Expanding the Wireless Frontier



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January 15, 2010

Mr. Donald S. Clark, Secretary Federal Trade Commission Office of the Secretary Room H-135 (Annex P2) 600 Pennsylvania Avenue, NW Washington, DC 20580

> RE: Privacy Roundtables - Comment, Project No. P095416 Comments of CTIA-The Wireless Association®

Dear Mr. Clark:

CTIA-The Wireless Association<sup>®1</sup> ("CTIA") respectfully submits these

comments for consideration by the Federal Trade Commission ("FTC"),

supplementing CTIA's filing of May 1, 2008,<sup>2</sup> and statements at the "Beyond

Voice: Mapping the Mobile Marketplace" Town Hall meeting hosted by the FTC

on May 6 and 7, 2008, in Washington, DC. CTIA thanks the FTC for addressing

consumer protection issues in the rapidly expanding and evolving world of M-

commerce, and for its interest in the evolving state of the location-based services

("LBS") market.

In these supplemental comments, CTIA provides an overview of non-

carrier applications stores (also known as "apps stores") and illustrative examples

<sup>&</sup>lt;sup>2</sup> See Letter from Michael F. Altschul, Senior Vice President and General Counsel, CTIA-The Wireless Association®, to Mr. Donald S. Clark, Secretary, Federal Trade Commission, May 1, 2008, re Beyond Voice – Comment, Project No. P074403, Comments of CTIA-The Wireless Association®, available online at <u>http://www.ftc.gov/os/comments/mobilevoice/534331-00014.pdf</u>.



<sup>&</sup>lt;sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, AWS and 700 MHz licensees, as well as providers and manufacturers of wireless data services and products.

of LBS offerings available through apps stores and other providers of mobile

applications.<sup>3</sup>

Location Based Services have one thing in common regardless of the underlying technology – they rely on, use or incorporate the location of a device to provide or enhance a service. Accordingly, the Guidelines are technology-neutral and apply regardless of the technology or mobile device used or the business model employed to provide LBS (*e.g.*, a downloaded application, a web-based service, etc.). The Guidelines primarily focus on the user whose location information is used or disclosed.

The hallmarks of the Guidelines are user notice and consent. The Guidelines place a premium on these two fundamental principles because it is the LBS user whose privacy is most at risk if location information is misused or disclosed without authorization. Under the Guidelines, LBS providers must inform users about how their location information will be used, disclosed and protected so each user can make informed decisions whether or not to use the LBS or authorize disclosure. In some cases, an account holder (as opposed to the actual device users) may control the installation and operation of LBS on multi-line accounts (e.g., business account holder utilizing LBS for fleet management; parental account holder providing phones for childrens' use). Under these limited circumstances, the appropriate consent may be obtained solely from the account holder.

Whenever location information is linked by the LBS Provider to a specific device (e.g., phone number, userID) or a specific person (e.g., by name or other unique identifier), the user should have confidence that their location information will be protected and used or disclosed only as described in LBS Provider notices. Accordingly, LBS Providers must ensure that users are informed about how location information will be used, disclosed and protected so that users can make informed decisions whether or not to use the LBS. Second, once users have chosen to use an LBS, or authorized the disclosure of location information, they should have choices as to when or whether location information will be disclosed to third parties and should have the ability to revoke any such authorization. In addition to the notices required under the Guidelines, the Guidelines also recognize the importance of educating users regarding the responsible use of LBS and the privacy and other risks associated with the disclosure of location information to unauthorized or unknown third parties. All the entities involved in the delivery of LBS, including wireless carriers, device manufacturers, operating system developers, application aggregators and storefront providers, should work to educate users about the location capabilities of the devices, systems, and applications they use as well as to inform them of the various privacy protections available.

<sup>&</sup>lt;sup>3</sup> CTIA has established "Best Practices and Guidelines for Location Based Services"

<sup>(&</sup>quot;Guidelines") that promote and protect user privacy as new Location-Based Services ("LBS") are developed and deployed. With strong support from the nation's leading wireless carriers and input from LBS providers and industry stakeholders, this voluntary initiative was developed to promote and protect consumer privacy through user notice and consent. For information about "Best Practices and Guidelines for Location-Based Services," *see* 

<sup>&</sup>lt;u>http://www.ctia.org/business\_resources/wic/index.cfm/AID/11300</u>. The Best Practices document is intended to be somewhat dynamic, and will be revisited as needed to keep pace with new developments.

#### LOCATION-BASED SERVICES

As noted in CTIA's filing of May 1, 2008, location-based services "are information services that utilize the location of a mobile device and are accessible through the mobile network. LBS applications are available from wireless carrier and non-carrier providers and include the public safety-oriented E911 services that wireless companies provide, as well as other commercial and noncommercial location-based services."<sup>4</sup>

As noted then, "Developers and solutions providers are a significant part of the location-based services market. Leading application publishers include Networks in Motion, MySpace Mobile, XM Satellite Radio and other GPS navigational software providers, such as Garmin Mobile, MapQuest Mobile, Pitney Bowes MapInfo, TeleNav, Telmap. uLocate, WaveMarket, and Wayfinder."<sup>5</sup>

LBS offerings include applications such as GPS, navigation, location messaging, friends / family locators, social networking, traffic alerts, and more.<sup>6</sup> Since the filing of those comments, the LBS marketplace has continued to evolve, with a growing number of non-carrier applications stores ("apps stores") offering consumers access to a variety of products and services, including LBS applications. Some of these applications, once downloaded to the mobile device, provide the location-based services without requiring use of a mobile network to perform their functions. Others draw upon the mobile network or upon other communications to provide their functionality on a real-time basis. Some blend

<sup>&</sup>lt;sup>4</sup> *Id.* at 1-2.

<sup>&</sup>lt;sup>5</sup> *Id.* at 2 (footnote omitted).

<sup>&</sup>lt;sup>6</sup> Id. at 2-6.

location- and gaming functionalities, others provide business-oriented services such as real estate listings.<sup>7</sup> Applications can range from meeting the most basic human needs, to apparently frivolous purposes. As one marketing expert noted earlier this year, when asked what mobile effort impressed him:

Charmin's Sit or Squat application, which was built by Dense Brain. A smaller brand like Charmin gave a clear and on-equity reason for consumers to digitally engage by offering consumers a high-interest utility - a bathroom-locater app. This won the P&G Global Media Award this year for best media idea. Touching lives, improving life. This app does just that.<sup>8</sup>

Table 1 shows some of the more high-profile applications stores that are currently available to wireless consumers in the United States. In fact, there are additional applications stores, operated or supported by such companies as Handango, MobiHand, and GetJar, offering mobile applications, including

<sup>&</sup>lt;sup>7</sup> See Larry Fiorino, "With Foursquare, your friends can always find you," Daily Record (Baltimore), Dec. 3, 2009 ("Foursquare notifies your friends of your location every time you check in. You can use your cell phone to check in from almost anywhere -- at a coffee shop, bar, restaurant, art gallery or even The Daily Record office. When you check in, Foursquare alerts your friends to your current location so they can drop by and say hello. What is so special about Foursquare? Foursquare has several competitors, but has attracted more attention because it incorporates elements of gaming and social competition. Most people are very competitive (whether they know it or not), and Foursquare awards points and virtual badges to players depending on how often they go out and which places they visit. The top designation is when you become mayor of your favorite location.") See also Faris Yakob, Executive VP and Chief Strategist at McCann Erickson, quoted in "Marketers, take note: The experts choose their favorite things," Advertising Age, Sept. 14, 2009, at M6 ("Foursquare is exciting precisely because it combines elements of 'geotility' [location-based usefulness], gaming, social networking, manufactured serendipity and more. By using a gamelike set of incentives to create a new kind of behavior - checking in at a venue when you are out and broadcasting that check-in to your network - they are creating a rich source of local data and delivering on some of the promise of the location-based social web."). And see "Smarter Agent Now Available on All Carriers, Devices and Platforms; Location-Based Access to Real Market Values and Photos Redefining How Generation X Buys New Homes," PR Newswire, Nov. 16, 2009 (the application "features three location-aware, including GPS-triggered, real estate searches" "to pinpoint the user's location and find available property listings in the immediate area"). See also http://www.smarteragent.com/useyourphone/ (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>8</sup> John Hadl, Managing Partner and Founder of Brandinhand, *quoted in* "Marketers, take note: The experts choose their favorite things," Advertising Age, Sept. 14, 2009, at M6.

location-related applications.<sup>9</sup> Such mobile applications may be purchased through multiple outlets, including carrier-affiliated or independent third-party applications stores, or directly from the developers or manufacturers of the applications.

Applications Store	Date Launched	Number of Apps		
iTunes App Store	July 2008	$>100,000^{10}$		
Android Market	October 2008	>16,000 <sup>11</sup>		
Palm Software Store	January 2009	>5,000 Apps and		
		Games <sup>12</sup>		
BlackBerry App World	April 2009	4,259 <sup>13</sup>		
Nokia Ovi Store	May 2009	20,000 Apps and Media		
		Files <sup>14</sup>		
Palm App Catalog	June 2009	$1,000^{15}$		
Windows Mobile	October 2009	Nearly 600 <sup>16</sup>		
Marketplace				

### Table 1

Some stores offer applications to consumers that may be used in the

United States or elsewhere in the world, either as residents of the U.S. or as

<sup>&</sup>lt;sup>9</sup> See <u>http://www.handango.com/catalog/SoftwareCatalog.jsp?categoryId=0</u>,

http://www.mobihand.com/Home.asp, and http://www.getjar.com/ (last accessed Jan. 5, 2010). <sup>10</sup> See Apple Hot News available at http://www.apple.com/hotnews (last accessed Dec. 29, 2009).

<sup>&</sup>lt;sup>11</sup> See Robin Wauters, "Google: Actually, We Count Only 16,000 Apps in Android Market," TechCrunch, Dec. 16, 2009, at <u>http://www.techcrunch.com/2009/12/16/google-android-market/</u> (last accessed Jan. 5, 2010); and see <u>http://www.android.com/market/</u> (last accessed Jan. 5, 2010) which notes that "For a comprehensive, up-to-date list of the thousands of titles that are available, you will need to view Android Market on a handset."

<sup>&</sup>lt;sup>12</sup> See <u>http://software.palm.com/us/html/top\_products\_treo.jsp?device=10035300025</u> and <u>http://appstore.pocketgear.com/palm/</u> (last visited Dec. 29, 2009)

<sup>&</sup>lt;sup>13</sup> See <u>http://appworld.blackberry.com/webstore/content/reviews/1414</u> (last visited Jan. 2, 2010), showing 4,259 entries in 19 categories, including Business, Entertainment, Finance, Games, Health & Wellness, IM & Social Networking, Maps & Navigation, Music & Audio, News, Photo & Video, Productivity, Reference & eBooks, Shopping, Sports & Recreation, Test Center, Themes, Travel, Utilities, and Weather.

<sup>&</sup>lt;sup>14</sup> See Pradipta Kukherjeee Kolkata, "Handset makers jump on to social networking bandwagon," Business Standard, Sept. 3, 2009.

<sup>&</sup>lt;sup>15</sup> See Leena Rao, "Palm's WebOS Now Has 1,000 Apps. Only 99,000 To Go To Catch Up To Apple," TechCrunch, Jan. 2, 2010, at <u>http://www.techcrunch.com/2010/01/02/palms-webos-now-has-1000-apps-only-99000-to-go-to-catch-up-to-apple/</u> (last accessed Jan. 2, 2010).

<sup>&</sup>lt;sup>16</sup> See <u>http://www.microsoft.com/windowsmobile/catalog/cataloghome.aspx</u> and

http://marketplace.windowsphone.com/Default.aspx (last accessed Jan. 5, 2010). The latter notes 576 entries across 14 categories, including Books, Business Center, Communication, Reference, Entertainment, Games, Lifestyle, Maps & Search, Music & Video, News & Weather, Productivity, Social Networks, Travel, and Tools.

visitors to other countries. Some companies currently operate applications stores only intended for the use of residents of other countries (*e.g.*, Samsung's current applications stores are intended for the use of residents of Italy, France, and the United Kingdom),<sup>17</sup> others offer applications that may be acquired and used in the U.S., and abroad.

These applications stores ("app stores") provide access to multiple LBS apps, and to multiple developers / authors / "manufacturers" of these apps. The app stores frequently offer apps which – when selected – show multiple companies offering the same app – e.g., Handango, MobiHand, or Pocketland (a European-oriented app store) – which, in turn, was developed and also is offered for sale to end users by another, the app's developer.

There are thousands of applications available to consumers, some available for download and usage at no charge, and some for a fee. Some of these applications are offered across platforms, and there are competing offerings of different apps (such as multiple automobile navigation apps). Some applications also appear more than once in an App store, as they offer variations tailored to specific areas (*e.g.*, Canyonlands National Park Map, Shenandoah National Park Map, etc.), different devices (*e.g.*, RIM, Motorola, etc.), or different products (*e.g.*, ILocate – Parking Facilities, ILocate – Subways, ILocate – Health Food).

Choice clearly exists between applications stores and between manufacturers of applications. Consumers may download competing applications for free, or for a fee, from either carriers or non-carrier sources. In fact, this

<sup>&</sup>lt;sup>17</sup> See e.g., Country Selection Page at <u>http://www.samsungapps.com/common/term.as</u>. See also "Terms and Conditions for Buyers," Samsung UK Applications Store, at <u>http://www.samsungapps.com/common/term.as</u> (last accessed Jan. 5, 2010).

competitive market is both attracting new entry and is being reshaped through the merger of existing players in the marketplace, as recently noted in an article about the acquisition of Networks In Motion (a provider of wireless navigation software for GPS-enabled cell phones) by TeleCommunications Systems Inc.<sup>18</sup> That article notes that:

Google is starting to offer a free turn-by-turn GPS-based navigation system on wireless handsets that run the latest version of its Android operating system. If Google's free product gains traction in the marketplace, it could mean that consumers are less willing to pay \$5 to \$10 in typical monthly charges for the GPS navigation applications that companies like Networks in Motion offer to customers through the wireless carriers."<sup>19</sup>

Although this entry poses a challenge to "the long-term sustainability of paid handset navigation," according to analyst Scott P. Sutherland of Wedbush Morgan Securities, Sutherland nonetheless thinks ultimately "the consumer market would evolve to leave room for both Google's free, ad-supported navigation product and subscription-based and ad-free products, such as those built by Networks in Motion."<sup>20</sup>

Motion.

Companies such as comScore and Nielsen Mobile have researched the adoption and use of mobile applications. For example, last year, comScore "reported a 51% year-over-year increase from March 2008 to March 2009 in the

http://www.intel.com/pressroom/archive/releases/2010/20100108comp.htm (last accessed Jan. 14, 2010). *See also* Agam Shah, "Intel Promotes App Store Model for Netbooks," PC World, Sept. 22, 2009, at

http://www.pcworld.com/businesscenter/article/172418/intel promotes app store model for net books.html (last accessed Jan. 14, 2010).

<sup>&</sup>lt;sup>18</sup> Gus G. Sentementes, "TCS To Buy Maker of Navigation Software, Purchase of Builder of Equipment for Cell Phones is 3<sup>rd</sup> Acquisition in a Month," Baltimore Sun, Dec. 3, 2009. Entry into the app store market is on-going, with Intel recently launching a beta version of its Intel® AppUp<sup>SM</sup> app store aimed at netbook computers. *See* "Intel, Industry Partners Unveil App Store Plans for Popular Netbook Computers," Intel Press Release, Jan. 8, 2010, at

 $<sup>^{19}</sup>_{20}$  Id.

<sup>&</sup>lt;sup>20</sup> Id.

number of people seeking local information on a mobile device, with the strongest growth coming from an 83% increase in downloaded applications.<sup>21</sup> Likewise, Nielsen "reported that users of the popular iPhone are six times as likely as a typical mobile subscriber to use mobile applications.<sup>22</sup> More recently, comScore's MobiLens<sup>TM</sup> service reported that for the three months ending in October 2009, almost a third (32.7 percent) of all U.S. wireless customers used an application, with 5.2 percent accessing maps, 5.1 percent accessing weather, 3.2 percent accessing social networking, and smaller percentages accessing news, sports, and an array of other applications.<sup>23</sup>

Last year, ABI Research noted its expectation that global LBS revenues will grow dramatically by 2014, after experiencing 156% growth from 2008 to 2009.<sup>24</sup> According to ABI Research practice director Dominique Bonte, "There seems to be no limit to developers' creativity in using location for functions such as search, social networking, messaging, micro-blogging and augmented reality."<sup>25</sup>

ABI Research also noted:

While there is no doubt LBS is heading towards mass market adoption, it remains unclear which pricing and business models will emerge successfully. Currently subscription-based models are making way for one-off pricing or free hardware-subsidized offers,

<sup>&</sup>lt;sup>21</sup> *Cited* in "NAVTEQ: Call for Touch User Interface Applications in 2010 NAVTEQ Global LBS Challenge; Leading developer competition encouraging applications that support consumer trends in location-based services (LBS) for touch screen devices," NAVTEQ Press Release, M2 Presswire, Oct. 13, 2009.

<sup>&</sup>lt;sup>22</sup> Id. (citing Nielsen's "The Global Online Media Landscape," April 2009).

<sup>&</sup>lt;sup>23</sup> Three month average ending October 2009, based upon 32,487 mobile phone users in the U.S. Source: comScore Applications Access report.

<sup>&</sup>lt;sup>24</sup> See "Global LBS Revenues to Reach \$2.6 Billion in 2009," ABI Research, Sept. 3, 2009, available online at <u>http://www.abiresearch.com/press/1483-</u>

 $<sup>\</sup>frac{\text{Global+LBS+Revenues+to+Reach+\$2.6+Billion+in+2009}}{\text{Id.}}$  (last accessed Jan. 8, 2010).

but expectations for advertising revenues in the longer term remain high despite privacy and fragmentation issues.

Bonte concludes, "ABI Research expects many business models will continue to coexist with recurring fees for many enterprise, navigation and safety services, but free models for most other consumer applications."<sup>26</sup>

A sampling of LBS- or GPS-related applications drawn from multiple applications stores, including the more high-profile stores identified in Table 1, and other applications stores, are described below. It should be noted that keyword searching is not possible on all app stores. Likewise, the categories which exist on one app store do not necessarily map to those of another app store provider. Moreover, the categories that exist may not correspond exclusively with LBS applications. For example, the category "Navigation" may not encompass all LBS-enabled apps in a particular applications store, since other LBS-apps may appear in such categories as "Social Networking" or "Productivity" or "Travel." Thus, the following section and the attached screenshots should be regarded as just a sampling of LBS- or GPS-related applications.

While it may be intuitively apparent that location-based services require the disclosure of location information to the providing company, a number of applications providers make explicit reference to this fact in their privacy policies or the terms and conditions of their service offerings. For example, the Company uLocate explicitly notes in its privacy policy that the users of its WHERE® application: You understand that when you use WHERE, certain information that you post on www.where.com or provide through WHERE may be shared with other users and posted on publicly available portions of WHERE, including without limitation your profile, comments, and photographs. In addition, you should be aware that (i) Location Data and other information that you post on www.where.com and WHERE that are not designated as private may be publicly available and can potentially be viewed by anyone.

Aggregate information and Location Data may be shared with carriers, Service Providers and other third parties in accordance with the provisions of this Privacy Policy. If the Location Data is shared with carriers, Service Providers and other third parties then it will be done so in a way to keep your anonymity. Location Data will not be shared in such a way as to be personally identifiable.<sup>27</sup>

The degree of disclosure of location information varies according to the

application and application provider. The following sections, which describe

categories and offerings by various applications store operators and applications

developers or providers, also include language drawn from various privacy

policies or notices of terms and conditions.

### **iTUNES APP STORE**

The iTunes Applications Store was launched in June 2008. Since then, the

number of applications available through the iTunes app store has risen to more

than 100,000, and more than 3 billion downloads have occurred.<sup>28</sup> The iTunes

App Store has 19 categories, including Books, Business, Education,

Entertainment, Finance, Games, Healthcare & Fitness, Lifestyle, Medical, Music,

Navigation, News, Photography, Reference, Social Networking, Sports, Travel,

<sup>&</sup>lt;sup>27</sup> WHERE® "Privacy Policy" at <u>http://www.where.com/privacy-policy/</u> (last accessed Jan. 2, 2010).

<sup>&</sup>lt;sup>28</sup> See Brad Stone, "Apple's App Store Tops 3 Billion Downloads," New York Times, Jan. 5, 2010, available online at <u>http://bits.blogs.nytimes.com/2010/01/05/apples-app-store-tops-3-billion-downloads/</u> (last accessed Jan. 5, 2010).

Utilities, and Weather. Attached to this filing are 147 pages of screenshots from the iTunes App store that are specific to the Navigation category. When these screenshots were begun on Thursday, December 10, 2009, there were 144 pages of Navigation applications. By December 16, 2009, there were 147 pages of such applications. On the evening of January 1, 2010, there were 161 pages.

These navigation applications include dozens of "Virtual Maps" for American cities, available from FQ Publishing (for a fee); and specialized applications such as the free offerings of Trapster's speed trap alerts,<sup>29</sup> Youniversalideas' Free Wi-Fi locator,<sup>30</sup> and more competing applications in the free and paid categories, such as free "Take Me to My Car" app (from individual developer Eldar Sadikov)<sup>31</sup> versus the paid "Park'n Find" app from Affinicore.<sup>32</sup>

The display pages within the Navigation category indicate the top 20 paid and top 20 free applications within the Navigation category, including such "Top Paid Apps" as "TomTom U.S.A." (number 4 on Jan. 4, 2010), "Where To? GPS points of interest" (number 6 on Jan. 4, 2010), "Tide Graph" (number 14 on Jan.

<sup>&</sup>lt;sup>29</sup> The description on iTunes' drill-down description page notes that beyond this free application, which "alerts you as you approach police speed traps, red light cameras, speed cameras, and other roadway wallet hazards," Trapster offers live traffic, turn-by-turn directions, local search, and My Trips trip recorder. *See also* <u>http://www.trapster.com/</u> (last accessed Jan. 5, 2010).

 <sup>&</sup>lt;sup>30</sup> The description of the "Free Wi-Fi" app includes notation that YOUniversalideas also offers "Museum Locator," "KidsEatFree," and "Snow-Flakes Free" (a non-LBS downloadable game application).
 <sup>31</sup> See "Take Me To My Car," at <u>http://takemetomycar.anresgroup.com/</u> (the free application "lets

<sup>&</sup>lt;sup>31</sup> See "Take Me To My Car," at <u>http://takemetomycar.anresgroup.com/</u> (the free application "lets you save your current position with two taps (including starting the application) and lets you get directions to your parking location with just one tap! On top of it, it functions just like regular Maps application allowing you to browse and zoom in/out on the map") (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>32</sup> See <u>http://www.affinicore.com/park-n-find.html</u> ("'Park'n Find' offers a wide range of features to get you back to your parking spot every time. In addition to showing a map view that automatically zooms and pans as you move closer to your parking location, iPhone 3GS users are provided a 'go this way' arrow. You can add an optional description, attach one or more photos, and record a voice note to help remind you where you parked. Park'n Find can also remind you when it is time to pay the meter with a push notification.") (last accessed Jan. 5, 2010).

