITIATIVES

Although the Alliance is cautiously optimistic about the NTIA's multistakeholder process, the Alliance believes that policies and guidelines related to privacy should be addressed primarily by the industry, and with feedback from consumer groups and other interests.⁵

Government certainly has a role in this process, and the NTIA multistakeholder process will be important in shaping privacy issues, but industry should lead privacy efforts because they will be implementing the standards that are developed.

In this regard, the Federal Trade Commission ("FTC") has taken the lead in the regulatory industry by developing a framework titled "Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Business and Policy Makers" ("Framework"), which was recently finalized.⁶ The announcement of the Framework led industry leaders to develop technical initiatives to foster better transparency on the Internet and many industry groups took the Framework as a call to action and continued to bolster current privacy practices as well as implement new ones to address the FTC's concerns. For example, "do not track" efforts by the FTC have led to the industry, including Google, Mozilla, and the Digital Advertising Alliance, to commit to implement "do not track" consumer privacy protections in Internet browsers.⁷ The

⁵ See e.g., Jon Potter, The mobile app industry can solve kids' privacy challenges, SD Times (March 20, 2012), available at <http://www.sdtimes.com/link/36454> (last visited March 30, 2012).

⁶ Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Business and Policy Makers (Dec. 2010), available at <http://www.ftc.gov/os/2010/12/101201privacyreport.pdf> (last visited March 30, 2012), and finalized in March 2012, available at <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf> (last visited March 30, 2012).

⁷ White House, DOC and FTC Commend DAA'S Self-Regulatory Program to Protect Consumer Online Privacy, available at

White House recently praised these “do not track” efforts by the industry to improve consumer privacy.⁸

We are seeing the same movement in the mobile market. The FTC has announced that it is revising the Children’s Online Privacy Protection Rules and will consider comments regarding the mobile space.⁹ It also released a report detailing concerns with mobile apps targeting children.¹⁰ With the recently released final version of the Framework, the FTC has stated that it will be closely following mobile privacy in the next year.¹¹ Further, in January, the Mobile Marketing Association released a Mobile Application Privacy Policy Framework as a starting point for privacy policies for mobile apps.¹² The CTIA released location based data guidelines, as mentioned above. Privacy certification companies like TRUSTe have also developed mobile compliance programs.¹³ Additionally, after receiving a call to action from the California

<http://www.aboutads.info/resource/download/DAA%20White%20House%20Event.pdf> (last visited March 30, 2012).

⁸ We Can’t Wait: Obama Administration Unveils Blueprint for a “Privacy Bill of Rights” to Protect Consumers Online (Feb. 23, 2012), *available at* <http://www.whitehouse.gov/the-press-office/2012/02/23/we-can-t-wait-obama-administration-unveils-blueprint-privacy-bill-rights> (last visited March 30, 2012).

⁹ FTC Request for Comment on Children’s Online Privacy Protection Rules (Released Sept. 2011), *available at* <http://ftc.gov/os/2011/09/110915coppa.pdf> (last visited March 30, 2012).

¹⁰ Mobile Apps for Kids: Current Privacy Disclosures are Disappointing (released February 2012), *available at* http://ftc.gov/os/2012/02/120216mobile_apps_kids.pdf (last visited March 30, 2012).

¹¹ Framework at v, *available at* <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf> (last visited March 30, 2012).

¹² See News Release: “Mobile Marketing Association Releases Final Privacy Policy Guidelines for Mobile Apps,” *available at* <http://www.mmaglobal.com/news/mobile-marketing-association-releases-final-privacy-policy-guidelines-mobile-apps> (last visited March 30, 2012) (providing information on guidelines and providing link to document request form).

¹³ TRUSTe, Mobile Privacy Policy & Certification, *available at* http://www.truste.com/products-and-services/enterprise_privacy/mobile_certification (last visited March 30, 2012).

government, several large mobile app platforms agreed to institute processes to allow mobile app developers to post privacy policies, to allow users to identify non-compliant mobile apps and have the platform respond to the non-compliant app, and to further work with the California Attorney General to develop best practices for mobile privacy.¹⁴

These industry efforts are a strong indication that the private sector is best positioned to create innovative solutions to address privacy concerns that are in line with the FTC's current requirements and—more importantly—in line with consumer expectations and needs. This is especially true as these industry efforts are often more narrowly focused on specific issues, which can lead to measurable success on a manageable scale.

The Alliance is fully committed to continuing this tradition of private-sector privacy practices education and standards development. As noted above, the Alliance has a planned Mobile App Privacy Summit for April 25, 2012 which will engage the Alliance's members in meaningful dialogue about incorporating privacy by design into app development. The goal of the Alliance's Mobile App Privacy Summit is to start a discussion on these topics within the app industry and between app developers and other stakeholders which will continue long after the conference is over.

The Alliance is ready to assist and participate in the multistakeholder process proposed by NTIA, and will also continue to focus its attention on industry-lead privacy efforts, with input from consumer groups and government agencies. Private sector attention to these issues is paramount and should continue in earnest. The Alliance will also continue to report its own

¹⁴ Joint Statement of Principles (signed Feb. 2012), *available at* http://ag.ca.gov/cms_attachments/press/pdfs/n2630_signed_agreement.pdf? (last visited March 30, 2012).

efforts, as well as others in the industry, on privacy to NTIA and the FTC, and hopes that the NTIA multistakeholder process will be successful.

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