

Questions for Senator Franken for Ms. Rich

1. Ms. RICH, the FTC has issued best practices for app developers. One of the key best practices you have is that app developers should always get affirmative express consent before collecting or sharing sensitive information like geolocation data. It's not enough for apps to do it and then let users opt-out.

My bill also sets up an opt-in rule for collection or sharing of location data. Why did you set this standard where you did – and is there precedent for it?

The Commission supports the LPPA's requirement that covered entities obtain affirmative express consent from consumers before knowingly collecting or disclosing geolocation information. As you note, this approach mirrors guidance in our 2013 staff report on mobile privacy disclosures, in which we discussed the importance of transparency in the mobile space through just-in-time disclosures and obtaining opt-in consent before allowing access to sensitive information like geolocation.¹ Moreover, the FTC's 2012 Privacy Report addressed the heightened privacy concerns presented with the collection and use of sensitive personal information, such as geolocation information, and why robust privacy controls like affirmative express consent are warranted for this kind of information.²

Geolocation information is sensitive because it can reveal a consumer's movements in real time and over time. Geolocation may also expose other types of sensitive information, such as health or financial information. For instance, geolocation information can disclose if a consumer has gone to an AIDS clinic or cancer treatment center and how often he or she has gone. It can provide information about where a person lives, works, shops, and goes out to eat. It can disclose a child's route to and from school. As discussed in our Privacy Report, when sensitive information is involved, the likelihood that data misuse could lead to discrimination or other harms is increased. Thus, the Commission has recommended the companies obtain opt-in consent from consumers before collecting sensitive information for either first-party or third-party uses.

The Commission's recommendations are in line with a number of self-regulatory frameworks in which industry agrees that geolocation data is sensitive and should be handled with care.³ But, inconsistencies in the application of self-regulatory codes can

¹ FTC Staff Report, *Mobile Privacy Disclosures: Building Trust Through Transparency* (Feb. 2013) at 15-16, available at <http://www.ftc.gov/sites/default/files/documents/reports/mobile-privacy-disclosures-building-trust-through-transparency-federal-trade-commission-staff-report/130201mobileprivacyreport.pdf>.

² Federal Trade Commission, *Protecting Consumers in an Era of Rapid Change: Recommendations for Businesses and Policymakers* (Mar. 2012) at 59, available at <http://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf>.

³ See, e.g., Future of Privacy Forum and Center for Democracy & Technology, *Best Practices for Mobile Application Developers* (July 2012) at 7, available at <http://www.futureofprivacy.org/best-practices-for-mobile-app-developers> (stating that app developers should obtain clear, opt-in permission before accessing precise location data); Network Advertising Initiative, *2013 NAI Mobile Application Code*, at 2, available at <http://www.networkadvertising.org/code-enforcement/mobile> (mandating that use of precise location data for advertising delivered across apps, based on the preferences or interests of a user, shall

make it challenging for an entity to know exactly what it should do when collecting or using geolocation data. And membership in a self-regulatory body is voluntary. The LPPA provides much-needed rules of the road that can help industry compliance and provide enforcement tools to ensure that consumers are protected.

require the user's opt-in consent); Direct Marketing Association, *Direct Marketing Association Guidelines for Ethical Business Practice* (May 2011), at 40, available at <https://thedma.org/wp-content/uploads/DMA-Ethics-Guidelines.pdf> (stating that location information may not be shared with third-party marketers unless the consumer has given prior express consent for the disclosure).