4, 2010), and "Where To Eat? Find restaurants using GPS" (number 19 on Jan. 4, 2010), plus such "Top Free Apps" as "MapQuest for Mobile" (number 2 on Jan. 4, 2010), "FastFood – Top Restaurant finder app" (number 7 on Jan. 4, 2010), and GasBag" (number 13 on Jan. 4, 2010).<sup>33</sup>



<sup>&</sup>lt;sup>33</sup> The drill-down description page notes that "GasBag is a user-driven application that provides the fastest way to find the cheapest gas near you. Our users are the best source of pricing data around and can submit those prices with a couple of quick taps. GasBag allows you to search for any type of gas, log your mileage and gas expenses, and track the efficiency of your car." GasBag is provided by jamcode LLC. See <u>http://www.jam-code.com/</u> (last accessed Jan. 5, 2010). This is one of a number of free applications available from various apps stores that are created through crowd-sourcing – with the underlying information provided by the users of the application.

The iTunes App store includes a link to the "Apple Customer Privacy Policy" at

the bottom of the page.<sup>34</sup> The policy includes notation of circumstances in which

Apple discloses consumers' information:

## When we disclose your information

Apple takes your privacy very seriously. Apple does not sell or rent your contact information to other marketers.

# Within the Apple Group

To help us provide superior service, your personal information may be shared with legal entities within the Apple group globally who will take steps to safeguard it in accordance with Apple's privacy policy.

## With our service providers, vendors, and strategic partners

There are also times when it may be advantageous for Apple to make certain personal information about you available to companies that Apple has a strategic relationship with or that perform work for Apple to provide products and services to you on our behalf. These companies may help us process information, extend credit, fulfill customer orders, deliver products to you, manage and enhance customer data, provide customer service, assess your interest in our products and services, or conduct customer research or satisfaction surveys. These companies are also obligated to protect your personal information in accordance with Apple's policies, except if we inform you otherwise at the time of collection. For example, when you purchase and activate your iPhone, you authorize Apple and its carrier to exchange the information that you provide during the activation process to carry out service. If you are approved for service, your account will be governed by Apple and its carrier's respective privacy policies. Without such information being made available, it would be difficult for you to purchase products, have products delivered to you, receive customer service, provide us feedback to improve our products and services, or access certain services, offers, and content on the Apple website.

At times we may be required by law or litigation to disclose your personal information. We may also disclose information about you if we determine that for national security, law enforcement, or other issues of public importance, disclosure is necessary.<sup>35</sup>

 <sup>&</sup>lt;sup>34</sup> The policy itself appears at <u>http://www.apple.com/legal/privacy/</u> (last accessed Jan. 5, 2010).
 <sup>35</sup> Id.

The Privacy Policy also includes the disclaimer:

Apple's website has links to the sites of other companies. Apple is not responsible for their privacy practices. We encourage you to learn about the privacy policies of those companies.<sup>36</sup>

Individual applications providers may include their own Privacy and

Terms and Conditions policies on their websites. Examples of such policies

would include TomTom's Privacy Policy, which notes "If you request TomTom

Plus services such as traffic information, TomTom may collect location data from

your TomTom device in order to provide you with the services requested."<sup>37</sup>

jamcode includes on its website a Privacy Policy that notes:

You can post user content through and information through jamcode LLC applications or our website at your own risk. Although we allow you to set privacy options that limit access to your content and associated meta-data such as location information, please be aware that no security measures are perfect or impenetrable. We cannot control the actions of other Users with whom you may choose to share your pages and information. Therefore, we cannot and do not guarantee that User Content you post with jamcode LLC will not be viewed by unauthorized persons. We are not responsible for circumvention of any privacy settings or security measures contained in jamcode LLC applications. You understand and acknowledge that, even after removal, copies of User Content may remain viewable in cached and archived form or if other Users have copied or stored your User Content."

\* \* \*

jamcode LLC is about users sharing information with others. For example, with our GasBag application, one of our services is to allow users to submit gas price data, they have collected, back to us. In the interest of helping other users in the GasBag community, this data will be used to update our gas price feeds. We may also use aggregate data about you and your use of our services for our

<sup>&</sup>lt;sup>36</sup> Id.

<sup>&</sup>lt;sup>37</sup> *See* "Collection of Personal Information by TomTom," at <u>http://www.tomtom.com/legal/privacy/</u> (last accessed Jan. 5, 2010).

own commercial purposes, however at all times your privacy will be protected and your contact and identifying details anonymized. Your contact information will always remain at jamcode LLC. We do not provide contact or identifying information to third party marketers or other users without your permission.<sup>38</sup>

The Park'n Find application's description on the Affinicore home page

includes the following:

Park'n Find allows you to enter as little or as much information as you need to remember where you parked.

The following information will be automatically saved with each entry if your device supports GPS:

- GPS Location
- Address of Location

The following types of data can be entered, all of which are optional:

- One or more photos
- A voice memo
- A description of the parking location
- Parking Garage Level
- Parking Lot Section
- Parking Lot Row
- Parking Space Designation<sup>39</sup>

Mapquest also includes on its website a Terms of Use explanation that

includes the provisions:

Your Use of MapQuest Wireless Services

Disclosures about Location and Other Information

When you use MapQuest Wireless Services, you provide MapQuest with certain information about you. Your MapQuest Wireless Services information will be collected and used in

<sup>&</sup>lt;sup>38</sup> See "Privacy" at <u>http://www.jam-code.com/jamcodePrivacyPolicy.pdf</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>39</sup> See "iPhone Software Park'n Find" at <u>http://www.affinicore.com/PnF.html</u> (last accessed Jan. 5, 2010).

accordance with the AOL Network Privacy Policy, as supplemented by the following, additional terms. If you elect to use certain location based services (such as, GPS assisted navigation instruction), MapQuest must periodically receive your GPS location in order to provide such GPS services to you. By using MapQuest location based services, you authorize MapQuest to locate your GPS hardware and to record, compile and display your location. As part of the MapQuest Wireless Services, MapQuest may also collect and store certain information about our users, such as, users' wireless mobile subscriber ISDN numbers and users' network access identifier information. This information will be used to provide you with the MapQuest Wireless Services. MapQuest may use third party providers to help operate the MapQuest Wireless Services and such providers may use the information in accordance with the AOL Network Privacy Policy. Certain applications of MapQuest Wireless Services may allow you to adjust your privacy settings; please review any information or FAQ area that accompanies such application for more details and instructions.<sup>40</sup>

Some applications may also include a link to a License Agreement on

iTunes' App store drill-down description page.41

### WINDOWS MOBILE

There are two separate sites for Windows-related applications. There is a

"Windows Mobile Catalog" page, and there is a "Windows phone Marketplace."

The Windows Mobile Catalog displays such categories as Industries; Business

and Office Productivity; Development Tools; Digital Video, Audio, and

Animation; Enterprise Solutions; Games and Entertainment; Home and

Education; Internet; Networking and Communication; Personalization; Security

<sup>41</sup> For example, the drill-down description page for jamcode LLC's GasBag application also includes a link to a "GasBag 3.0 License Agreement," which includes the condition that the user acknowledges "that while jamcode will make every effort to not disclose any information uniquely identifying a particular user, jamcode makes no guarantees about such and accepts no liability as a consequence of breaches of same." *See* "Terms of Agreement" at 5.2, at <u>http://app-store.appspot.com/?url=viewEula%3Fid%3D304020431%26ign-impt%3DclickRef%253DSoftware%252520Page-US-GasBag%252520Pro-304020431-</u>

<sup>&</sup>lt;sup>40</sup> See "Terms of Use, Supplemental Terms and Privacy Disclosures for MapQuest Wireless Services," at <u>http://www.mapquest.com/terms-of-use</u> (last accessed Jan. 5, 2010).

and Virus Protection; and Utilities.<sup>42</sup> The Windows Mobile Catalog offers applications for Pocket PC and Smartphone devices.<sup>43</sup>

The Windows phone Marketplace page is segmented into sections for "Showcase," "Most Popular," and "What's New." The page states "To enable purchasing from this Web site, sign in to Windows Marketplace for Mobile from your phone, then return to this Web site and sign in. If you don't already have Windows Marketplace on your phone, you can download it for the Windows Mobile 6.x phone."<sup>44</sup> The Windows phone Marketplace offers the following categories, and enumerated entries: 9 entries in Books, 31 in Business Center, 33 in Communication, 27 in Reference, 39 in Entertainment, 207 in Games, 44 in Lifestyle, 9 in Maps & Search, 16 in Music & Video, 15 in News & Weather, 33 in Productivity, 14 in Social Networks, 35 in Travel, and 62 in Tools.<sup>45</sup>

The Windows Mobile Catalog includes links to its Terms of Use and Privacy Statement at the bottom of the page, which take you to the Terms of Use, and highlights of Microsoft's Online Privacy Policy.<sup>46</sup> Microsoft's Online Privacy Statement includes links to supplemental policies related to maps and

<sup>43</sup> *Id.* For example, clicking on the category "Business and Office Productivity" generates a page with three tabs: All Products (176), Pocket PC (112) and Smartphone (64). Consumers may click on a tab to display the products "for the Pocket PC (Touchscreen) or Smartphone (Non-touchscreen)." Clicking on other categories leads to similar option displays.

<sup>&</sup>lt;sup>42</sup> See

http://www.microsoft.com/windowsmobile/catalog/cataloghome.aspx?catid=5&subid=22&bin=1 &device=0&os=0 (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>44</sup> At <u>http://marketplace.windowsphone.com/</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>45</sup> See <u>http://marketplace.windowsphone.com/Default.aspx</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>46</sup> See <u>http://www.microsoft.com/info/cpyright.mspx</u> ("Microsoft - Information on Terms of Use") and <u>http://privacy.microsoft.com/en-us/default.mspx</u> ("Microsoft Online Privacy Notice Highlights"). The "Microsoft Online Privacy Statement" appears at

http://privacy.microsoft.com/en-us/fullnotice.mspx.

location services, as well as to the Windows Marketplace.<sup>47</sup> The Maps Privacy

Supplement notes that with respect to the Microsoft MapPoint Web Service:

Mapping features on Microsoft's sites and services are based in part on the Microsoft MapPoint Web Service. The MapPoint Web Service is a set of mapping and related services that is accessed through an application such as a Web site, desktop software, or mobile application. When you submit information, such as an address to be viewed on a map, to the application, that application passes it to the MapPoint Web Service for processing.

We keep track of all requests the application you are using makes to the MapPoint Web Service. Location-related information in the request or derived from the request, such as latitude and longitude, is used for calculating payments to our data vendors so that we may operate the service. We will occasionally capture all information in the request for use in testing and maintenance of the service. This information includes the date and time of the request and location-related information you may have provided to the application such as latitude and longitude, address, place name, or the start and end address of a route.<sup>48</sup>

The MapPoint Web Service is not an end-user service. Rather, it is "used by enterprises and independent software developers to integrate location-based services into Web applications."<sup>49</sup> These may include "mapping and related services, such as spatial proximity searching, geocoding, POI lookups, obtaining street maps and driving directions, and other mapping-related services."<sup>50</sup>

The Windows Marketplace and Digital Locker Privacy Supplement cautions:

<sup>&</sup>lt;sup>47</sup> See <u>http://privacy.microsoft.com/en-us/fullnotice.mspx</u>, <u>http://privacy.microsoft.com/en-us/maps.mspx</u> ("Maps Privacy Supplement," related to Microsoft MapPoint Web Service), and <u>http://privacy.microsoft.com/en-us/windowsmarketplace.mspx</u> ("Windows Marketplace and Digital Locker Privacy Supplement") (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>48</sup> See <u>http://privacy.microsoft.com/en-us/maps.mspx</u> (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>49</sup> See <u>http://www.microsoft.com/maps/product/mappoint.aspx</u> (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>50</sup> See Section 1.5 of the "Microsoft MapPoint Web Service Developer Account Agreement," at <u>http://www.microsoft.com/maps/assets/docs/mappoint-developer-terms.aspx</u> (last accessed Jan. 4, 2010). Section 2.4 of the developer agreement indicates the use of the service "will be subject to the data practices set forth in the MapPoint Web Service Privacy Statement."

In some cases, when you click on a link to purchase or download an item listed on the Site, you will be redirected to a different site where the merchandise is available. Any personal information you provide to such sites will be collected by those sites and governed by those sites' privacy statements. Windows Marketplace does not receive any of that personal information. We receive only aggregate reports from those sites.<sup>51</sup>

A keyword search on the Windows phone Marketplace produces 16 results

for GPS, including such paid apps as: LocateMe, from Applied PDA Software,

Inc., GPS Trackah from Subsembly GmbH, SMS my Position from M2Mobi, and

Joggah from Subsembly GmbH.<sup>52</sup>

The Windows Marketplace drill-down page for Joggah includes a link at

the bottom to a "Customer Service Agreement."<sup>53</sup> Section 11.3 of this agreement

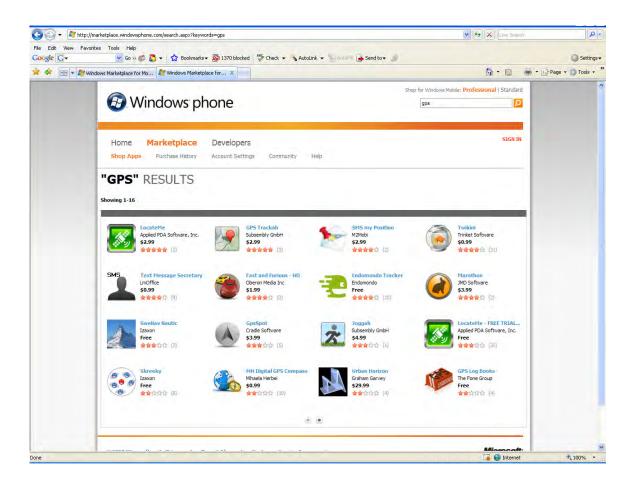
states:

Each time a location request is made by a Windows Marketplace application that uses location services provided by Microsoft, we will collect information about your location such as available cell tower data, Wi-Fi data, and GPS data to help the application provide features that use location and to help improve Microsoft's location services. This data may include cell tower and Wi-Fi access point identification information and their signal strength in relation to your phone. This location data is associated with a unique ID Microsoft generates for your phone. This unique ID is used to distinguish location requests in order to help improve the accuracy and performance of the location services. The unique ID is not associated

<sup>&</sup>lt;sup>51</sup> See http://privacy.microsoft.com/en-us/windowsmarketplace.mspx (last accessed Jan. 4, 2010). <sup>52</sup> The drill-down description indicates that "With Joggah you always have your complete running log book with you on your smartphone. Using the integrated GPS tracker functionality you can record your running tracks straight to your log automatically. Of course you can still listen to music or place phone calls simultaneously while Joggah tracks your outdoor workout. As each running path is stored in standard KML format, they can be opened directly in Google Earth. Of course you can use Joggah for biking, hiking, or any other outdoor activities, too." *See* <u>http://marketplace.windowsphone.com/details.aspx?appSKU=5f1c1a10-f8f2-4f77-80bf-</u> <u>3c2c614a0b0a&retURL=/search.aspx%3Fkeywords%3DGPS</u> (last accessed Jan. 5, 2010). *See also* <u>http://www.joggah.de/en/runninglog.html#Purchase</u> for additional details (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>53</sup> See <u>http://marketplace.windowsphone.com/details.aspx?appSKU=5f1c1a10-f8f2-4f77-80bf-3c2c614a0b0a&retURL=/search.aspx%3Fkeywords%3Djoggah</u> (last accessed Jan. 5, 2010).

with identifying information that is part of your Windows Marketplace or Windows Live ID account or profile and is not used to identify or contact you.<sup>54</sup>



Searching on the Windows phone Marketplace for the term "location-

based" produces one entry: Nanonavi, which is described as:

[A] secure mobile social app to bring your Family, Socialnetworks and Belongs together. Family, Friends, Things, Media, Places buttons to support the daily life of its user. Virtual Care gives users a breakthrough personal security functionality to care remotely for family-members, friends and possessions anywhere in

<sup>54</sup> See "Windows® Marketplace for Mobile Customer Service Agreement" at <u>http://marketplace.windowsphone.com/resources/en-us/Windows%20Marketplace%20Customer%20Service%20Agreement.pdf</u> (last accessed Jan. 5, 2010).

the world. Basic one month service included, user can renew their service anytime.<sup>55</sup>

Nanomatic Ltd., the manufacturer of Nanonavi, includes general Terms and

Conditions and Privacy Policy statements on its website.<sup>56</sup>

The Windows Mobile Catalog also allows keyword searches.<sup>57</sup> Searching

on the word "location" produced 18 results, including:

### **Driving Log**

"Driving Log is a GPS enabled, award winning application for recording distances traveled." The website indicates that the app is offered by MobiHand and Handango<sup>TM</sup> and is manufactured by Concrete Software, Inc.<sup>58</sup>

The Driving Log application provides an illustration of the variety of ways

in which a consumer may purchase LBS applications. First, in the Windows

Mobile Catalog you can click on the "buy-it-now" vendor's icon (e.g.,

Handango), which will take you to the initial Handango Driving Log page at

which point you can purchase the application, or review other applications.<sup>59</sup>

(Here, too, compatibility with the device may be determined.) A link to

Handango's general privacy policy appears at the bottom of the initial Driving

<sup>&</sup>lt;sup>55</sup> See <u>http://marketplace.windowsphone.com/details.aspx?appSKU=a0eb4761-9892-4d22-bb77-a37b23d8b142&retURL=/search.aspx%3Fkeywords%3Dlocation-based</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>56</sup> See <u>http://nanonavi.com/en\_privacy\_policy.php; http://nanonavi.com/en\_terms.php;</u> <u>http://www.nanomatic.net/index.php?option=com\_content&task=view&id=24&Itemid=40;</u> and <u>http://www.nanomatic.net/index.php?option=com\_content&task=view&id=23&Itemid=41</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>57</sup> See <u>http://www.microsoft.com/windowsmobile/catalog/cataloghome.aspx</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>58</sup> See

http://www.handango.com/catalog/ProductDetails.jsp?storeId=1819&platformId=30&productId= 204310 (last accessed Jan. 5, 2010).

Log page,<sup>60</sup> as well as to Handango's other policies, including their Subscription and Terms of Use ("Software License Agreement") Policies.<sup>61</sup> The latter policy includes the caveat that "You understand, acknowledge, and agree that Handango may not be owner of the Software and, as such, is not responsible for its content and/or functionality."

Alternatively, from the Windows Mobile Catalog you can click on a link

to Concrete Software - the manufacturer of the application - for additional

product information, or to buy it directly from the manufacturer.<sup>62</sup> The Driving

Log page on Concrete Software's website provides a link to its "Online Privacy

Policy."<sup>63</sup> That statement notes that:

Concrete Software intends to post a statement of purpose that explains why Personal Information will be collected and whether we plan to share such information outside of Concrete Software at the point of this information being collected. Concrete Software does not intend to transfer Personal Information without your consent to third parties who are not bound to act on Concrete Software's behalf unless such transfer is legally required.

You may choose whether or not to provide Personal Information to Concrete Software. The notice we intend to provide where Concrete Software collects Personal Information on the Web should help you to make this choice. If you choose not to provide the Personal Information we request, you can still visit most of Concrete Software's Web site, but you may be unable to access certain options, offers, and services that involve our interaction with you.<sup>64</sup>

<sup>&</sup>lt;sup>60</sup> See <u>http://www.handango.com/policies/PrivacyPolicy.jsp?storeId=1819&platformId=30</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>61</sup> See e.g., <u>http://www.handango.com/policies/TermsOfUse.jsp?storeId=1819&platformId=30</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>62</sup> See <u>http://www.concretesoftware.com/mobilephone/drivinglog.shtml</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>63</sup> See <u>http://www.concretesoftware.com/privacy.shtml</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>64</sup> Id.

Variations in handset selection may result in directing the would-be

purchaser to different sites, and policies. For example, in selecting to "Buy It

Now" from the Concrete Software story, for an iDEN handset, the icon transfers

you to the Sprint website, where a link to Sprint's "Your Privacy Rights"

appears.<sup>65</sup> That "Sprint Privacy Policy" landing page in turn provides a link to

Sprint's policy statement regarding "Presence, Location and Tracking

Information," which notes:<sup>66</sup>

We offer wireless location-based applications that use your wireless network location to provide the service you request. For example, you may choose to subscribe to a service that provides driving directions on your wireless device. Please review the terms and conditions for each service for additional information about how the location information will be used or disclosed. It is important to note, if you let others use location-based services to which you've subscribed as the account holder (or if you let others use your handset if such handset has location tracking capabilities), it is your responsibility to inform that user that his or her location may be tracked.<sup>67</sup>

Selecting a different handset, e.g., a Nokia device, results in directing a

would-be purchaser to Concrete Software's check-out page. That page includes a

link to "Customer Support," which indicates that:

Concrete Software and Handango have teamed together to provide you a secure way to purchase software applications for your mobile device. Handango developed and manages this area of the Web site; you are using Handango's server right now. Should you decide to purchase, you will be buying from Handango, and Handango will provide first-level support for your software purchase and download. If you have questions pertaining to specific functionality, features or

<sup>65</sup> See

http://nextelmedia.sprintpcs.com/NextelDigitalLounge/gamesdetails.do?categorydisplaypath=App lications&developerName=Concrete+Software&deviceDisplayName=Driving+Log+2 (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>66</sup> See <u>http://www.sprint.com/legal/sprint\_privacy.html#presence</u> ("Presence, Location and Tracking Information") (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>67</sup> Id.

use of Concrete Software software applications, please contact Concrete Software directly.<sup>68</sup>

The "Customer Support" page also includes a link to Handango's Privacy Policy,

which notes that:

Information about you – we actively collect personal information about you when you provide it voluntarily. This information may include your name, email address, phone number, credit card details (e.g., type, expiry date), postal address and other information as defined by applicable federal, state or local law. More detailed information is collected via our Careers link from those who may be interested in employment with Handango.

Information about your computer or mobile device – we may passively collect information about your computer and/or mobile device, such as your Internet domain name, IP address, device and/or phone number, the type of browser your computer is using, the date and time of your visit, and the page(s) you visited on our website or in an on-device catalogue (if applicable). This is done automatically using a variety of tools, including cookies, server log files and other forms of navigational data collection, including, without limitation, pixel tags, web beacons or clear GIFs."

The Privacy Policy also notes:

Your personal information may be shared with our business partners, such as software developers, network providers, device manufacturers and/or certain retailers, in order to fulfil [sic] your request for Handango products and services. These business partners should not use this information for any purpose other than to fulfil [sic] your request, but we cannot ensure that their confidentiality policies are the same as ours.<sup>69</sup>

As previously noted, not all LBS-related applications may be produced by

a single search. Use of "location-based" or "GPS" instead of "location" to search

the Windows Mobile Catalog generates different and longer sets of applications.

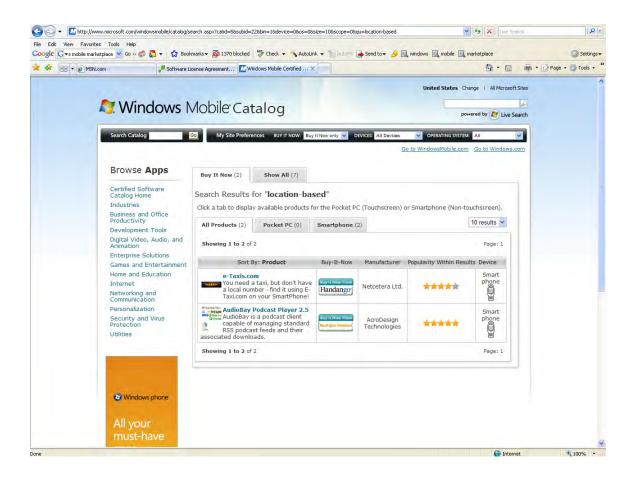
<sup>68</sup> See

http://hce5.handango.com/minibrand/MiniCustomerSupport.jsp?siteId=1081&jid=3B9A332BDB1 925C4F11AEE38B442BE34&authorId=416207&title=Concrete%20Software (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>69</sup> See "Handango Privacy Policy" at

http://www.handango.com/policies/PrivacyPolicy.jsp?storeId=1819&deviceId=1956&platformId= 40 (last accessed Jan. 5, 2010).

Indeed, with respect to applications available from the Windows Mobile Catalog that are "location-based," there are actually two sets of results – a "buy it now" selection, shown immediately below, and an "all results" set which includes both the "buy it now" items and additional applications, with links to the developers of the applications.



Although the second entry might not seem intuitively to include location-

based features from just looking at the top-line "buy it now" results, the drill-

down description of the AudioBay Podcast Player notes: "AudioBay also includes

integrated location-based and category podcast directories."70

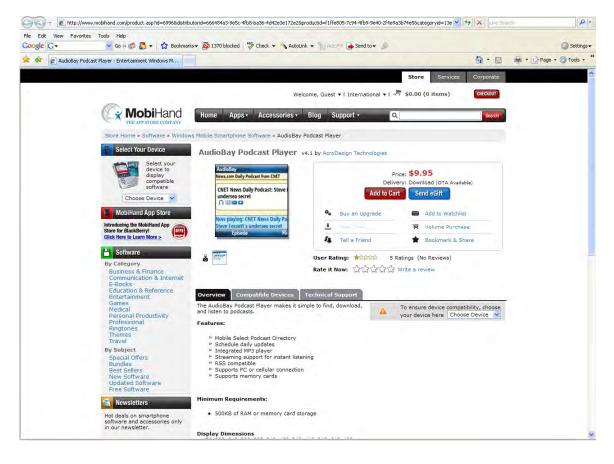


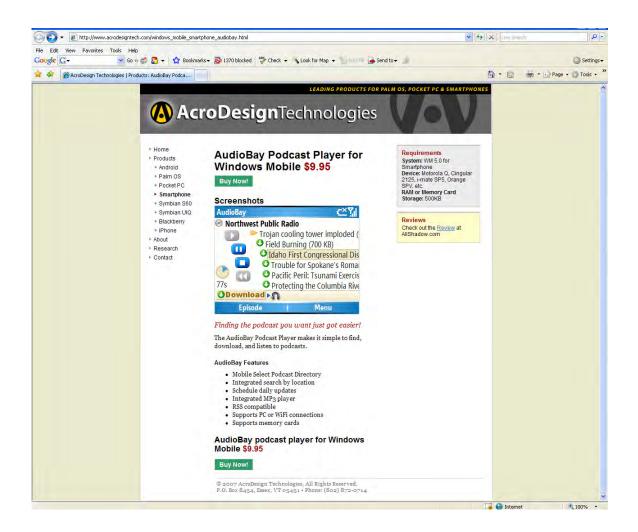
In fact, this product also demonstrates how applications are made available for purchase through multiple providers (in this case, through both Handango and MobiHand), as well as through the application's manufacturer, AcroDesign Technologies, as the following screenshots illustrate.<sup>71</sup> Clicking on either the Handango or MobiHand icons takes you to the next two screenshots. Clicking on the "More Product Information" link takes you to the page on the manufacturer's website shown in the third screenshot. The application may be purchased from any one of these three pages.

<sup>&</sup>lt;sup>70</sup> See <u>http://www.microsoft.com/windowsmobile/catalog/product.aspx?productid=f1ffe805-7c94-4fb9-9e40-2f4e9a3b74e5</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>71</sup> See <u>http://www.acrodesigntech.com/windows\_mobile\_smartphone\_audiobay.html</u> (last accessed Jan. 5, 2010).







Clicking on the "Buy Now" icon to purchase the application from the AcroDesign page takes you to the check-out page, hosted by Handango, which includes a "Customer Care" link at the bottom of the page that in turn provides you with a link to a Handango "Privacy Policy" statement.<sup>72</sup> The Handango Privacy Policy reached through this link, which differs from the Privacy statement associated with the Concrete Software application described earlier, indicates:

Handango will not sell your private information to any outside company for its use in marketing or solicitation. However, many downloadable software applications that we sell require the

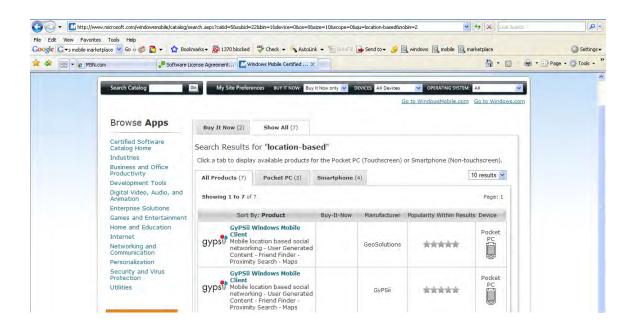
<sup>&</sup>lt;sup>72</sup> See <u>https://hce.handango.com/HCE/policies/CustomerSupport.jsp</u> and <u>http://hce.handango.com/HCE/policies/PrivacyPolicy.jsp</u> (last accessed Jan. 5, 2010).

software developers to provide the customer with a registration code to convert trial versions into full versions. In these cases, Handango must provide the software developers with relevant customer information in order for them to generate a registration code and email it to the customer. Although we strongly encourage software developers to follow strict privacy policies, Handango cannot be responsible for the privacy practices that each of the software companies follow. If you are concerned about the privacy policy of a certain developer or software company, you may contact them directly or visit their individual Web sites. Handango may also disclose your information in certain cases where we have your permission or under special circumstances, such as when we believe it is required by law.<sup>73</sup>

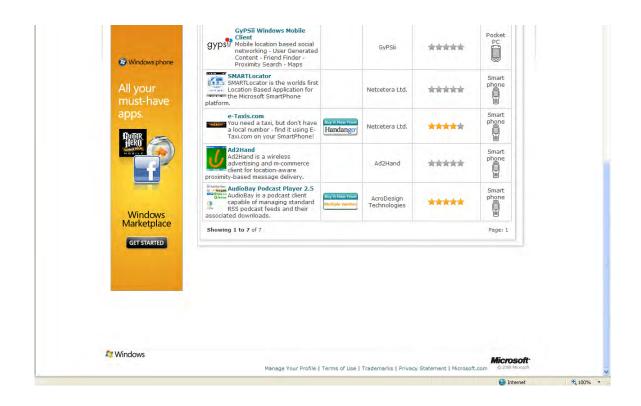
With respect to the "all results" page referred to earlier, the following

screenshot indicates the various "location-based" apps that are available for

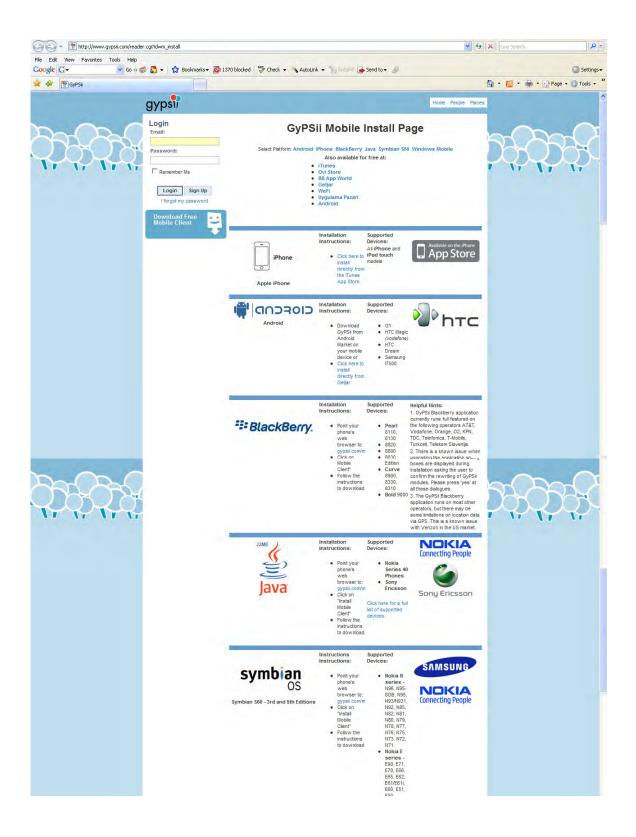
Pocket PC or Smartphone devices.



<sup>&</sup>lt;sup>73</sup> See <u>http://hce.handango.com/HCE/policies/PrivacyPolicy.jsp</u> (last accessed Jan. 5, 2010).



The non-"buy it now" items also include links to descriptive pages which in turn include links to the manufacturers' websites where, in addition to product information, installation instructions and links to other apps stores appear. The following screenshot from the GyPSii website shows the page which is reached through clicking on the GyPSii Windows Mobile Client links in the above screenshot.





The GyPSii Mobile page includes a link to its Privacy Policy, which

details how it collects and uses personal information, including:

Profile Information: GyPSii also collects user profile data, including but not limited to personal interests and search criteria, gender, education, occupation, and physical location coordinates in order to assist Users in locating and communicating with each other and identifying common interests among Users. User profile information, including Users' pictures and display names, are displayed in order to facilitate interaction through the GyPSii social networking community. Email addresses are used when existing Users invite others to join the GyPSii Service, and to send notifications, updates, and newsletters related to the GyPSii Service.

User-Provided Content: You post User Content on the GyPSii Service at your own risk. Although we offer privacy setting options to limit access to your personal information and other content you provide, no security measures are perfect or impenetrable. We cannot control the actions of other Users with whom you choose to share your personal information or other content. Accordingly, there is a risk that your personal information or content may be viewed by unauthorized persons or disclosed publicly by such unauthorized persons or other Users of the GyPSii Service. Even if you and/or GyPSii removes your personal information or other content from the GyPSii Service, copies may remain viewable in cached or archived locations, including such copies made or stored by other Users on their own computers. GyPSii is not responsible for any unauthorized use or disclosure of personal information or other content you submit to the GyPSii Service, and disclaims all liability to you or any third party arising from such use or disclosure.<sup>74</sup>

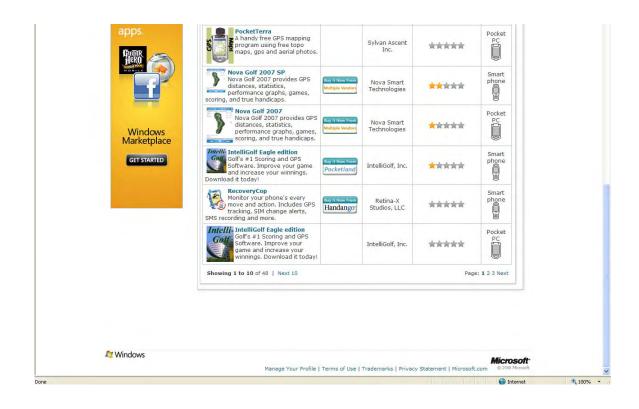
In the Windows Mobile Catalog, searching for GPS-related applications

generated 17 "buy-it-now" applications, and a total of 48 "all results"

applications. An illustrative screenshot of these GPS-related results follows.

	Section in concernment of						
Search Catalog	Go My Site Prefer	ences BUY IT NOW: Bu	ay it Now only 💉 D	EVICES: All Devices	OPERATING SYSTEM:		
				G	o to WindowsMobile.com	Go to Wind	
Browse <b>Apps</b>	Buy It Now (17)	Show All (48)					
Certified Software Catalog Home	Search Results	for "CDS"					
Industries					or Smartphone (Non-tou		
Business and Office	Click a tab to displa	y available products	TOT THE POCKEL PC	(Touchscreen) (	or smartphone (Non-cou	inscreen).	
Productivity Development Tools	All Products (48)	Pocket PC (34)	Smartphone (1	4)	1	0 results 🛰	
Digital Video, Audio, and Animation	Showing 1 to 10 c	Showing 1 to 10 of 48   Next 10 Page: 1 2 3 Nex					
Enterprise Solutions	Sort	By: Product	Buy-It-Now	Manufacturer	Popularity Within Result	Device	
Sames and Entertainment Home and Education	The first core To		buy it non	Honoroccorer	ropolority within resole		
Internet	🚍 🏠 All in on	e GPS Software with	Buy It Now From	Megalith -		Pocket PC	
Networking and	Lechniqu	ecision Averaging ue! Mapping,	Multiple Vendors	Gabor Tarnok	RXXXX	Ĩ	
Personalization	Geocach	ning & Measuring.	1.000				
Security and Virus	x gps aleph gps	aleph				Pocket PC	
Protection	data capture, gps	capture and Photo	r	Aleph software, s.a.	*****	,	
Scindes	capture, all in one	PDA device.					
		zetteer - UK Edition				Pocket	
		a users GPS		Apex Networks Limited	*****	PC	
	databas	se of over 33,000 UK		Limited			
Our	places.						
Windows phone	SDK	T Global Positioning				Pocket	
100		develop GPS-enabled	d	StormSource	*****	PC	
All your	lightwei	ght, multi-threaded ly for Visual		Software, LLC	AAAAA	60.9	
						9779	

<sup>&</sup>lt;sup>74</sup> See GyPSii "Privacy Policy" at <u>http://corporate.gypsii.com/content/view/7/</u> (last accessed Jan. 5, 2010).



## ANDROID

The Android Market permits viewing of a sampling of free and popular applications from a desktop computer. However, to view a comprehensive and up-to-date listing, the Android Market indicates it needs to be explored via a Google handset.<sup>75</sup>

From a desktop computer, previewed applications include such items as

Google Maps, and Layar Reality Browser 2.1, the latter of which:

shows what is around you by displaying real time digital information on top of reality through the camera of your mobile phone. With many local layers and global content from Flickr, Wikipedia, Yelp, Google local search, Qype, Brightkite, Yellowpages (soon), Twitter and much more.<sup>76</sup>

<sup>&</sup>lt;sup>75</sup> See <u>http://www.android.com/market/</u> ("Check out our site for some of the more popular applications and games available in Android Market. For a comprehensive, up-to-date list of the thousands of titles that are available, you will need to view Android Market on a handset.") (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>76</sup> *Id. See also* <u>http://layar.com/</u> (last accessed Jan. 5, 2010).

The desktop-accessed version of the Android Market page permits display of four pages of the Top Paid Applications, and 14 pages of the Top Free Applications. Most of the displayed top paid applications provide for customization of the user's handset. The displayed top free applications include a variety of locationrelated applications, such as:

**US Traffic** from Better Android, which is described as a "simple app that shows traffic report around your neighborhood. US cities ONLY. This is our gift back to the android community to thank you for supporting our apps."<sup>77</sup>

**ShopSavvy** from Big in Japan, which is described as "your shopping assistant. Using the camera in your phone, you can scan the barcode of any product to find the best prices on the internet and at nearby, local stores."<sup>78</sup>

**Google Sky Map** from Google, which is described as "A star map for Android. Google Sky Map turns your Android-powered mobile phone into a dynamic window on the night sky. When you point your phone up you will see a map of the brightest stars, constellations, and planets in that part of the sky."<sup>79</sup>

**Hotels near me** from BlueMedialab.com B.V, which says "Find and book hotel rooms mobile for often BETTER PRICES then at the reception! "Hotels near me" app is the first worldwide GPS hotel finder for Android. 66000 hotels in 71 countries and no fees. 21 languages supported!"<sup>80</sup>

 <sup>&</sup>lt;sup>77</sup> See <u>http://www.android.com/market/</u>. See also <u>http://betterandroid.wordpress.com</u>.
 <sup>78</sup> See <u>http://www.android.com/market/free.html#app=shopsavvy</u>. See also

http://www.biggu.com/consumers/. Big in Japan includes in its Privacy Policy both notation of the circumstances under which it may disclose individuals' personal information (*e.g.*, if necessary in order to provide the requested service, or to comply with a legal process, etc.) as well as notice that ""If you use location-enabled products and services, such as local price search, you may be sending us location information. This information may reveal your actual location, such as GPS data, or it may not, such as when you submit a partial address to look at a map of the area." *See* Big in Japan "Privacy Policy" at <a href="http://www.biggu.com/privacy-policy/">http://www.biggu.com/privacy-policy/</a> (last accessed Jan. 5, 2010).

 <sup>&</sup>lt;sup>79</sup> See <u>http://www.android.com/market/free.html#app=skymap</u> (last accessed Jan. 5, 2010).
 <sup>80</sup> See <u>http://www.android.com/market/free.html#app=hotelsnearme</u>. See also

http://www.blumedialab.com/hotels/ (last accessed Jan. 2, 2010).

**Wikitude – Mobile Global Travel Guide** from Philipp Breuss, mobilizy.com, which is described as "Maybe the most innovative and comprehensive travel guide ever: See the world through your phone's camera view overlaid with Wikipedia content. What you see is an annotated landscape, mountain names, landmark descriptions, and interesting stories: Augmented-reality for everyday use."<sup>81</sup>

**Loopt** from Loopt, Inc., which is described as connecting "you to your friends and the places around you. See where your friends are and what they're doing. Connect on the fly and instantly share photos, comments, and cool places. Turn your phone into a social compass and never be bored or lonely again!"<sup>82</sup>

Loopt provides explicit description of what constitutes "location

information" and the manner in which it is used and disclosed in their Privacy

Notice. The Loopt Privacy Notice notes that:

Loopt collects, maintains, uses, and displays your personal data and the geographic location of your mobile device (we call this location fix of your device "location information" or "geolocation") to provide the Loopt Services.

By using the Loopt Services, you have consented to: (1) the use of your device's location to provide Loopt's services including relevant advertisements, and the display of that location information to your Loopt friends and within your geo-tagged messages and content; (2) receive text messages and emails; and (3) pay carrier data, messaging, and other fees resulting from Loopt usage.

<sup>&</sup>lt;sup>81</sup> See <u>http://www.android.com/market/free.html#app=wikitude</u>. See also

http://www.mobilizy.com/ (last accessed Jan. 5, 2010). mobilizy includes "Wikitude API – Privacy Policy" guidance on its website at http://www.mobilizy.com/produkte/wikitude-apiprivacy-policy, which notes (1) ""Mobilizy may make available third party applications through its services. The information collected by Mobilizy when you enable a gadget or other application is processed under this Privacy Policy. Information collected by the application or gadget provider is governed by their privacy policies." And (2) "If we propose to use personal information for any purposes other than those described in this Privacy Policy and/or in the specific service privacy notices, we will offer you an effective way to opt out of the use of personal information for those other purposes. We will not collect or use sensitive information for purposes other than those described in this Privacy Policy and/or in the supplementary service privacy notices, unless we have obtained your prior consent.") (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>82</sup> See <u>http://www.android.com/market/free.html#app=loopt</u>. See also <u>http://www.loopt.com/</u> (last accessed Jan. 5. 2010).

The Loopt Services default privacy settings are set for the way that most Users use the services: we save your password for the mobile applications, your mobile device's geo-location is updated automatically, and that location information may be displayed to your Loopt friends even when Loopt is not open and running on your device. Changing these settings is easy - just select 'Settings' on the Loopt mobile application or manage your preferences via the Loopt.com Web site.<sup>83</sup>

The Loopt Privacy Notice also indicates that:

'PROFILE INFORMATION': When using the Loopt Services you provide certain other personal information and content - such as event times and locations, interests and hobbies, age, gender, sexual orientation, relationship status, and favorite places for breakfast, drinks, dancing, outdoor activities, etc. - that will be publicly displayed to other Users and on third-party sites and services (for example, when using the Loopt Services to publish updates to Twitter, Facebook, etc.) in accordance with your privacy settings.

'LOCATION INFORMATION': To provide the Loopt Services, we derive location information from your wireless carrier, certain third-party service providers, or directly from the mobile device that you used to register. This location tracking of your mobile device may occur even when the Loopt mobile applications are not actively open and running in the foreground, but your location is displayed and shared with others only in accordance with your privacy settings.<sup>84</sup>

The Android Market website includes statements regarding the "Android

Market Business and Programs Policies," "Android Market Terms of Service,"

and "Android Privacy Policy."<sup>85</sup> The Android Privacy Policy explicitly states:

**Location data** – Google offers location-enabled services, such as Google Maps for mobile. If you use those services, Google may receive information about your actual location (such as GPS

<sup>&</sup>lt;sup>83</sup> See Loopt "Privacy Notice" at <u>https://app.loopt.com/loopt/privacyNotice.aspx</u> (last accessed Jan. 3, 2010).

<sup>&</sup>lt;sup>84</sup> Id.

<sup>&</sup>lt;sup>85</sup> See <u>http://www.google.com/mobile/android/market-policies.html</u>, <u>http://www.google.com/mobile/android/market-tos.html</u>, and <u>http://www.android.com/privacy.html</u> (last accessed Jan. 5, 2010).

signals sent by a mobile device) or information that can be used to approximate a location (such as a cell ID).<sup>86</sup>

The Android Privacy Policy (modified March 11, 2009) also says:

At Google we recognize that privacy is important. This Privacy Policy applies to all of the <u>products</u>, <u>services and websites</u> offered by Google Inc. or its subsidiaries or affiliated companies except DoubleClick (<u>DoubleClick Privacy Policy</u>) and Postini (<u>Postini</u> <u>Privacy Policy</u>); collectively, Google's "services." In addition, where more detailed information is needed to explain our privacy practices, we post supplementary privacy notices to describe how particular services process <u>personal information</u>. These notices can be found in the <u>Google Privacy Center</u>.<sup>87</sup>

Google maintains a page with multiple links to privacy policies specific to particular products and services.<sup>88</sup> One such policy is the Google "Mobile Privacy Policy," which identifies mobile-specific information that Google collects, as well as the applicability of third-parties' policies to information sharing and forwarding with respect to third-party applications ("If you decide to use third party applications on your device, any information those applications collect may be sent to third parties and the Google privacy policies do not apply. However, third party applications may have their own privacy policies that you should review.").<sup>89</sup>

## BLACKBERRY APP WORLDTM

Research in Motion's ("RIM") BlackBerry App World<sup>™</sup> offers 19 categories of applications, including 168 items under Business, 308 under Entertainment, 108 under Finance, 1071 under Games, 120 under Health & Wellness, 95 under IM & Social Networking, 159 under Maps & Navigation, 95

<sup>&</sup>lt;sup>86</sup> *Id.* at <u>http://www.android.com/privacy.html</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>87</sup> Id.

<sup>&</sup>lt;sup>88</sup> See <u>http://www.google.com/privacy.html</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>89</sup> See <u>http://www.google.com/mobile/privacy.html</u> (last accessed Jan. 5, 2010).

under Music & Audio, 154 under News, 73 under Photo & Video, 252 under Productivity, 500 under Reference & eBooks, 31 under Shopping, 143 under Sports & Recreation, 3 under Test Center, 395 under Themes, 202 under Travel, 389 under Utilities, and 24 under Weather. Location-based applications may exist across these categories. Thus, for example, "Wheres My Phone Pro" and "Wheres My Phone – Free Edition" appear in the Utilities category.<sup>90</sup>

A search on the acronym GPS generates a list of 181 entries which refer to GPS, appearing in 17 of the BlackBerry App World<sup>TM</sup> categories: 5 in Business, 2 in Games, 97 in Maps & Navigation, 2 in Photo& Video, 2 in Shopping, 15 in Utilities, 12 in Entertainment, 8 in Health & Wellness, 1 in Music & Audio, 4 in Productivity, 18 in Sports & Recreation, 6 in Weather, 1 in Finance, 8 in IM & Social Networking, 3 in News, 1 in Reference & eBooks, and 12 in Travel. These range from applications specific to particular wireless service providers, or other countries (*e.g.*, Canada or the UK) as well as applications offering to track the users' location, providing traffic information and directions, location information for nearby stores, or tools to track and analyze ski statistics.<sup>91</sup> As previously noted, some applications – once downloaded – function without requiring on-line

<sup>&</sup>lt;sup>90</sup> See <u>http://appworld.blackberry.com/webstore/category/2?page=2</u> (the description notes that this paid application from Essare LLC "Helps you Locate, Find, and Recover your Lost or Wandering BlackBerry® smartphone! Wheres My Phone helps you find out where your BlackBerry is, whether it s lost at home, on the road, or anywhere else!" The description suggests would-be purchasers test the application with the Free edition to confirm that the GPS functionality works with the would-be purchasers' devices.) (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>91</sup> The "GpsSkiMaps – GPS Maps Track and Analytics – 2009-2010 Season Pass for All North American Resorts" by Bist LLC offers for a one-time fee a downloadable application that provides downloadable maps and subsequent offline "run by run analysis," including GPS tracking, run overlays, and ski track summaries. *See <u>http://appworld.blackberry.com/webstore/content/4826</u> (last accessed Jan. 6, 2010).* 

connectivity. Others may involve periodic or real-time connectivity in order to

perform their functions.

The BlackBerry App World<sup>™</sup> includes in the information intended for developers, the following notation (item "j"):

How should I notify users of data charges associated with my application? In general, the application only needs to warn the user once—however, if the data charge is linked to a specific action (e.g. downloading a video), it would be preferable to warn the user before each action. The application can provide a warning with an option that says "do not warn me again". Please communicate any data charges within your application description as well.<sup>92</sup>

The RIM BlackBerry website includes links to RIM's Privacy Policy,

Terms and Conditions, and BlackBerry® Software License Agreements.93 These

policy statements and agreements provide consumers with information regarding

the collection, use and disclosure of their personal information, as well as the

consumers' ability to withdraw consent for such use;<sup>94</sup> the terms under which

access is provided to third-party information;<sup>95</sup> and cautionary language regarding

"Third Party Content and Third Party Services" accessed via the Internet.<sup>96</sup>

RIM's BlackBerry website also includes the following information for

consumers under the "Security Options" topics:

<sup>&</sup>lt;sup>92</sup> See <u>http://na.blackberry.com/eng/developers/appworld/faq.jsp</u> (last accessed Jan. 6, 2010).

<sup>&</sup>lt;sup>93</sup> See "Privacy Policy" at <u>http://na.blackberry.com/eng/legal/privacy\_policy.jsp</u>, "Terms and Conditions" at <u>http://na.blackberry.com/eng/legal/terms.jsp</u>, and links to country-specific

<sup>&</sup>quot;BlackBerry® Software License Agreements" at <u>http://na.blackberry.com/eng/legal/bbsla.jsp</u> (last accessed Jan. 14, 2010).

<sup>&</sup>lt;sup>94</sup> "Privacy Policy" at <u>http://na.blackberry.com/eng/legal/privacy\_policy.jsp</u>.

 <sup>&</sup>lt;sup>95</sup> See e.g., "Terms and Conditions," Section 3, at <u>http://na.blackberry.com/eng/legal/terms.jsp</u>.
 <sup>96</sup> See "BlackBerry® Software License Agreement" at 5, at

http://www.blackberry.com/legal/pdfs/BBSLA/BBSLA\_USA-Canada\_English\_NA.pdf (last accessed Jan. 14, 2010).

#### **Protecting your GPS location information**

Your BlackBerry® device stores GPS location information. Thirdparty applications and preloaded BlackBerry device applications that support location-based services can use that GPS location information. For example, you can use BlackBerry® Maps to get the GPS location of your BlackBerry device. However, third-party applications cannot access your GPS location information automatically.

When applications have access to your GPS location information, they could potentially track your location or report your location back to a server. To prevent applications from using the GPS location of your BlackBerry device, perform any of the following actions:

- Block specific third-party applications from using the GPS location information.
- Block all third-party applications from using location-based services.
- Turn off GPS technology on your BlackBerry device.
- Delete the BlackBerry Maps application from your BlackBerry device.<sup>97</sup>

As previously noted, third-parties also offer directly applications which

may be compatible with differing devices. Handango's website permits would-be

purchasers to identify their specific device, and search for applications by

keyword. On Handango's website it is possible to choose "BlackBerry Bold

9700" and specify "GPS" and generate a list of 43 products that offer GPS-based

services for such a device.98

Likewise, third party applications such as uLocate's WHERE®

application may be available across competing applications stores, and compatible

<sup>&</sup>lt;sup>97</sup> See "Protecting Your GPS Location Information" at

http://docs.blackberry.com/en/smartphone\_users/deliverables/9895/Protecting\_your\_GPS\_locatio n information 763474 11.jsp (last accessed Jan. 6, 2010). Additional information on controlling downloaded applications appears at

http://docs.blackberry.com/en/smartphone\_users/deliverables/9895/Controlling\_your\_downloaded applications 763475 11.jsp (last accessed Jan. 6, 2010). <sup>98</sup> See

http://www.handango.com/catalog/SearchResults.jsp?storeId=1819&deviceId=2298&platformId= 40&pagingSortBy=-salesCount&N=4294892919&Ntt=gps (last accessed Jan. 6, 2010).

with devices running on competing wireless service providers' networks. For

example, uLocate's WHERE website notes that:

WHERE® is available on most of the major carriers: AT&T, Sprint, Verizon, T-Mobile, Virgin/Helio, Boost, and metroPCS, and as well as most of the hottest phones: iPhone, BlackBerry, Android, and the Palm Pre. Think we left you out? Think again. For the rest of you we have a mobile web version available at m.where.com.<sup>99</sup>

# PALM

Palm offers two stores from which applications may be purchased: the

Palm Software store, and the Palm App Catalog.

# PALM SOFTWARE STORE

The initial page of the Palm Software Store lists 47 Palm devices for

which applications are available, and allows viewing of applications by supported

platform: Palm OS and Windows Mobile Touchscreen.<sup>100</sup> The Palm Software

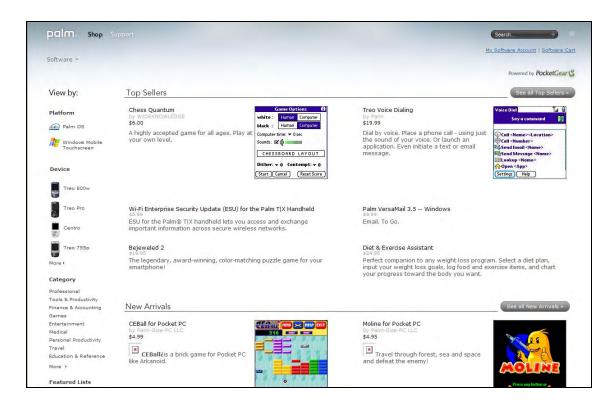
Store offers nine broad categories: Professional, Tools & Productivity, Finance &

Accounting, Games, Entertainment, Medical, Personal Productivity, Travel, and

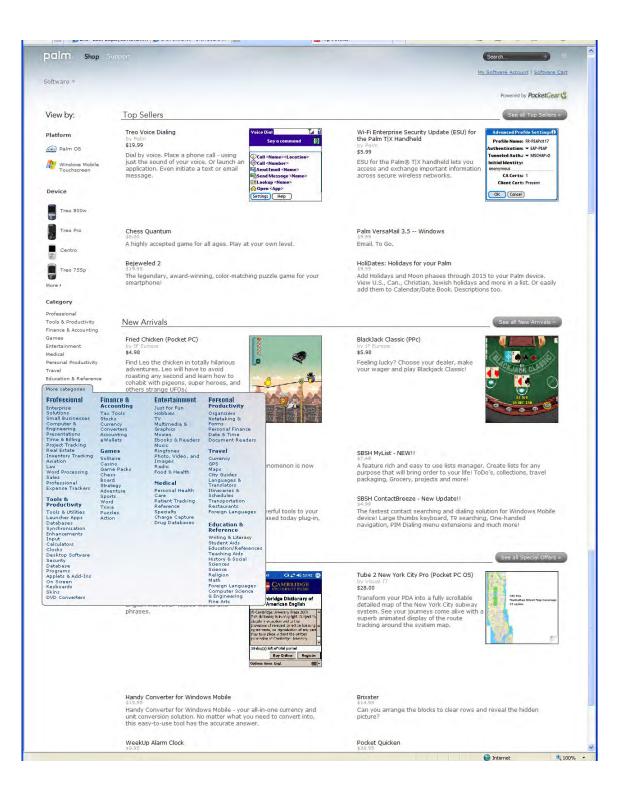
Education & Reference.

<sup>&</sup>lt;sup>99</sup> At <u>http://www.where.com/#</u> (last accessed Jan. 2, 2010).

<sup>&</sup>lt;sup>100</sup> See <u>http://software.palm.com/us/html/</u> (last accessed Jan. 2, 2010).



These categories are in turn divided into 89 subcategories (*e.g.*, Travel is divided in Currency, GPS, Maps, City Guides, Languages & Translators, Itineraries & Schedules, Transportation, Restaurants, and Foreign Languages).



A keyword search on the acronym "GPS" generates 2,970 hit in the Palm Software Store.<sup>101</sup> A search on "location-based" generates eight hits (five of which are different cities' versions of "Where to Wear" by Earthcomber LLC), while a search on LBS generates nine hits, only one of which is a genuine location-based service (imov Messenger Enterprise for Windows Mobile by mov Software, Inc.), the rest being unrelated diet or exercise-related apps, or unit converter / calculators.<sup>102</sup>

The Palm Software Store includes a link to Legal Notices at the bottom of the page, which in turn leads to the "Palm Privacy Policy."<sup>103</sup> That policy notes that "If you use services we provide through your Palm mobile device, we will collect information relevant to providing the services and as you designate. For example:"

**Location Based Services.** When you use location based services, we will collect, transmit, maintain, process, and use your location and usage data (including both real time geographic information and information that can be used to approximate location) in order to provide location based and related services, and to enhance your device experience.<sup>104</sup>

Palm's Privacy Policy also notes, with respect to "Notice and Choice":

You may choose whether or not to provide your personal information to us. If you choose not to do so, you can continue to interact with Palm, but you may not be able to take advantage of certain products, services, offers, or options that depend on personal information.<sup>105</sup>

<sup>&</sup>lt;sup>101</sup> See <u>http://www.palm.com/us/search/shop-software.html?search=GPS</u> (last accessed Jan. 2, 2010).

<sup>&</sup>lt;sup>102</sup> See <u>http://www.palm.com/us/search/shop-software.html?search=location-based</u> and <u>http://www.palm.com/us/search/shop-software.html?search=lbs</u> (last accessed Jan. 2, 2010). <sup>103</sup> See http://www.palm.com/us/company/privacy.html (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>104</sup> Id. in Section 1 of the "Palm Privacy Policy" ("Collection and Use").

<sup>&</sup>lt;sup>105</sup> *Id.* in Section 2 ("Notice and Choice").

The Privacy Policy also notes that:

Our website or mobile devices may display links to other sites that are not owned or controlled by us. We are not responsible for the privacy practices of such other sites. We encourage you to read the privacy statements of such sites and understand their privacy practices.<sup>106</sup>

## PALM APP CATALOG

The Palm App Catalog for the Palm® webOS<sup>TM</sup>-based devices offers apps

across the categories of Entertainment, Music, Social Networking, News,

Weather, Sports, Finance, Productivity, Games, Food, Business, Books,

Reference, Lifestyle, Travel, and Navigation.<sup>107</sup> The Palm App Catalog also

includes a link at the bottom of the page to Palm's Legal Notices, which in turn

provides links to the Palm Privacy Policy and other legal notices, including the

Palm App Catalog Terms and Conditions.<sup>108</sup>

The Palm App Catalog Terms and Conditions include a provision to the

effect:

**CONSENT TO USE OF DATA:** You agree that Palm, its affiliates and designated agents may collect and use technical and related information, gathered in any manner, as part of product support services related to the App Catalog. Palm, its affiliates and designated agents may use this information solely to improve its products or to provide customized services or technologies to you. Palm will collect and use this information in accordance with its privacy policy and in accordance with applicable data protection laws. Palm, its affiliates and designated agents may disclose this information to others, but not in a form that personally identifies you.<sup>109</sup>

<sup>&</sup>lt;sup>106</sup> *Id.* in Section 8 (Links).

<sup>&</sup>lt;sup>107</sup> See <u>http://www.palm.com/us/products/software/mobile-applications.html</u> (last accessed Jan. 2, 2010).

<sup>&</sup>lt;sup>108</sup> See id. "Legal notices" at the bottom of the page, and "Palm App Catalog End-User Terms and Conditions and Application License Agreement" at <u>http://www.palm.com/us/company/app-tc.html</u> last accessed Jan. 6, 2010).

<sup>&</sup>lt;sup>109</sup> See <u>http://www.palm.com/us/company/app-tc.html</u> ("Palm App Catalog End-User Terms and Conditions") last accessed Jan. 8, 2010).

The Palm App Catalog also includes an "Application License Agreement" (which notes that it may be supplemented by an Application Provider's End User License Agreement, which would have precedence over the Application License Agreement, if such an agreement is established between a consumer and an application provider). The Application License Agreement provides (among other things) that:

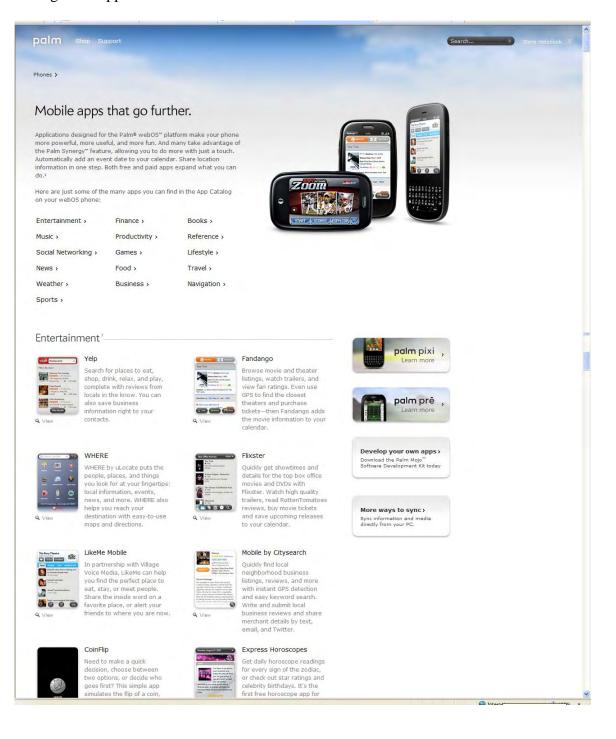
**CONSENT TO USE OF DATA:** You agree that the Application Provider may collect and use technical and related information, gathered in any manner, as part of product support services related to the Application. The Application Provider may use this information solely to improve its products or to provide customized services or technologies to you. The Application Provider may disclose this information to others, but not in a form that personally identifies you.<sup>110</sup>

The first page of the Palm App Catalog provides an illustrative listing of applications within the various categories (*e.g.*, Entertainment, Music, etc.). The location-based applications available in the Palm App Catalog (which are previewed) include uLocate's WHERE, Yelp (which allows you to search "for places to eat, shop, drink, relax, and play, complete with reviews from locals in the know"), Mobile by Citysearch (which allows you to "Quickly find local neighborhood business listings, reviews, and more with instant GPS detection and easy keyword search. Write and submit local business reviews and share merchant details by text, email, and Twitter."), FreeWeather (which provides you with "real-time, location-based weather app shows the weather conditions around your current location. Zoom in or out to cover a wider region."), and Kosher2Go ("Powered by the world's largest kosher database, Kosher2Go provides location

<sup>&</sup>lt;sup>110</sup> See "Application License Agreement," op cit.

and information for over 2700 kosher establishments in more than 50 countries."),

among other applications.<sup>111</sup>



<sup>&</sup>lt;sup>111</sup> See <u>http://www.palm.com/us/products/software/mobile-applications.html</u> (last accessed Jan. 2, 2010).

#### NOKIA OVI STORE

The Ovi store offers "approximately 20,000 items across categories ranging from applications, games, videos, podcasts, productivity tools and web to location-based services. The store is currently accessible from over 75 Nokia devices in five languages. Nokia's top five downloading countries include India, Italy, Spain, the UK and the US, with developers from 60 countries uploading content to Ovi Store."<sup>112</sup>

The Ovi Store applications page welcomes the consumer by offering them the ability to identify their specific Nokia device, in order to direct them to the applications or content appropriate to the device.<sup>113</sup> The page also permits display of all applications, as well as paid or free applications, and provides a search capability. Searching on terms such as "location" or "GPS" results in the display of a dozen applications per page, on either a newest-to-oldest basis, or by relevancy. Location applications include:<sup>114</sup>

SMS My Position (Utilities) by M2Mobi – with the snapshot description: "SMS your address in one click! How many times have you spend ages trying to explain somebody where to meet up, and finally. . ."

DondeEsta (Utilities) by Counterpoint – with the snapshot description: "DondeEsta is an application that allows you to share your location with the contacts you had previously authorized."

Nulaz (Social Networks) by M2Mobi - with the snapshot description: "See what's happening around you: friends, restaurants, bars, wifi hotspots, wikipedia, and movies."

<sup>112</sup> See Pradipta Kukherjeee Kolkata, "Handset makers jump on to social networking bandwagon," Business Standard, Sept. 3, 2009, available online at http://www.businessstandard.com/india/news/handset-makers-jumptosocial-networking-bandwagon/368859/ (last

accessed Jan. 6, 2010). <sup>113</sup> See <u>https://store.ovi.com/#/applications</u>.

<sup>&</sup>lt;sup>114</sup> Search performed Dec. 31, 2009.

The Terms and Conditions for Nulaz include the following privacy policy

disclosures:

All user details will be treated as confidential and will not be made available to third parties without permission. With user details we mean all the information that you have given us: Your personal information, email, phone number, tracks, messages, favourites, preferences, places, etcetera.

Only the people that you allow to see you will see you.

Only the information that you allow other people to see will be made available to these people.

In case of bankruptcy or takeover of M2Mobi BV, this privacy policy still holds and your details will be protected.<sup>115</sup>

Competing social networking applications also available on the Ovi store include:

**Mobile Locaccino** (Social Networks) by Zipano Tech – with the snapshot description: "Mobile Locaccino is a location-centered social networking app that allows friends to share their current location."

**Mobnotes** (Social Networks) by Mobnotes – with the snapshot description: "Mobnotes connects you with friends, people and places around you. You can see where your friends are on the map and what..."

**Pocket Life beta** (Social Networks) by Pocket Life – with the snapshot description: "Free worldwide location based social networking. Everything is tied to a place like finding your friends nearby and what. . ."

**KiTwitts** (Social Networks) by Biskero LLC – with the snapshot description: "KiTwitts allows your to search for twitts on Twitter using keywords and display ads based on keywords, device and location..."

**Here I am** (Social Networks) by Enpronomics – with the snapshot description: "'Here I am' is a user-friendly, geo- presence application with personal safety features. It enables users to call for help..."

<sup>&</sup>lt;sup>115</sup> See "Terms and Conditions, Nulaz User Agreement, Privacy Policy" at <u>http://www.nulaz.net/about/terms</u> (last accessed Jan. 6, 2010).

Other location-related apps include:

Wcities (City guides & Maps) by Wcities – with the snapshot description: "Wcities Venice is a complete social city guide covering your city with the most current events, nightlife, restaurants, ..."<sup>116</sup>

**Locify** (City guides & Maps) by Locify Ltd. – with the snapshot description: "aps, navigation, places, route recording and GPS - all ready to use. Also extendable by third party web services."

**Solar View** (Utilities) by ARSoftware – with the snapshot description: "SolarView displays sunset and sunrise times for any date or location, whether in your own backyard or at far-flung foreign..."

**Fuel-UP!** (City guides & maps) by i2tecnologia – with the snapshot description: "Fuel-UP! widget helps you to find the nearest gas station based on your current location and orders them according to price..."

**ForecaWeather 1-year license** (News & info) by Foreca Ltd – with the snapshot description: "ForecaWeather provides current conditions, 10 day weather forecasts and various weather animations for any location world..."

**Mobile Anti-Theft** (Business) by MIGITAL – with the snapshot description: "Want to Secure your Phone against Theft or Loss? Trace the Exact User & Location of your Mobile? Use Anti-Theft App. to..."<sup>117</sup>

**Hotelzon Mobile** (Utilities) by Hotelzon – with the snapshot description: "Must have tool for business and leisure travelers: Find hotels, check prices and book them with full GPS support! Hotelzon..."

**Widgets-GPS Info** (Utilities) by One View Systems – with the snapshot description: "Widget application that enables user to track his location & position along with trip meter and odometer functionalities..."

<sup>&</sup>lt;sup>116</sup> Wcities guides exist for multiple cities in the U.S. and around the world, including Auckland, Barcelona, Boston, London, Miami, New York, Paris, Venice, etc.

<sup>&</sup>lt;sup>117</sup> See <u>http://store.ovi.com/search?q=location</u>.

Searching on the basis of the term "GPS" generates a somewhat different selection, including some of the same applications (*e.g.*, Fuel UP!, Widgets-GPS Info, and Locify) as well as such applications as:

**I Parked Here** (City Guides & Maps) by Staron – with the snapshot description: "With I Parked Here, you'll never forget where you parked. Remember your parking place with a simple tap – and without waiting..."

**KidsLocator** (City Guides & Maps) by FindMe – with the snapshot description: "Do you know where your children are? KidsLocator gives you peace of mind by letting you always know where your children ..."

The Nokia Ovi Store includes links to Nokia's "Privacy Policy,"<sup>118</sup> "Ovi Service Terms,"<sup>119</sup> and "Ovi Store Service Specific Terms."<sup>120</sup> Collectively, these outline the data that Nokia collects when users "make a purchase, use or register" for services or otherwise interact with the company, as well as the purposes for which the data is processed. The Privacy Policy notes that "Certain services may involve the use of your location data. However, use of your location data for such services is subject to your consent."

# **OTHER APPLICATIONS STORES**

As previously noted, additional applications stores exist, operated by

Handango, MobiHand, GetJar, and other companies.

# HANDANGO

Handango offers 4,867 applications across dozens of categories, including Android<sup>™</sup>, BlackBerry<sup>®</sup>, Palm<sup>®</sup>, Windows Mobile<sup>™</sup>, and Symbian OS<sup>™</sup>

<sup>&</sup>lt;sup>118</sup> See <u>http://store.ovi.com/legal/privacy</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>119</sup> See <u>http://store.ovi.com/legal/terms</u> (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>120</sup> See <u>http://store.ovi.com/legal/terms/store</u> (last accessed Jan. 5, 2010).

apps.<sup>121</sup> The Handango website offers would-be purchasers of applications a "Top 10" listing of applications (and a "Top 10" listing of games) for each of these operating systems.<sup>122</sup> The site prompts would-be purchasers of applications to identify their mobile device (or manufacturer, or network provider) before they proceed to search the store for specific applications.

Handango's website includes both Privacy Policy and "Software License

Agreement" (terms of use) notices.<sup>123</sup> The latter notice indicates:

**Use of Information; Opt Out Rights**. Information provided by you in connection with your use of the Software will be used as necessary to complete your purchase. In addition, by Downloading the Software, you agree to receive communications via email from Handango regarding changes to and upgrades and/or new versions of the Software and promotions relating to the Software. You may choose to not receive these communications by going to the Website and modifying your settings. The terms of Handango's Privacy Policy as available on its Website shall govern all use of your personal information by Handango or its Providers. Should you have any questions regarding the use of your personal information, you may complete and submit a customer care form and/or send an email to the following e-mail address: privacy@handango.com.<sup>124</sup>

<sup>&</sup>lt;sup>121</sup> See <u>http://www.handango.com/catalog/SoftwareCatalog.jsp?categoryId=0</u> (last accessed Jan. 3, 2010).

<sup>&</sup>lt;sup>122</sup> See <u>http://www.handango.com/content/Top-Android-Apps;</u> http://www.handango.com/content/Top-BlackBerry-Apps;

http://www.handango.com/content/Top-Palm-Apps; http://www.handango.com/content/Top-Windows-Mobile-Apps; http://www.handango.com/content/Top-Symbian-Apps (last accessed Jan. 3, 2010).

<sup>&</sup>lt;sup>123</sup> See "Handango Privacy Policy" at

http://www.handango.com/policies/PrivacyPolicy.jsp?storeId=1819&deviceId=1956&platformId= 40 and "Software License Agreement" (terms of use) at

http://www.handango.com/policies/TermsOfUse.jsp?storeId=1819&platformId=110 (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>124</sup> See "Software License Agreement," Section 11 at <u>http://www.handango.com/policies/TermsOfUse.jsp?storeId=1819&platformId=110</u> (last accessed

Jan. 5, 2010).

As previously noted, the "Handango Privacy Policy" provides explanatory detail regarding the information collected by Handango via its website, measures taken to protect that data, and the extent to which information:

[M]ay be shared with our business partners, such as software developers, network providers, device manufacturers and/or certain retailers, in order to fulfil [sic] your request for Handango products and services. These business partners should not use this information for any purpose other than to fulfil [sic] your request, but we cannot ensure that their confidentiality policies are the same as ours.<sup>125</sup>

#### **MOBIHAND**

MobiHand's website describes it as "a leading distributor of software and content for smartphones, including BlackBerry, Windows Mobile, Palm, Symbian, and Android devices. The company partners with media companies, portals, retailers, device manufacturers and operators to deliver customized desktop and on-device app stores."<sup>126</sup> They note that they "currently power hundreds of co-branded app stores worldwide -- offering thousands of mobile applications, media products, and subscription services from hundreds of leading content providers and developers."<sup>127</sup> The website permits users to identify the software that they are interested in by platform (*i.e.*, BlackBerry, Pocket PC, Windows Smartphone, Android, Symbian, Palm OS, iPhone), by category (Business & Finance, Communications & Internet, E-Books, Education & Reference, Entertainment, Games, Medical, Personal Productivity, Professional, Ringtones, Themes, Travel), by Subject (Special Offers, Best Sellers, New

 <sup>&</sup>lt;sup>125</sup> See <u>http://www.handango.com/policies/PrivacyPolicy.jsp?storeId=1819&platformId=110</u> (last accessed Jan. 4, 2010). The language of this Handango Privacy Policy mirrors that linked to by the Concrete Software Driving Log application discussed previously.
 <sup>126</sup> See <u>http://corporate.mobihand.com/</u> (last accessed Jan. 3, 2010).
 <sup>127</sup> Id.

Software, Updated Software, Free Software), and invites them to identify their

device.<sup>128</sup> MobiHand's website also permits keyword searching, with 289 results

for GPS, such as:

**YouCaddy GPS** – "mobile phone GPS application for golfers." (Available for BlackBerry and Sprint CDMA devices.)<sup>129</sup>

**Map My Tracks** – an "easy way to accurately track, or share in real-time, your sporting activity over land, sea or air using your mobile phone and GPS." (Available for BlackBerry, Windows Mobile Pocket PC, Windows Mobile Smartphones, Android, Symbian, Palm OS, and iPhone devices.)<sup>130</sup>

**Efficasoft GPS Utilities for Smartphone** – offering real-time map navigation, digital compass, speedometer, and speed alarms (for Windows Mobile Pocket PC, and Windows Mobile Smartphones).<sup>131</sup>

MobiHand's website includes, in the Developer Partners section, a Software

Distribution Agreement, which includes the notation that:

**Customer Information.** Information about Customers delivered by MobiHand to Content Partner shall not, without the permission of the Customer, be sold, given, loaned or made available to any third party, nor be used to contact the customer in violation of applicable laws.<sup>132</sup>

#### GETJAR

GetJar offers thousands of applications, across such categories as Games,

Education, Social & Messaging, Entertainment, Productivity, Finance, Food,

Health, Search, Maps, Music, News & Weather, Photos, Religion, Shopping,

<sup>&</sup>lt;sup>128</sup> See <u>http://www.mobihand.com/</u> (last accessed Jan. 3, 2010).

<sup>&</sup>lt;sup>129</sup> See e.g., <u>http://www.mobihand.com/product.asp?id=26381&n=YouCaddy-GPS-%28Sprint-CDMA-phones%29</u> (last accessed Jan. 3, 2010).

<sup>&</sup>lt;sup>130</sup> See e.g., <u>http://www.mobihand.com/product.asp?id=20726&n=Map-My-Tracks</u> (last accessed Jan. 3, 2010).

<sup>&</sup>lt;sup>131</sup> See e.g., <u>http://www.mobihand.com/product.asp?id=13999&n=Efficasoft-GPS-Utilities-for-</u> <u>Smartphone</u> (last accessed Jan. 3, 2010).

<sup>&</sup>lt;sup>132</sup> See "MobiHand App/Content Developer Program, Software Distribution Agreement, Service Agreement," Section 2, "Obligations of Content Provider" at

http://corporate.mobihand.com/sda\_dev.asp (last accessed Jan. 4, 2010).

Sports, Travel, Adult, and Lifestyle.<sup>133</sup> A keyword search on GPS produces 452

results across such categories as:

**Maps**, such as **BerrySki offline GPS ski maps** – "fully offline GPS ski maps software for BlackBerry with analytics for skiers and snowboarders in North America"<sup>134</sup>

**Sports**, such as **WeGolf** – **Golf GPS** – which "turns your cellphone into a Golf GPS. Combining Distances, Scorecard, Statistics, Live Scoring and Satellite Tracking its your personal Caddie both on and off the course."<sup>135</sup>

**Lifestyle**, such as **Radio Finder!** – by "Using your device's GPS and a local database (no internet connection required) with the tap of a button you will see a list of all of the radio stations you can receive from your current location and what format (rock, classic, news radio, etc.) they play!"<sup>136</sup>

**Productivity**, such as **GPS To Do List** – "Get alerts when you are near the places on your GPS ToDo List. Manage your day using time and distance sensitive alarms. Example: Forget to pick up milk? Next time you're at the store set a new favorite location. When you need milk again, set an alarm. As you drive past the store the alarm will go off, telling you to get milk."<sup>137</sup> **SMS & IM** applications, such as **Vicinity Match** – **Location Based (LBS)** which asks: "Want to find your match using location based service (GPS)? Use the new and improved Vicinity Match to

find a new friend, a penpal or your ideal dating partner.")<sup>138</sup>

The GetJar privacy policy generally applies to the use of the GetJar website,

describing the parameters of what information they may collect, and the

<sup>&</sup>lt;sup>133</sup> See <u>http://www.getjar.com/</u> (Jan. 3, 2010). See also Jenna Wortham, "Firms Selling Apps for Simple Phones," New York Times, Jan. 3, 2010, at

http://www.nytimes.com/2010/01/04/technology/personaltech/04app.html?ref=technology (last accessed Jan. 14, 2010).

<sup>&</sup>lt;sup>134</sup> See <u>http://www.getjar.com/mobile/31630/berryski--offline-gps-ski-maps/</u> (last accessed Jan. 3, 2010).

<sup>&</sup>lt;sup>135</sup> See <u>http://www.getjar.com/mobile/5154/wegolf---golf-gps/</u> (last accessed Jan. 3, 2010).

<sup>&</sup>lt;sup>136</sup> See http://www.getjar.com/mobile/21526/radio-finder%21/ (last accessed Jan. 3, 2010).

<sup>&</sup>lt;sup>137</sup> See <u>http://www.getjar.com/mobile/23852/gps-todo-list/</u> (last accessed Jan 3, 2010).

<sup>&</sup>lt;sup>138</sup> See e.g., <u>http://www.getjar.com/mobile-all-applications/gps/?o=bestmatch</u> (last accessed Jan. 3, 2010). See also http://www.youtube.com/watch?v=\_mQK4hYi02o&NR=1 (last accessed Jan. 3,

<sup>2010).</sup> *See also* <u>http://www.youtube.com/watch?v=\_mQK4hYi02o&NR=1</u> (last accessed Jan 2010).

restrictions that they apply to the use of consumers' personal information. The

Policy also includes the notice that:

Please be aware that the terms of our Privacy Policy do not apply to Third Party Sites, Third Party Services or Third Party Materials that have links or are provided through the GetJar Site. Third party providers of such Third Party Sites, Third Party Services or Third Party Materials, may collect (via tracking technologies like Cookies or web beacons) and use Anonymous Information regarding your interaction with the Third Party Sites, Third Party Services or Third Party Materials that they deliver and with which you interact.<sup>139</sup>

# **OTHER LBS-RELATED COMPANIES**

There are third-party companies which provide services that enable other

companies to offer applications stores. Companies like Handmark provide

turnkey services that enable service providers and third-parties to offer their own

applications stores. As Handmark describes it:

The company delivers an engaging, customized experience for your mobile phone with the industry's best applications covering news and information, games, lifestyle and travel, reference and productivity, personalization and more. As one of the leading distributors of mobile content and storefronts for 10 years, Handmark has established itself as the premier mobile content partner.<sup>140</sup>

Handmark also develops and aggregates mobile applications for other

companies to offer in their own stores,<sup>141</sup> and provides desktop and mobile web

solutions for carriers and handset companies to use in establishing their own

application stores.<sup>142</sup>

<sup>&</sup>lt;sup>139</sup> See <u>http://m.getjar.com/privacy/?ref=0&lvt=1262667011&sid=20616525047&lang=en&p=1</u> (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>140</sup> See <u>http://www.handmark.com/company/about.php</u> (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>141</sup> See <u>http://www.handmark.com/company/solutions/product-aggregation.php</u> (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>142</sup> See <u>http://www.handmark.com/company/solutions/desktop-stores.php</u> (last accessed Jan. 4, 2010).

Handmark website posts a general "Privacy Notice,"<sup>143</sup> and "Terms of

Use" regarding its website and operations. The Terms of Use notice cautions

consumers that:

Parties other than Handmark operate stores, provide services, or sell products on this website. We are not responsible for examining or evaluating their products, services or advertising. We do not warrant the offerings of, any of these third parties or their products, services, the content of their websites or advertising, nor do we assume any responsibility or liability for their actions, products or services. You should carefully review their privacy statements and other conditions of use before purchasing products or services, or visiting the websites of such third parties.<sup>144</sup>

Handmark's store offers apps for Android, BlackBerry, iPhone, Java,

Palm OS, Palm WebOS, Symbian, Windows Mobile Pocket PC, and Windows

Mobile Smartphones.<sup>145</sup> These include LBS apps, as the following illustrative

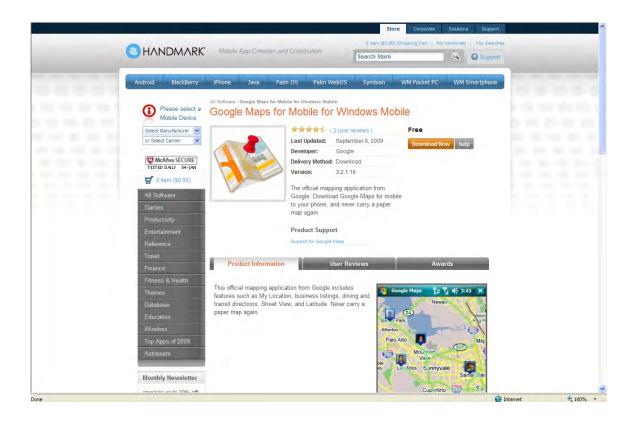
screenshots indicate.

<sup>&</sup>lt;sup>143</sup> See <u>http://www.handmark.com/company/privacy.php</u> (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>144</sup> See <u>http://www.handmark.com/company/conditions.php</u> (last accessed Jan. 4, 2010).

<sup>&</sup>lt;sup>145</sup> See <u>http://www.handmark.com/</u> (last accessed Jan. 4, 2010).





A search on the Handmark store on the acronym "GPS" generates 32 hits, ranging from navigation applications such as Garmin Mobile for U.S. and Canada for BlackBerry, Google Maps or MapQuest Navigator, to sports and exercise related applications such as AllSports GPS for Android, or Trimble Outdoors for BlackBerry.<sup>146</sup> Applications providers, like AAA Mobile and Trimble Outdoors, may include Privacy or Terms of Use policies or notices on their websites regarding location information, while others may include general privacy policy statements. These sites and notices may be reachable via the "Product Support"

<sup>146</sup> See

http://handmark.resultspage.com/search?p=Q&srid=S1%2d3&lbc=handmark&ts=custom%5fv2& w=gps&uid=242419424&method=and&isort=score&srt=0 (last accessed Jan. 5, 2010).

links for the applications sold through the Handmark website.<sup>147</sup> Thus, for

example, the "Terms of Use" for AAA Mobile notes:

For AAA to provide services via AAA Mobile, the location of your mobile device must be sent from AAA Mobile to AAA. AAA will record this information only for use in providing services to you via AAA Mobile and for internal quality assurance purposes.

Your location is retrieved by AAA Mobile directly from the GPS unit in your wireless device only when you request it via the services provided by AAA Mobile. AAA Mobile does not provide AAA, or any other entity, a means to retrieve your location without your knowledge and consent.

Your location information is retained by AAA and NIM only for the purposes of delivering the services provided by AAA Mobile and for internal quality assurance measures. When you request AAA member Roadside Service, your location is made available to the AAA member roadside assistance call center strictly for use in directing the appropriate service personnel and equipment to where you are. This member roadside assistance location information cannot be retrieved for any other purpose by AAA or any other entity.<sup>148</sup>

Likewise, Trimble Outdoors (provider of an application which "transforms your

phone into a GPS device, providing you the ultimate outdoor experience. With

Trimble Outdoors, you can find your way, avoid getting lost, and record and track

your outdoor experiences"<sup>149</sup>) includes in its Terms of Use the provision:

http://store.handmark.com/products/detail.php?id=1793&&& (last accessed Jan. 5, 2010). Trimble also provides the AllSport GPS Yearly Subscription for BlackBerry, at http://store.handmark.com/products/detail.php?id=1912&&&, and the AllSport GPS for Android, at http://store.handmark.com/products/detail.php?id=151635&&& (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>147</sup> See e.g., "AAA Mobile Monthly Subscription for BlackBerry" at

http://store.handmark.com/products/detail.php?id=1995&&&, and "Product Support" link thereon (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>148</sup> See e.g., "Terms of Use," at

http://www.aaa.com/Automotive/files/aaa mobile terms and conditions.pdf (last accessed Jan. 5, 2010).

<sup>&</sup>lt;sup>149</sup> See "Trimble Outdoors Monthly Subscription for BlackBerry," at

Notice about Location Based Services. When you use the Software used with the Trimble Outdoors Services to voluntarily upload and share Adventure Planner Trips through Site, information regarding your geographic location(s) may be accessed and disclosed through the Software. You agree to notify any other users associated with your Trimble Outdoors account of this feature.<sup>150</sup>

The Trimble Outdoors Terms of Use statement (dated July 21, 2008) also

includes the company-specific provision:

Notice for Alltel users

By subscribing to and/or using this application, you, the user of the location based service, agree that Alltel Communications, LLC. ("Alltel") may disclose your location information to a third party service provider or providers in order to deliver the location based services you requested. You should not initiate this service if you do not want your location shared with these third party service providers. You control when your location is shared with others by managing the settings on the application. You authorize the disclosure of your location to those third parties you wish to receive your location. You may revoke the foregoing consents within the application and by deleting the application from your handset. Alltel may retain your location information for as long as it has a business need to do so. Alltel does not guarantee the accuracy or completeness of any location information displayed through this application. Always use caution when disclosing personally identifiable information about yourself or your location to others.<sup>151</sup>

#### CONCLUSION

As the foregoing indicates, the applications marketplace is complex, and

multi-dimensional. It is comprised of applications developers, third-party

platform enablers, applications store operators, and companies which span all

three of these functional categories. The applications marketplace is evolving, as

<sup>&</sup>lt;sup>150</sup> See <u>http://portal.trimbleoutdoors.com/Main/Legal/TermsofUse/tabid/280/Default.aspx</u> (last accessed Jan. 6, 2010).

<sup>&</sup>lt;sup>151</sup> *Id*.

well, with new entry occurring across these functional categories, and companies

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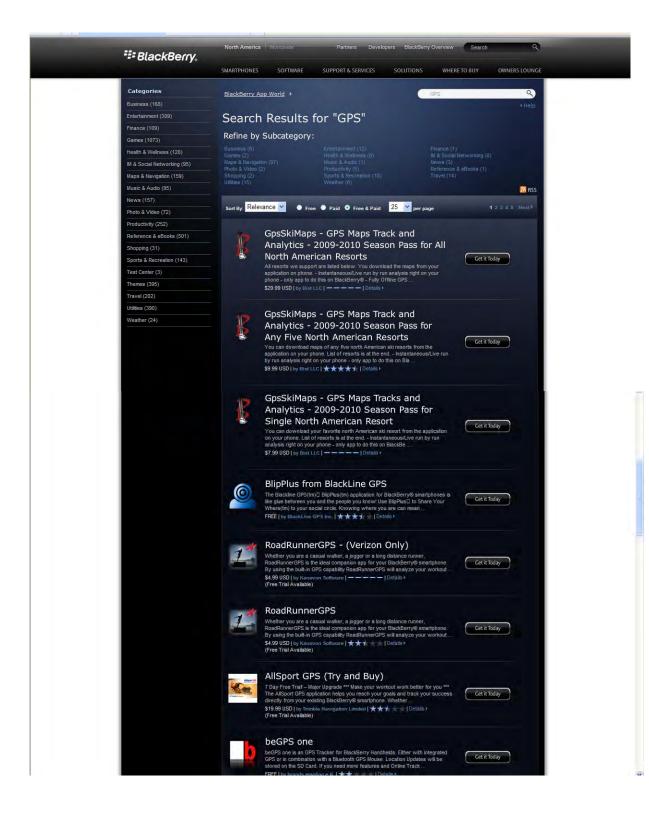
expanding their offerings.

Respectfully submitted,

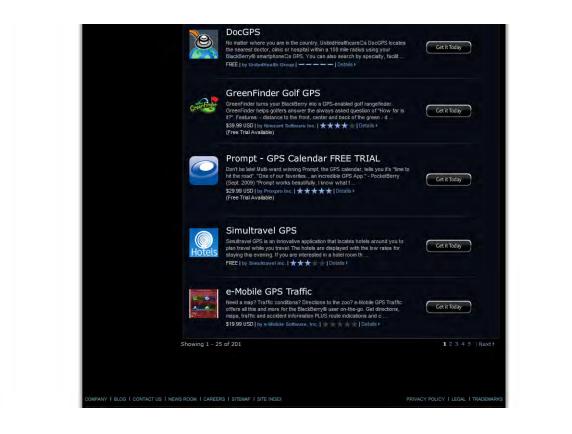
CTIA-THE WIRELESS ASSOCIATION 1400 16<sup>th</sup> Street, N.W. Suite 600 Washington, D.C. 20036 (202) 785-0081

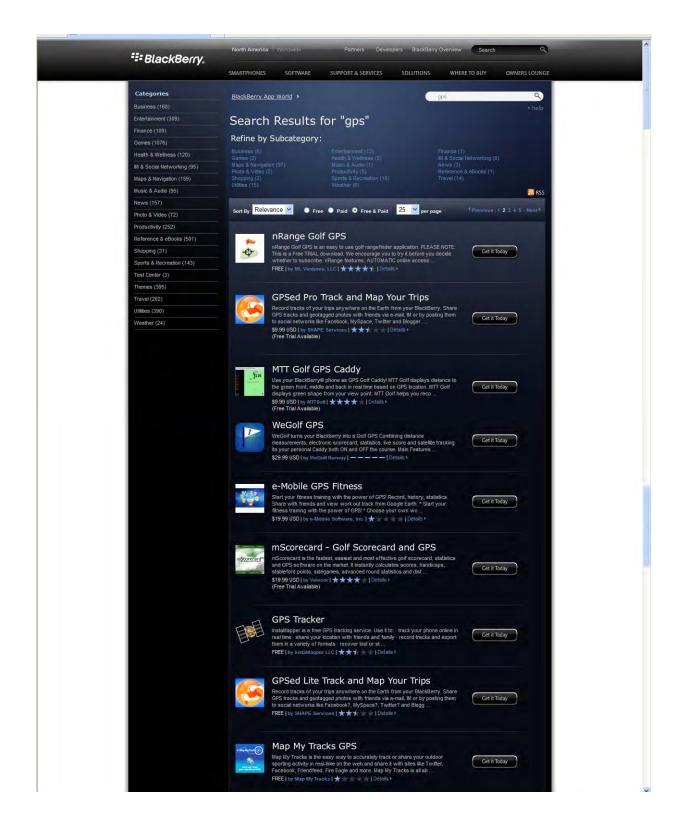
Michael F. Altschul Senior Vice President and General Counsel

# **ATTACHMENT A**



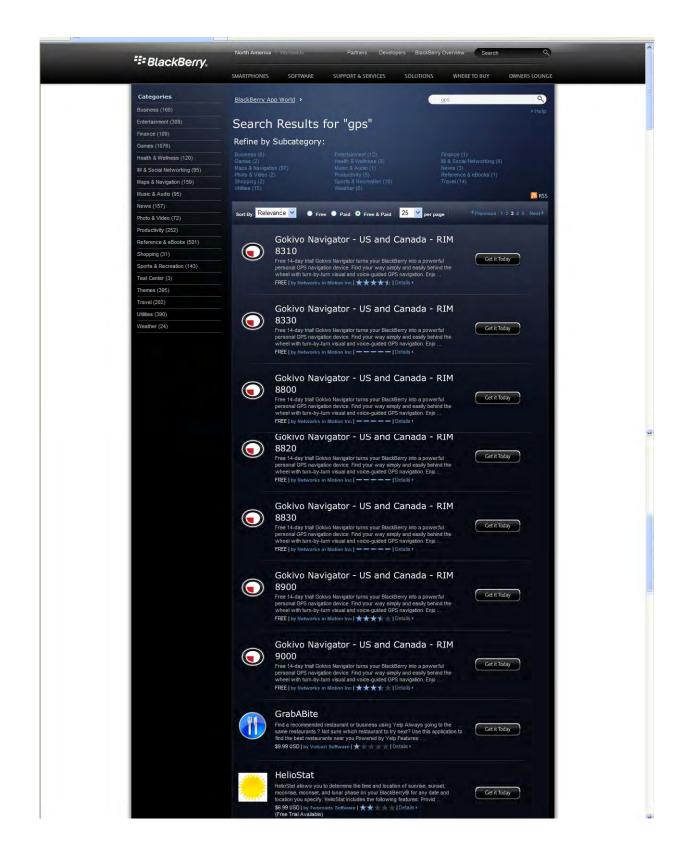
	e-Mobile GPS Companion Enrich social life with e-Mobile GPS Companion. Powered with directions, maps,		
<u>No a</u>	services into and GPS guidance and the ability to connect with friends. Need a map? An entertainment guide? Traffic conditions? Directions \$19.99 USD [by e-Mobile Software, Inc.] * * * * * (Details)	Get it Today	
telenav	TeleNav GPS Navigator for BlackBerry 8830 - Free Trial TeNav GPS Navigator™ TeleNav® is the leader in GPS navigation on the BlackBerry® for all the best reasonsBlackBerry News, December 29, 2008 Try TeleNav GPS Navigator free for 14 days. If you enjpy your 14-d FRE[ by TeleNav III] ★★★★ (Details *	Get it Today	
telenav	TeleNav GPS Navigator for BlackBerry Curve 8330 - Free Trial Tekhav GPS Navigator <sup>100</sup> Tekhav® is the leader in GPS navigation on the BlackBerry® for all the best reasonsBlackBerry News, December 29, 2008 Try Tekhav GPS Navigator free for 14 days. If you enjoy your 14-d FREE [ by TeleNav Inc ] ★ ★ ★ ★   Details *	Get it Today	
telenav	TeleNav GPS Navigator for BlackBerry Curve 8900 - Free Trial TeleNav GPS Navigator <sup>10</sup> TeleNav® is the leader in GPS navigation on the BlackBerry® for all the best reasonsBlackBerry News, December 29, 2008 Try TeleNav GPS Navigator free for 14 days. Hy voe neby your 14-d FREE [ by TeleNav Inc ] ★★★★ % [ Details *	Cet it Today	
telenav	TeleNav GPS Navigator for BlackBerry Pearl 8130 - Free Trial TeleNav GPS Navigator <sup>™</sup> TeleNav® is the leader in GPS navigation on the BlackBerry® for all the best reasonsBlackBerry News, Becember 29, 2008 Try TeleNav GPS Navigator free for 14 days. Hy our eipy your 14-d FREE   by TeleNav Inc     Details +	Cet it Today	
telenav	TeleNav GPS Navigator for BlackBerry Storm 2 - Free Trial TeleNav® is the leader in GPS navigation on the BlackBerry® for all the best reasonsBlackBerry News, December 29, 2008 Try TeleNav GPS Navigator free for 14 days 1 FREE   by TeleNav Inc  ★★★★ \(10table \)	Cet it Today	
e-GPSI))	e-GPS An application for the BlackBerry® Smartphone. If you have ever bst, misplaced or had your phone stolen, or want to cover yourself in case it happens in the future, then this is the app for you. It allows you to remot \$4.99 USD [by The DB Group   ★★★★/   Details >	Cet it Today	
	e-Mobile GPS FindMe *Turn your phone into a working compass! Locate people you care, trace your kdis whereabouts, use like a employee/whicle tracker or even locate your lost phone * Never get lost again, find out curren \$19.99 USD   by e-Mobile Software, Inc.         Details >	Get it Today	
	DocGPS No matter where you are in the country, UnitedHealthcareDs DocGPS locates the nearest doctor, clinic or hospital within a 100 mile radius using your BlackBerry® smartphoneDs GPS. You can also search by specialty, facilit FREE   by UnitedHealth Group     Details )	Cet it Today	
Creation	GreenFinder Golf GPS GreenFinder tums your BlackBerry into a CPS-enabled golf rangefinder. GreenFinder helps golfers answer the always asked question of 'How far is ft?' Features distance to the front, center and back of the green - d \$39.99 USD by timenant Software Inc.   ★ ★ ★ III [Details * (Free Trial Available)	Get it Today	
	Prompt - GPS Calendar FREE TRIAL Don't be late! Multi-ward winning Prompt, the GPS calendar, tells you it's "time to hit the road". "One of our favoritesan incredible GPS App." - PocketBerry (Sept. 2009) "Prompt works beautifuly, I know what t \$2999 USD (proprogram Co] ★ ★ ★ ★ (Details) (Free Trial Available)	Cet it Today	



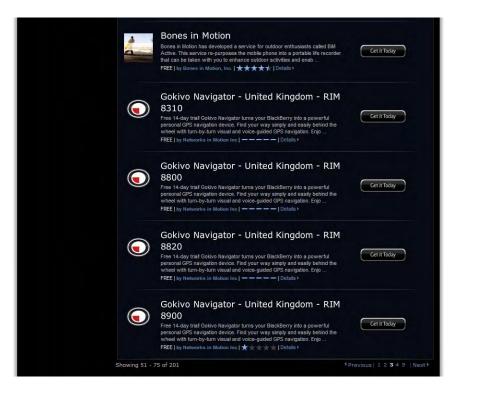


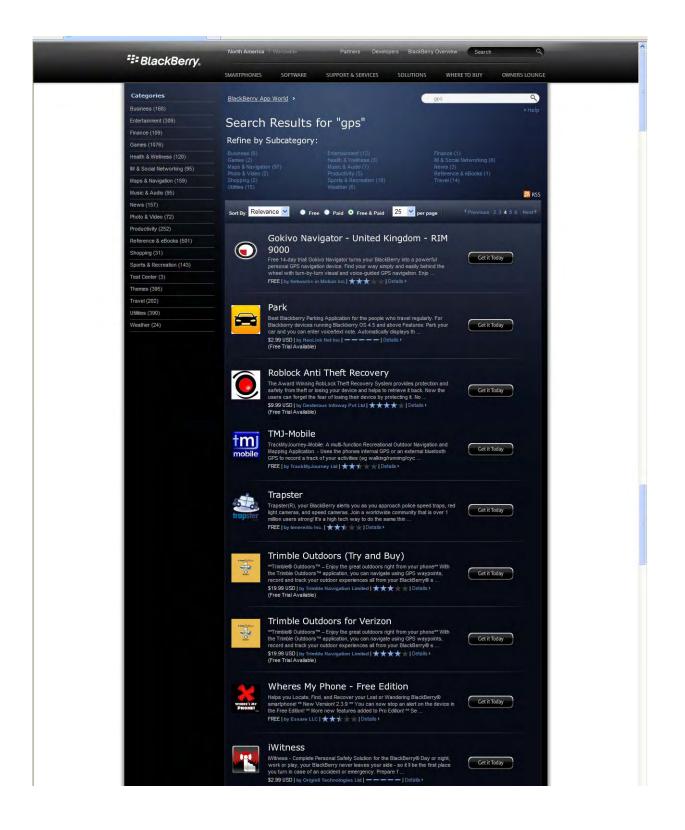






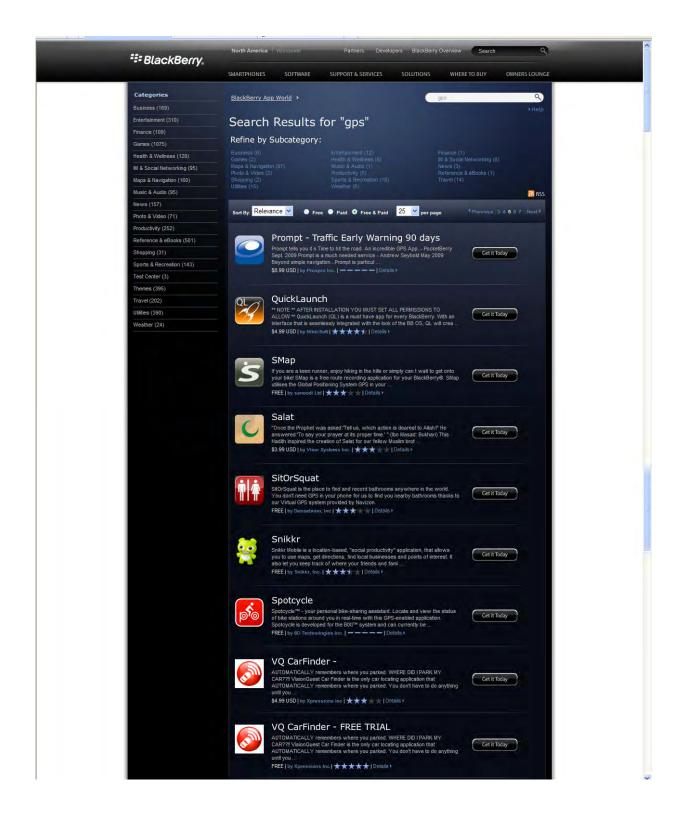
	IamHere Note: For BlackBerry® StormD users you need to diaable Compatibility mode in the Optiona-advanced-application app Permissions must be set to all allow for lamffere in the Options app too lamffere is a neat little u \$259 USD I project Development inc ] ———————————————————————————————————	Get it Today
	TopoExplorer *** Free Maps can be downloaded inside the program at 'Menu - Get Maps' *** WM TopoExplorer you will discover your surroundings on topographic maps even in remote areas assisted by GPS and without the need of the w FREE [by Skylab Mobile-systems Ltd.] * * * * * * [Details /	Get it Today
Trackem	Trackem Mobile Try Trackem Mobile free for 7 days. Contact Trackem at 866-868-7225 or go to http://solutionstomotion.com/app/world to setup your account. If Trackem Mobile works for you, contact Trackem support and subscribe for as Io FREE   by Solutions Into Motion   ★★★★ / Details >	Get it Today
	Traxx is a GPS-based program that tracks your speed, distance traveled, split times, course, and position and displays the information using a variety of gauges, graphs, and maps. The captured information can also be st \$4.99 USD [by Moxley Technologies LLC]	Get it Today
220	Tripometer Tripometer is a simple, easy to use program which utilizes the BlackBerry® GPS receiver to calculate the speed and distance that you travel. It is designed for biking, walking, running, kayaking, cross-country skiing, sk \$2.99 USD   by Imre Kadar   ★★★★   Details >	Get it Today
<b>(</b>	WhereAreYou WhereAreYou works like this: 1. You install it on a BlackBerry® device, and configure it as that it latens for incoming SI/S messages with a specific content, and coming from a specific its of numbers. 2. You \$4.99 USD   by GetConnected.it ]   Details >	Get it Today
1	WhereRYu - Family Location Tracking Patent-Pending Location Tracking Technology Lets people you trust find your current location Emails that are sent to you with the subject "Where are you?" or "WhereRYU" will be automatically replet with a link to you. \$38.98 USD   by Volcari Software   ★★★★ %   Details +	Get it Today
WHEN ANY PHONE	Wheres My Phone Pro Hebs you Locate. Find, and Recover your Lost or Wandering BlackBerry® smarbhone** New Versinot 2.3 ** New Features: Auto-delete emails, Choice of alert tones, Code word to stop app, Alert screen graphics. ** See \$3.99 USO   by Essare LLC   ★★★★/   Details >	Get it Today
<b></b>	got-2Pro Task and Schedule Management Integrated Task List and AS pointment Manager for BlackBerry. At-a-glance agenda with ime and GPS boation alerts! If you prefer crossing items off your list versus constantly checking your calendar, then our got-2Pro \$8.99 USD [by gWiniz LLC] 大大大大力[Details )	Get it Today
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4	BiM Active Bones in Motion has developed a service for outdoor enthusiasts called BM Active. This service re-purposes the mobile phone into a portable ife recorder that can be taken with you to enhance outdoor activities and enab FREF [1y Bones in Motion, nc. ] → ★ ★ ★ ★ ↓ (Details)	Cet it Today















## **ATTACHMENT B**

rt by: Most Popular	Viewing: 50 Per Page Display	:
WorldMate Live Gold Annual Subscription - BlackBerry **** \$99.95 State State Add to Cart Download Trial	Put actionable, real-time information at your fingertips: flight alerts, on- device hotel booking and much more.	Your Recent Activity Recently viewed products: » Pharos GPS: Ostia Smart Naviga » AudioBay Podcast Player » Driving Log
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Home Games Travel & E	Intertainment Tools	Organization & Wellnes	Work & School	New & Updated	All Apps
Travel Dresden - illustrated travel guide, phrasebook, and maps \$9.99 Add to Cart Download Trial		asebook, and maps. Indulge PDA. FREE General Informa			
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e-Mobile GPS Tracker \$22.95 SMS Available Add to Cart	Track locations in real-time, capture favorite vacation routes, scenic spots with personalized notes, photos, replay in Google Earth and share with friends	
GPS Monitor	The GPS Monitor is a comprehensive Tool for getting fast access to your location.	

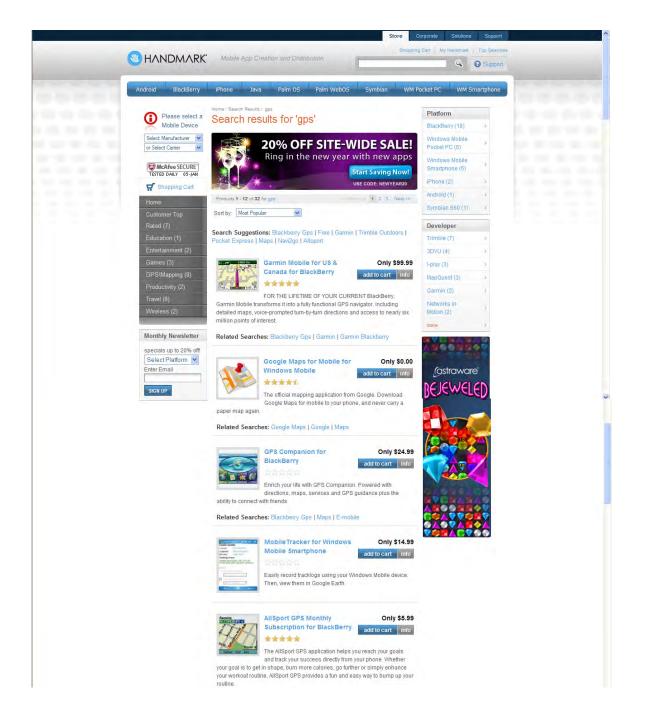
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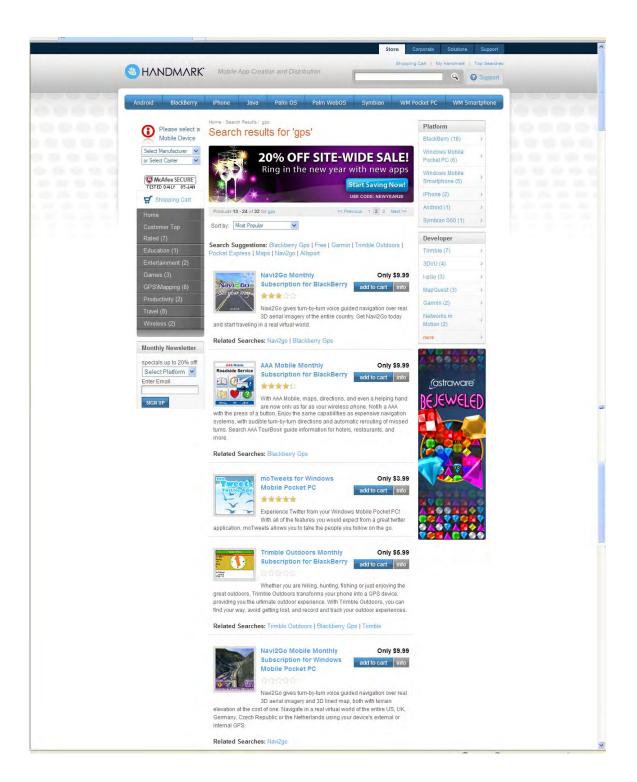
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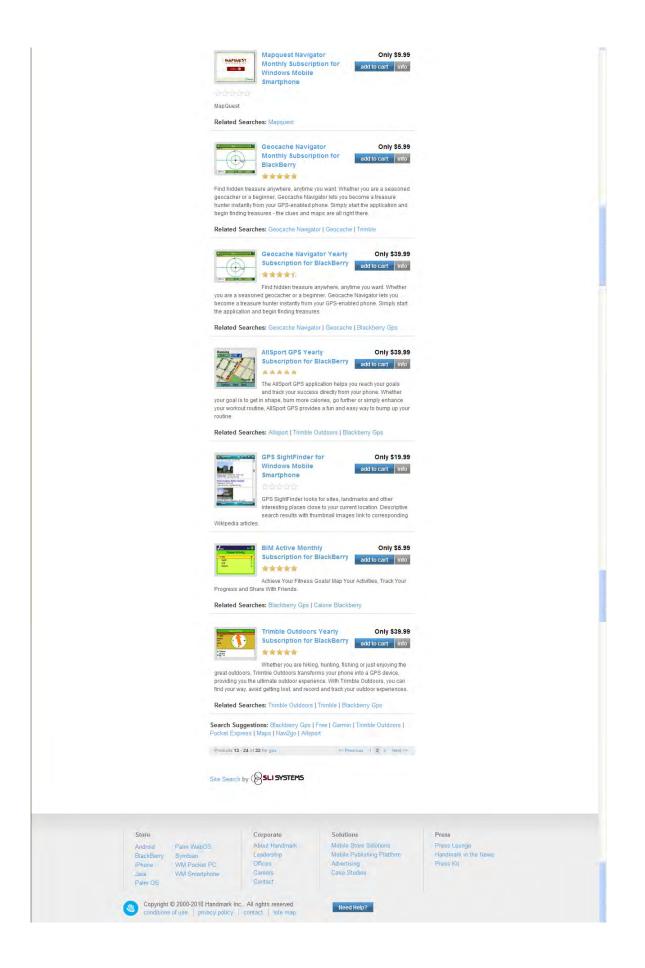
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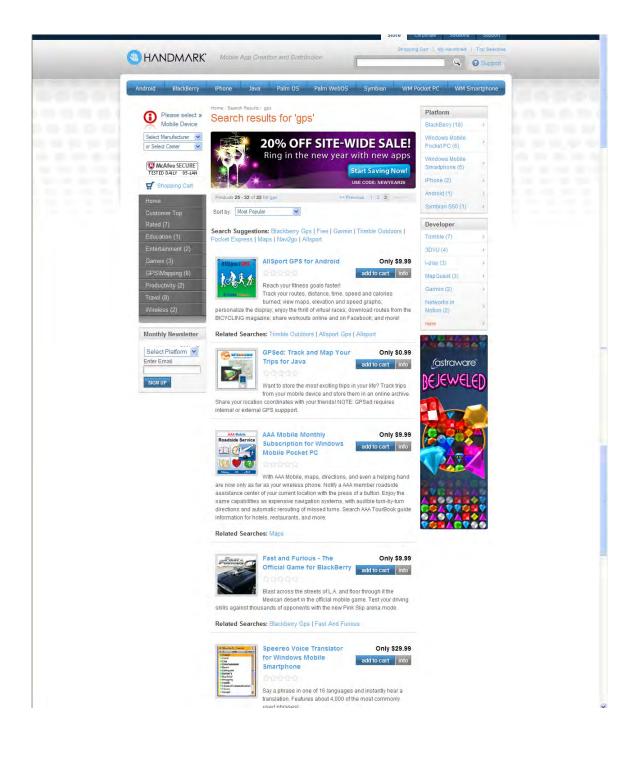
## **ATTACHMENT D**



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			VHERE - GPS System help you		
		places and things that matter. ches: Blackberry Gps			
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		Way2Go Monthly Subscription for Wind Mobile Pocket PC	Only \$9.99		
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	Served Avey	MapQuest Navigator Monthly Subscription BlackBerry	Only \$9.99 for add to cart info		
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	Related Sear	ches: Mapquest   Blackberry	Gps		
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	Trades	Retrieve your lost BlackBerr Related Searches: Alarr	y just by sending an email! n   Blackberry Gps   Email		
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Store		Corporate	Solutions	Press	
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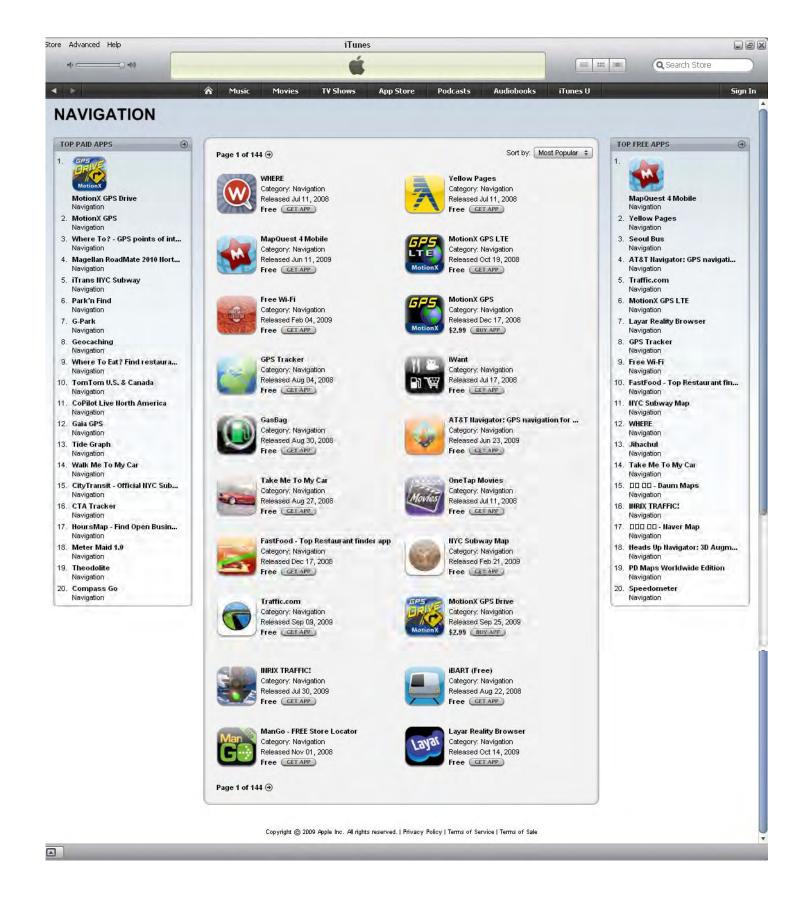






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## **ATTACHMENT E**



































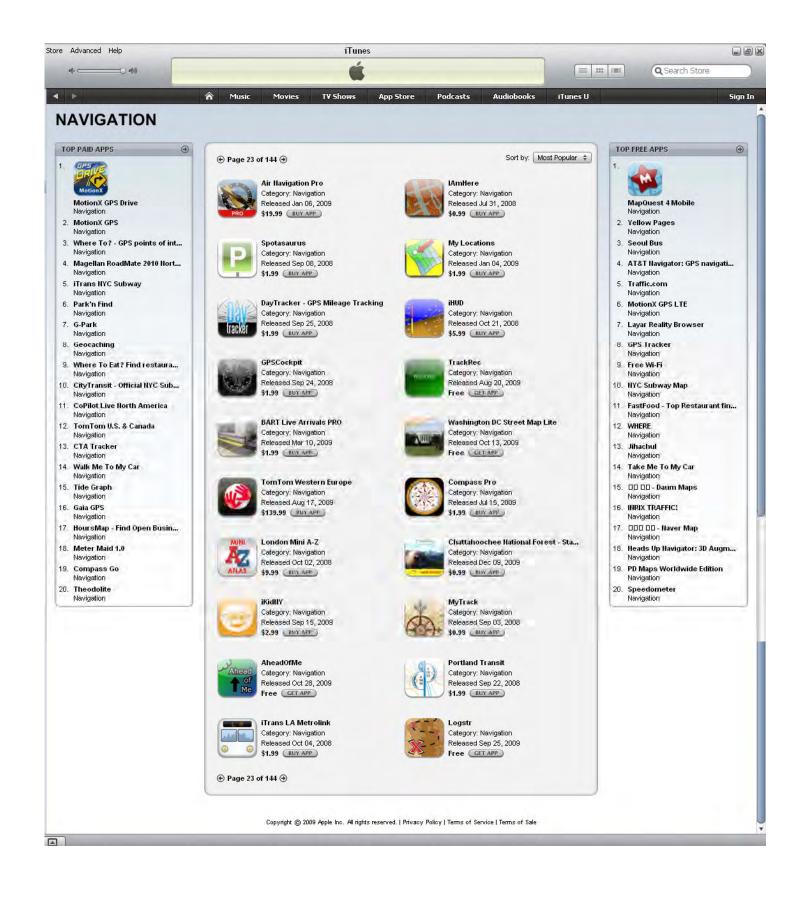










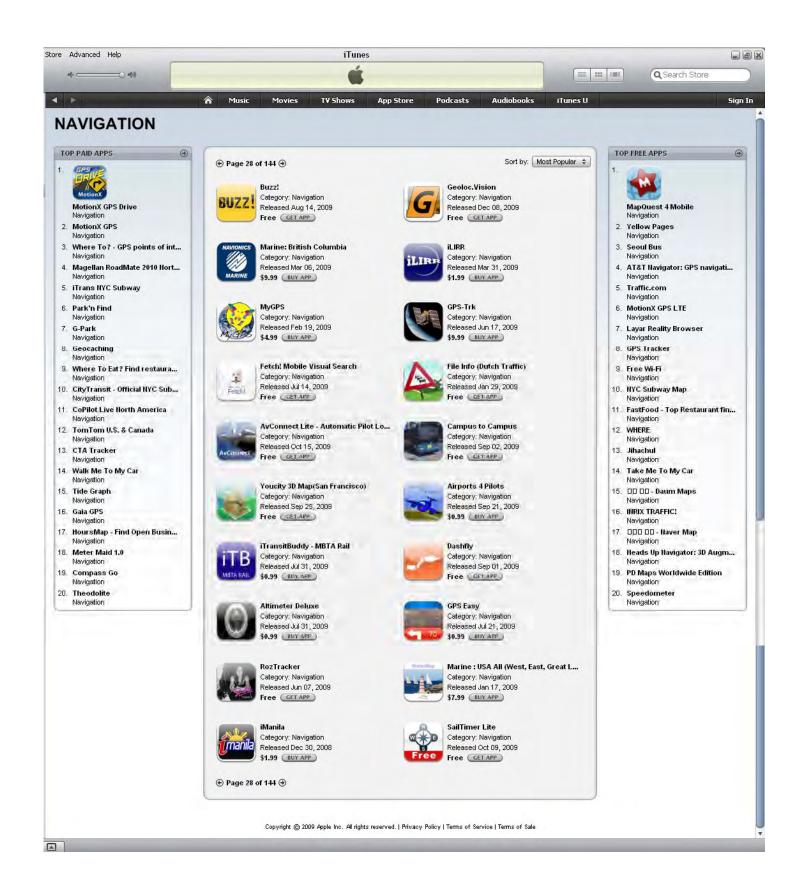










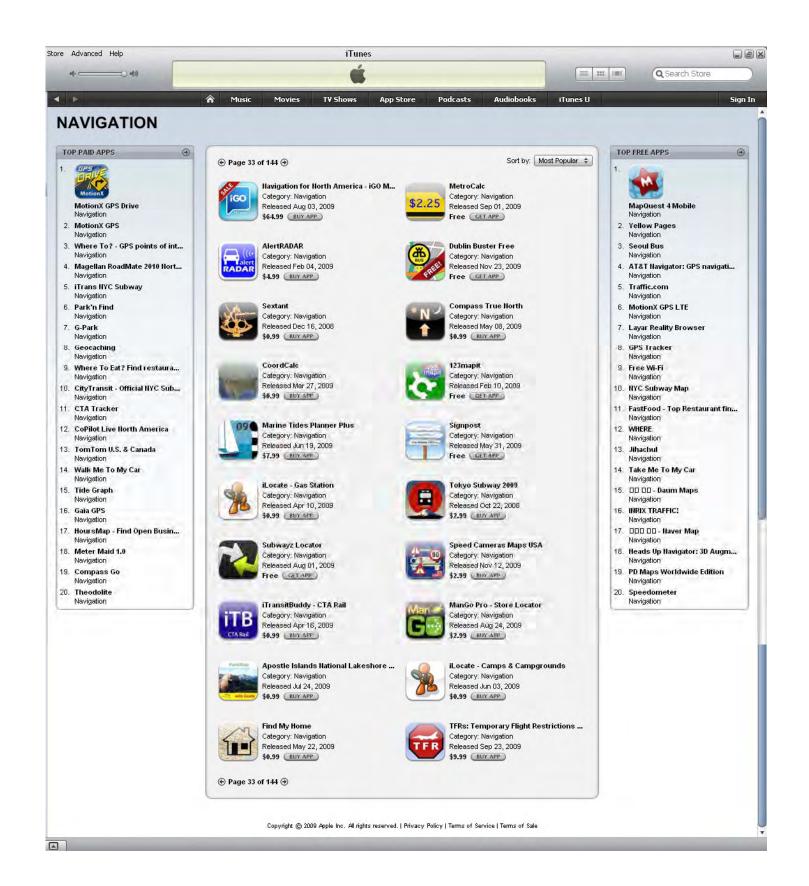


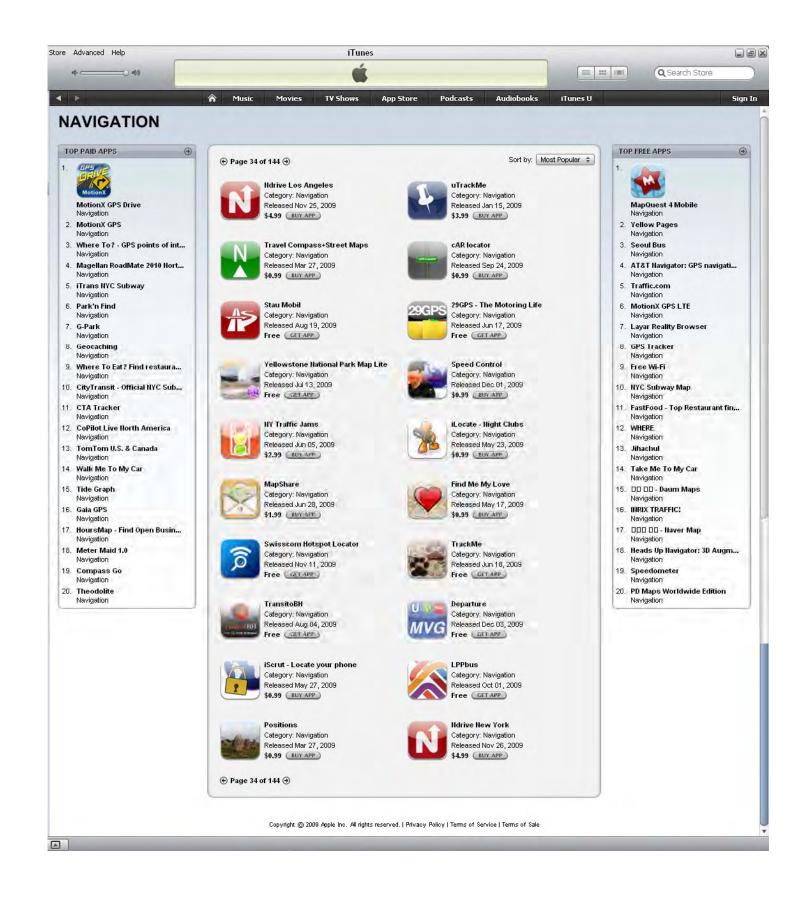


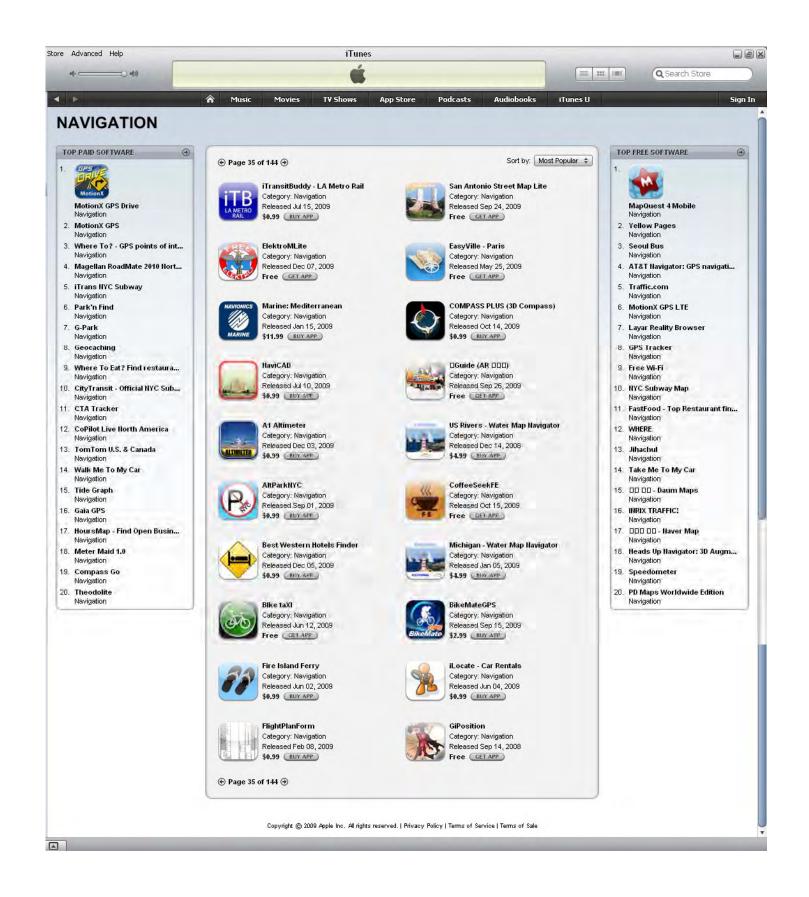


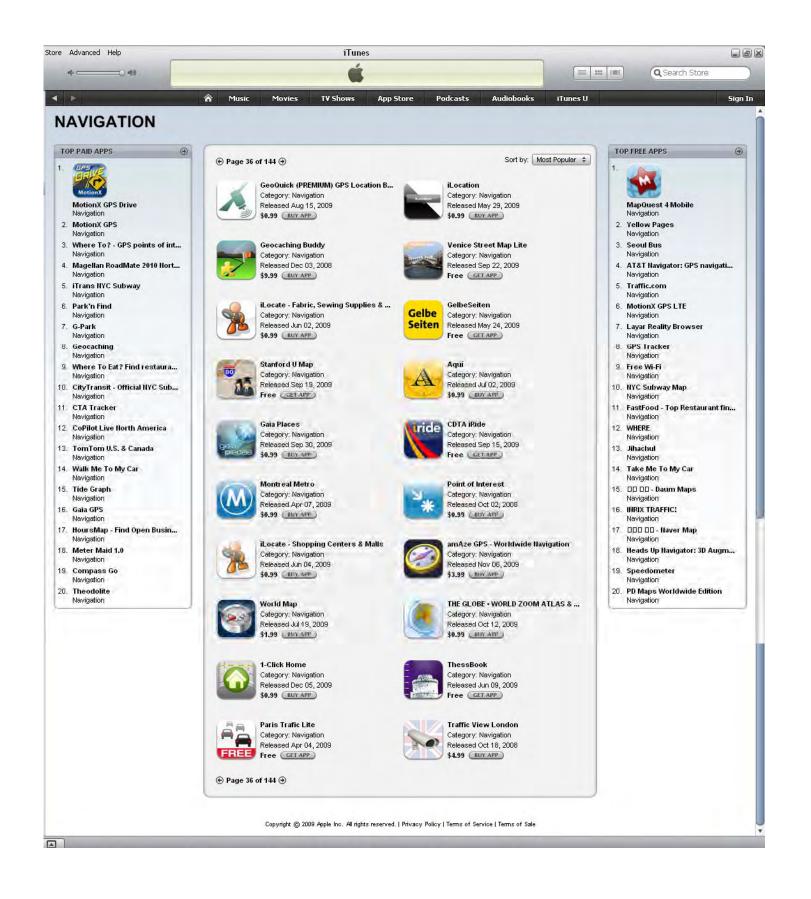






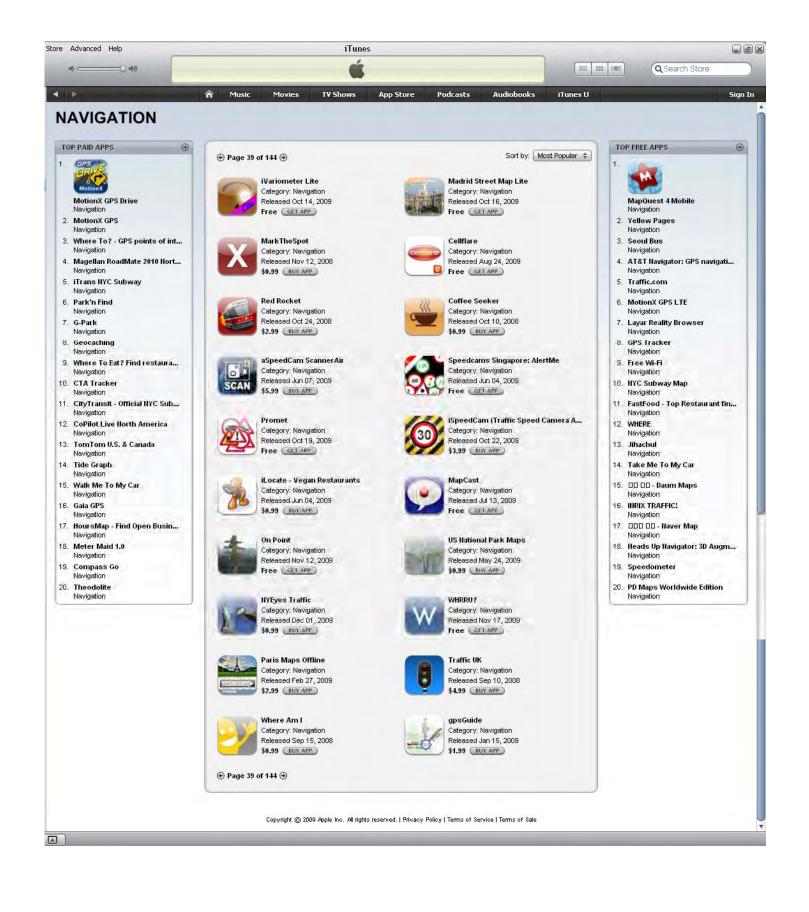






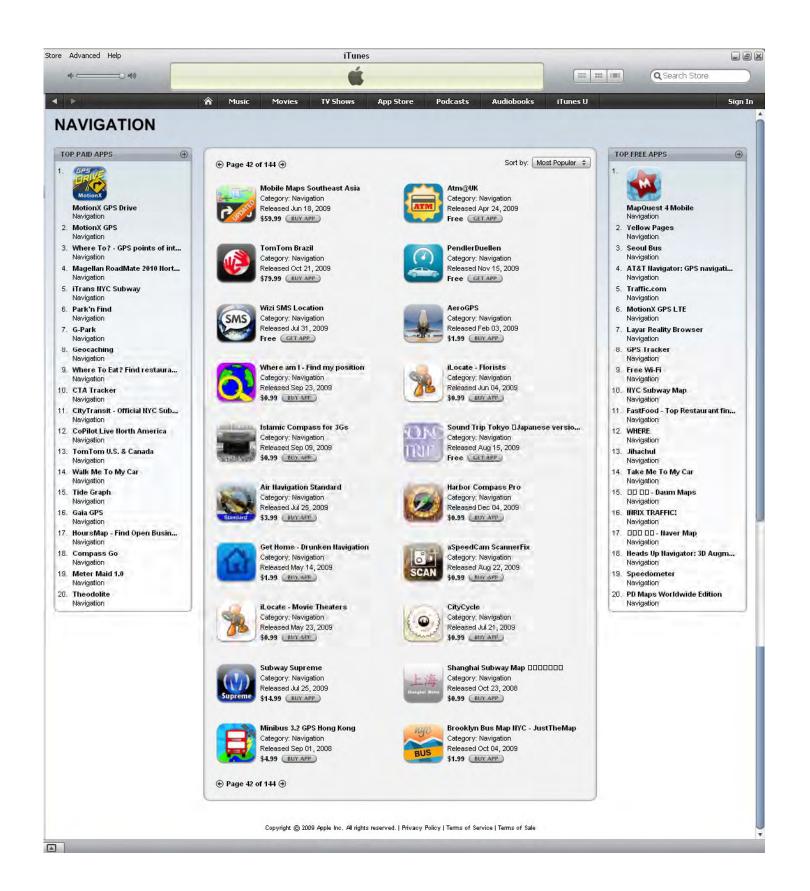




















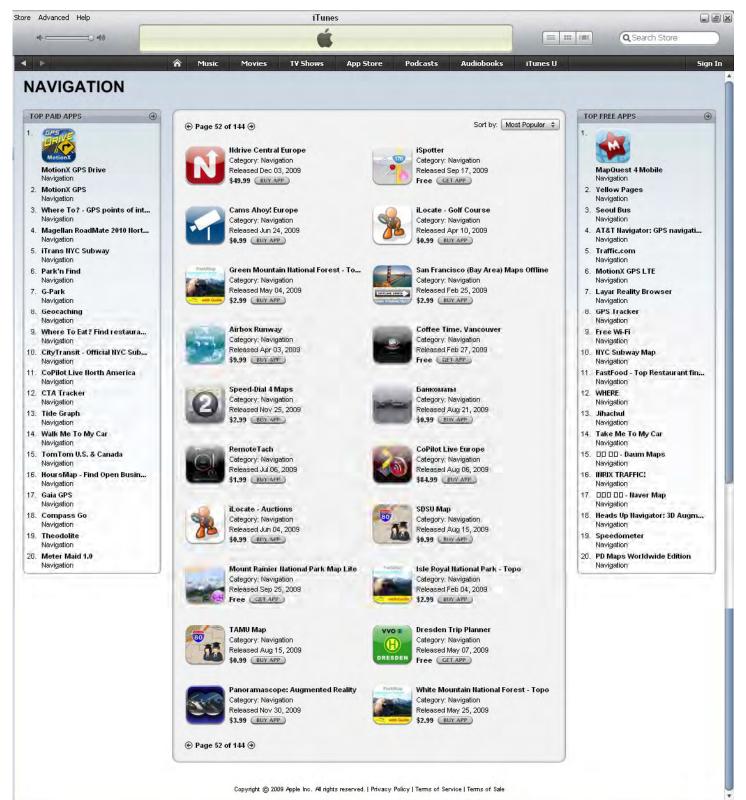




































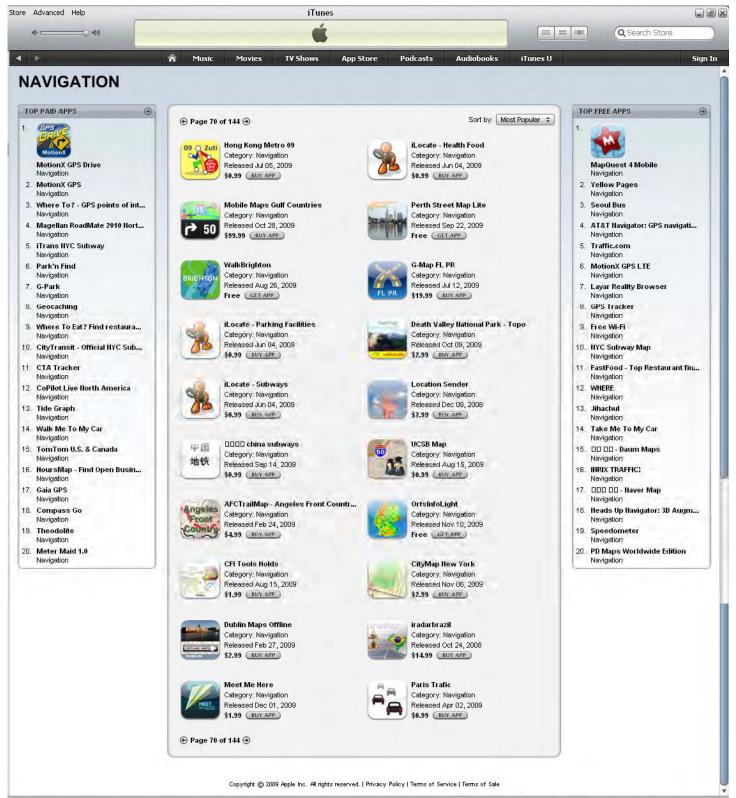


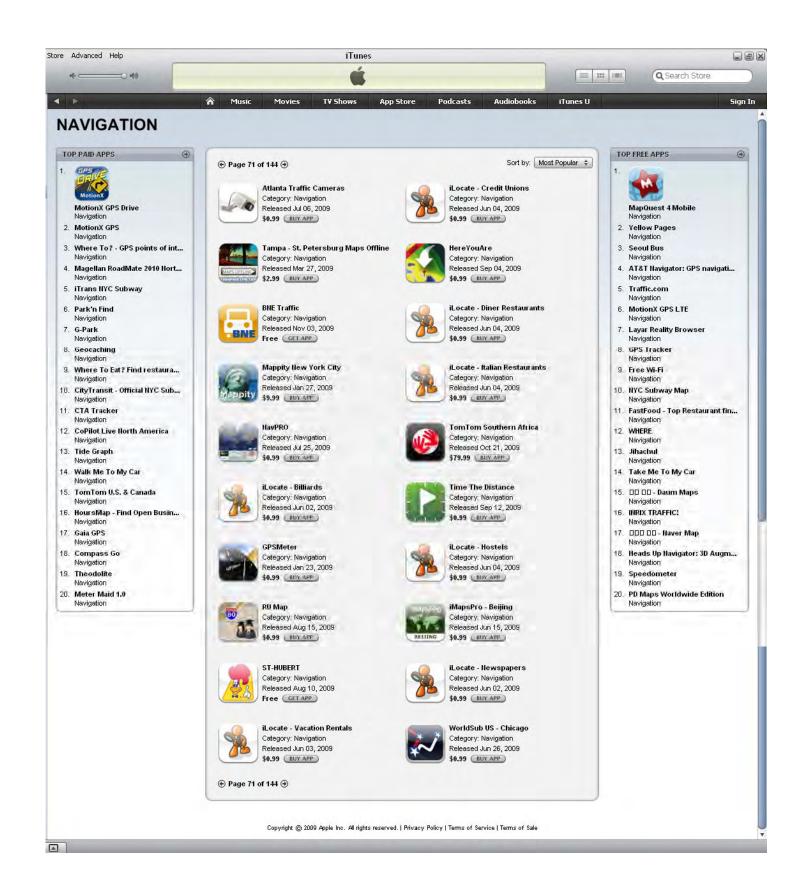




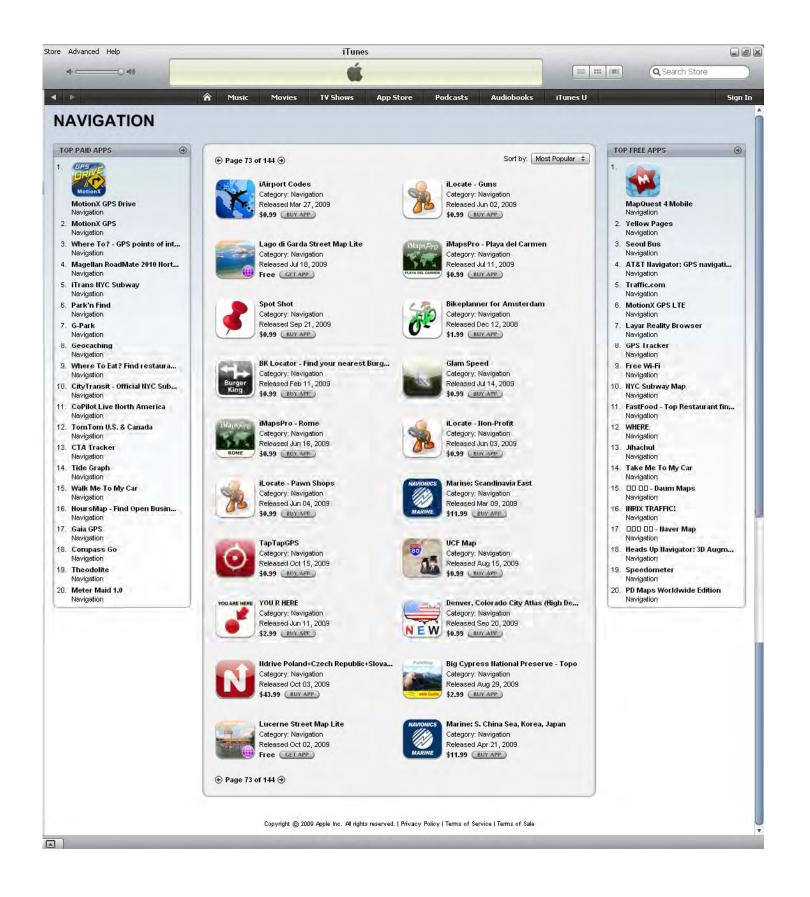




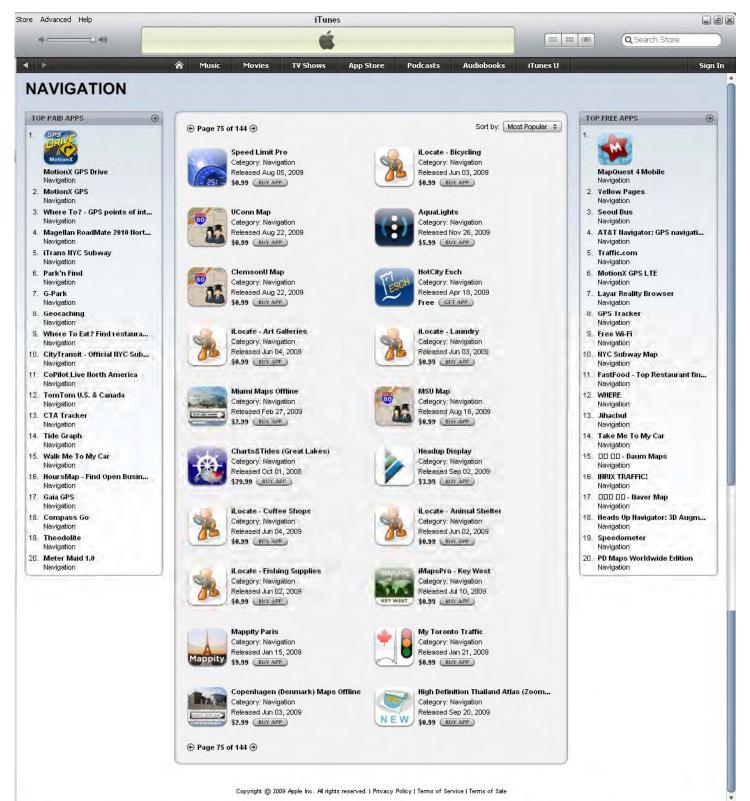




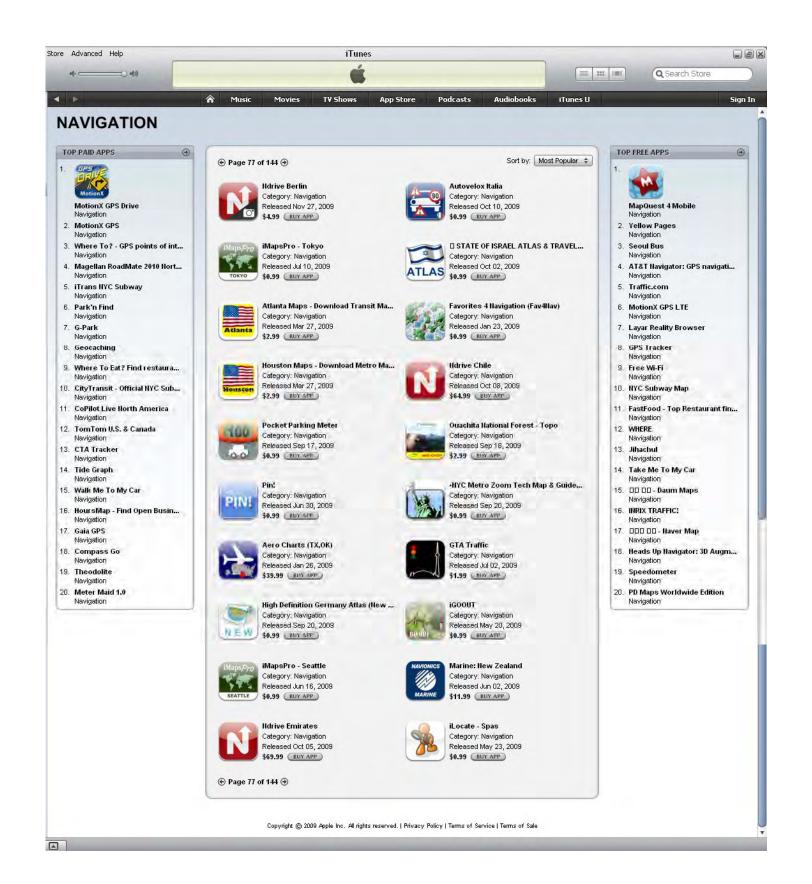








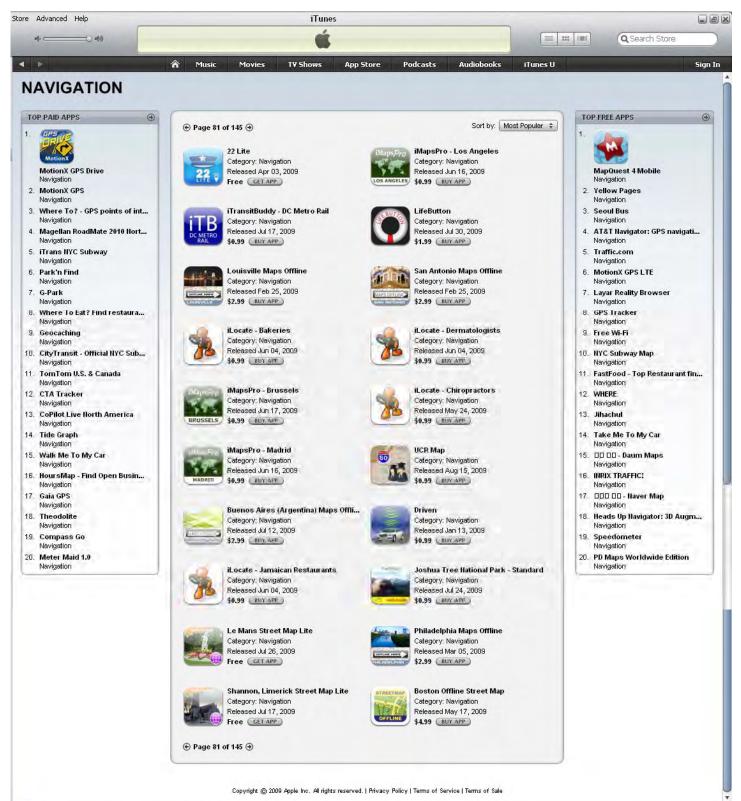












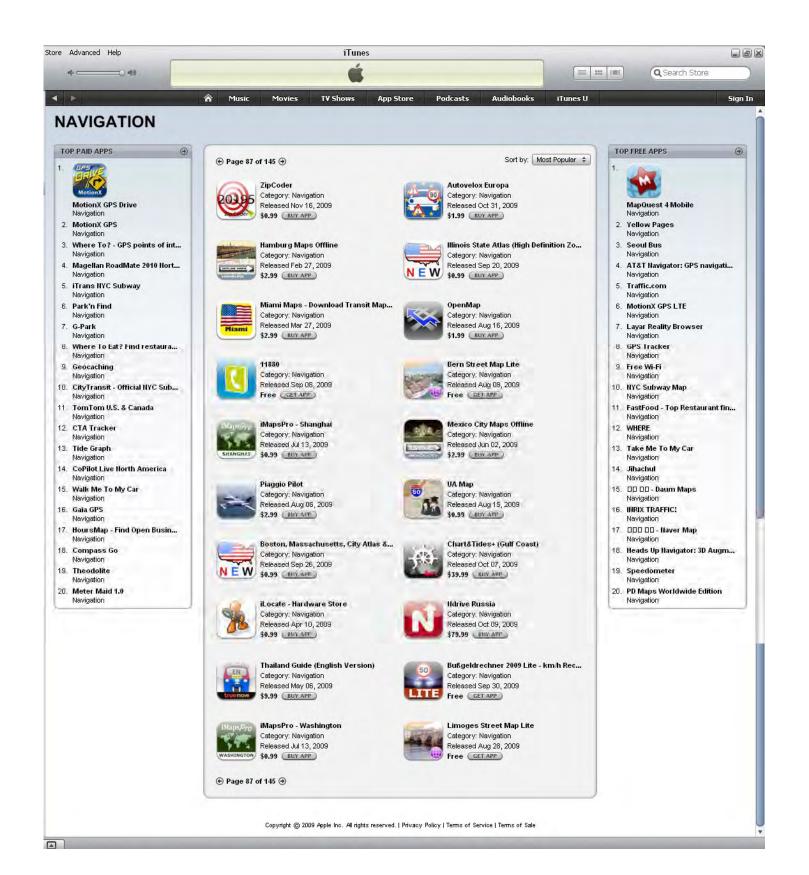




















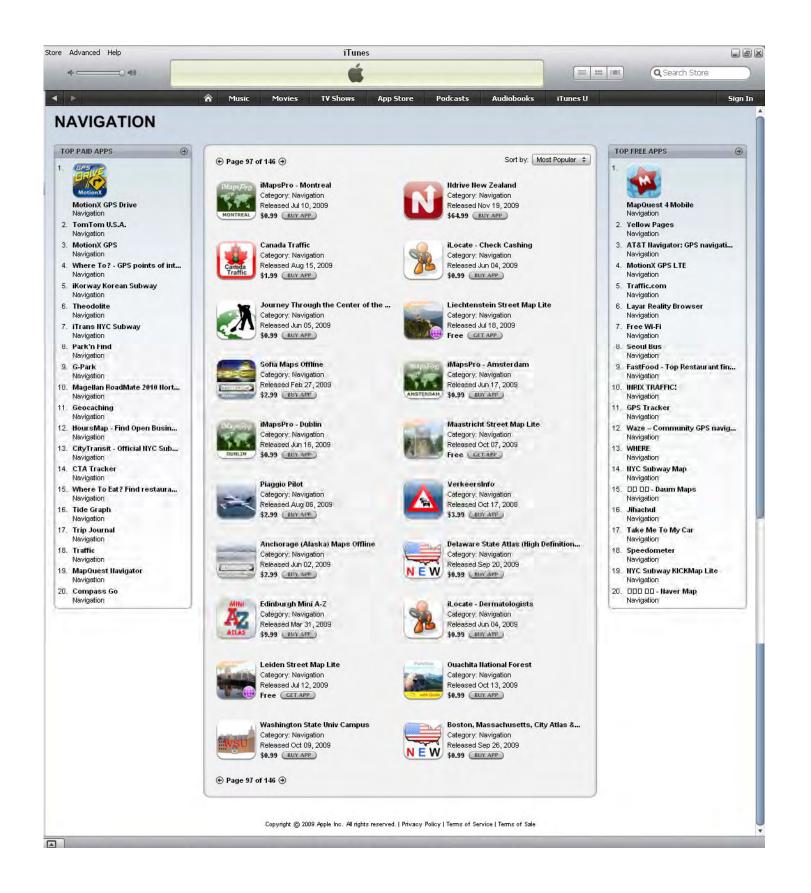








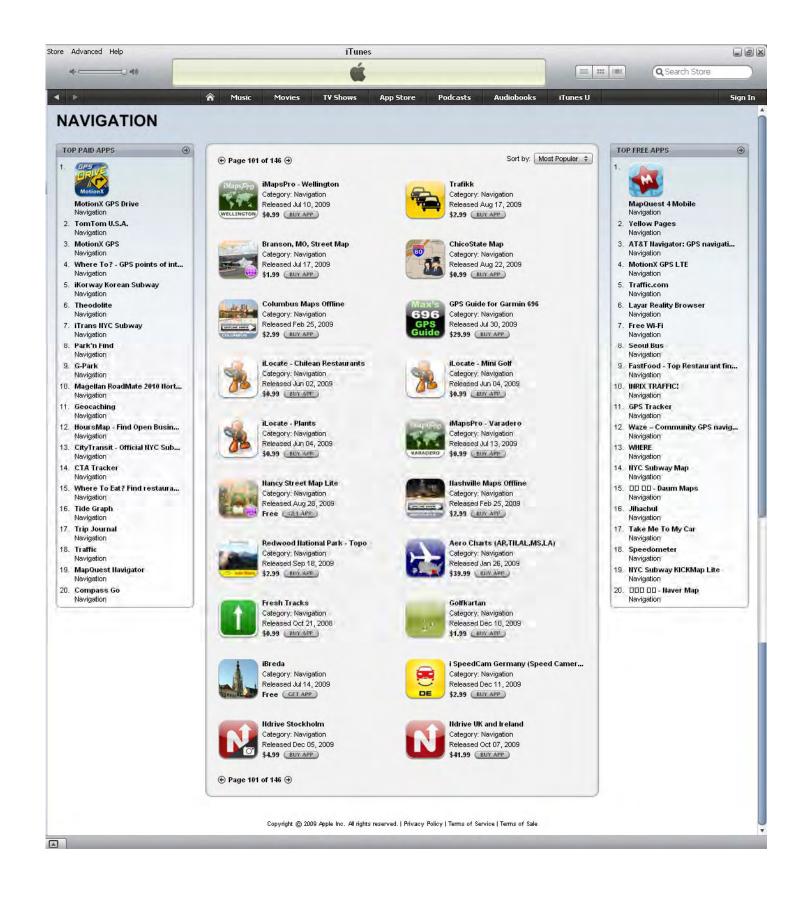


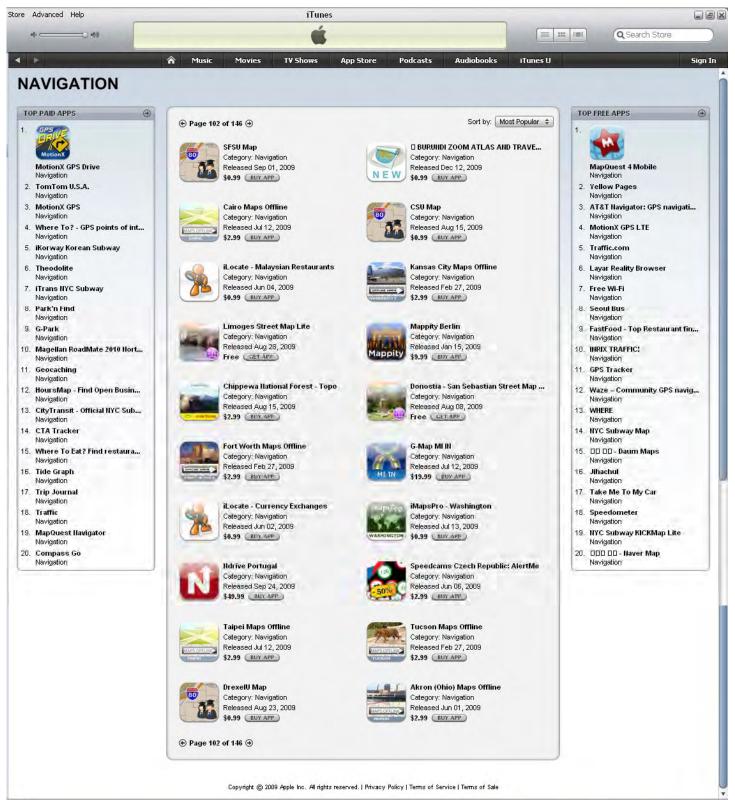














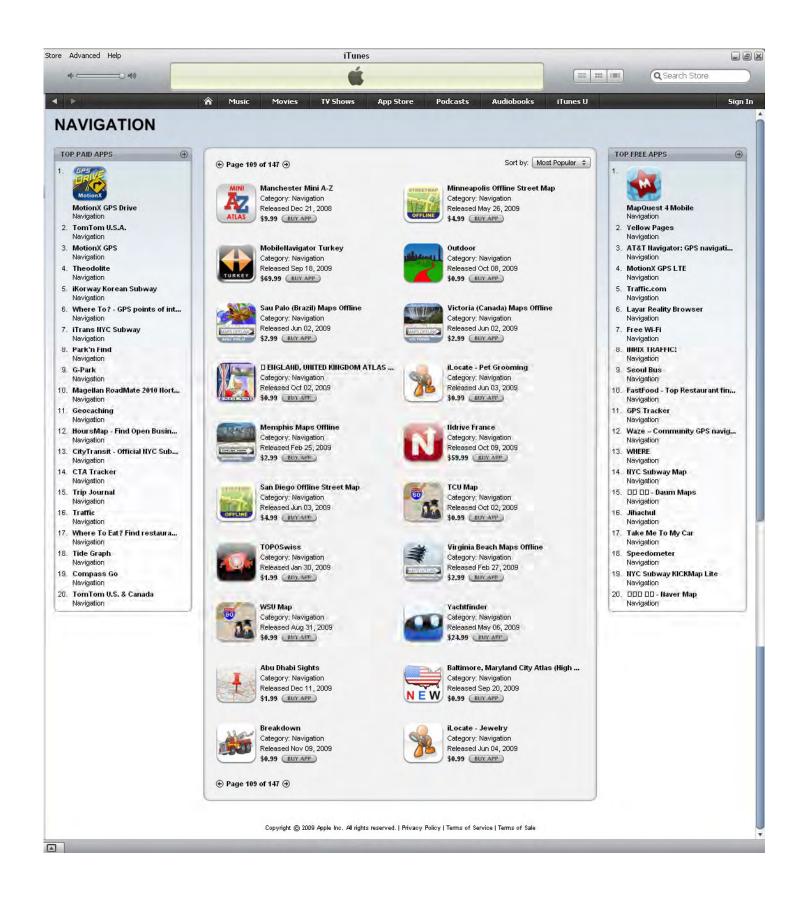




















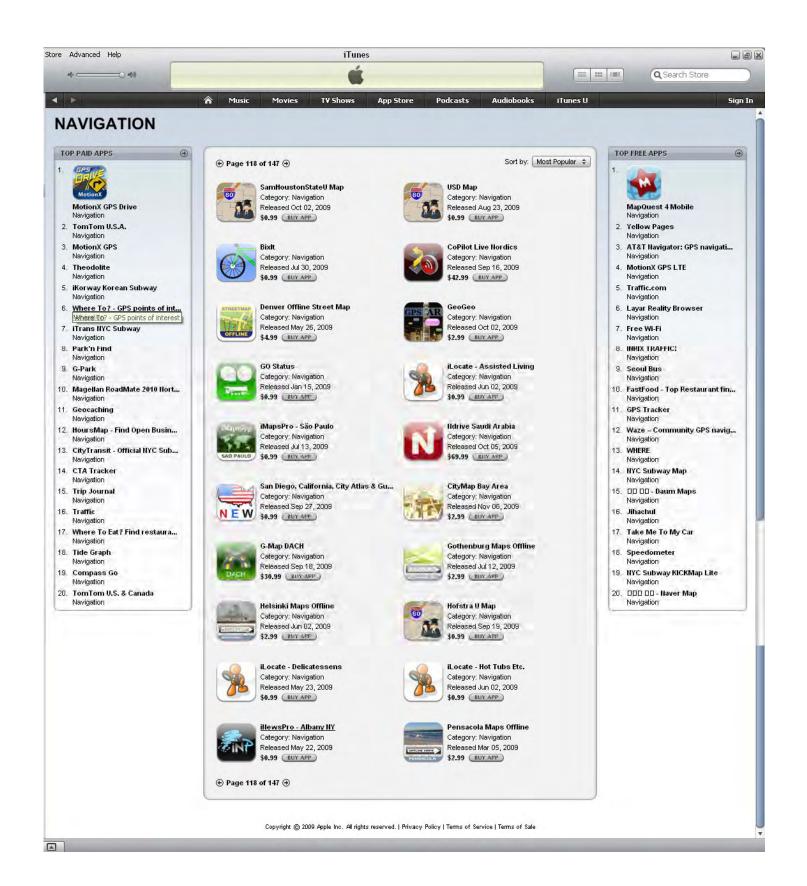
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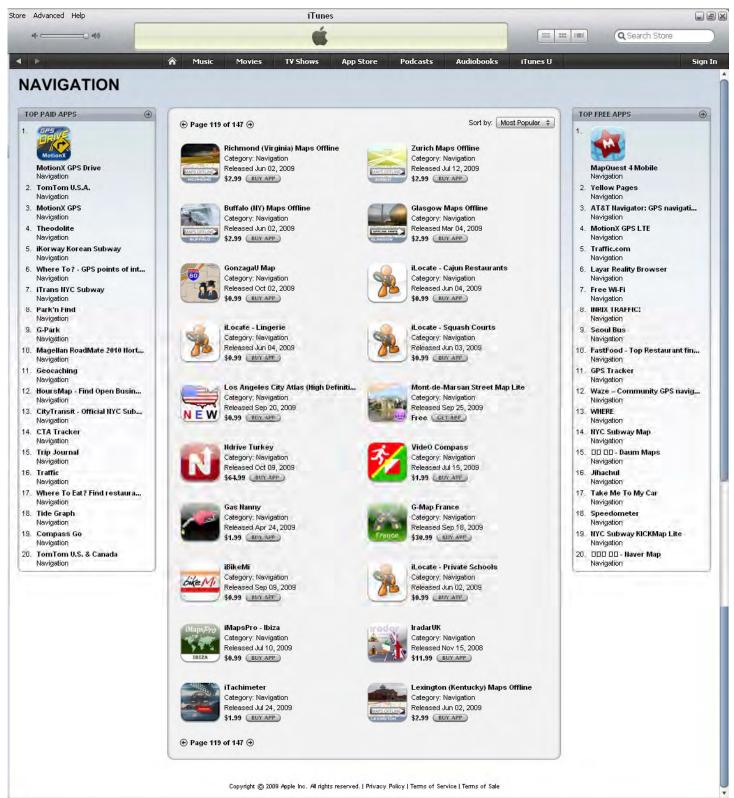




















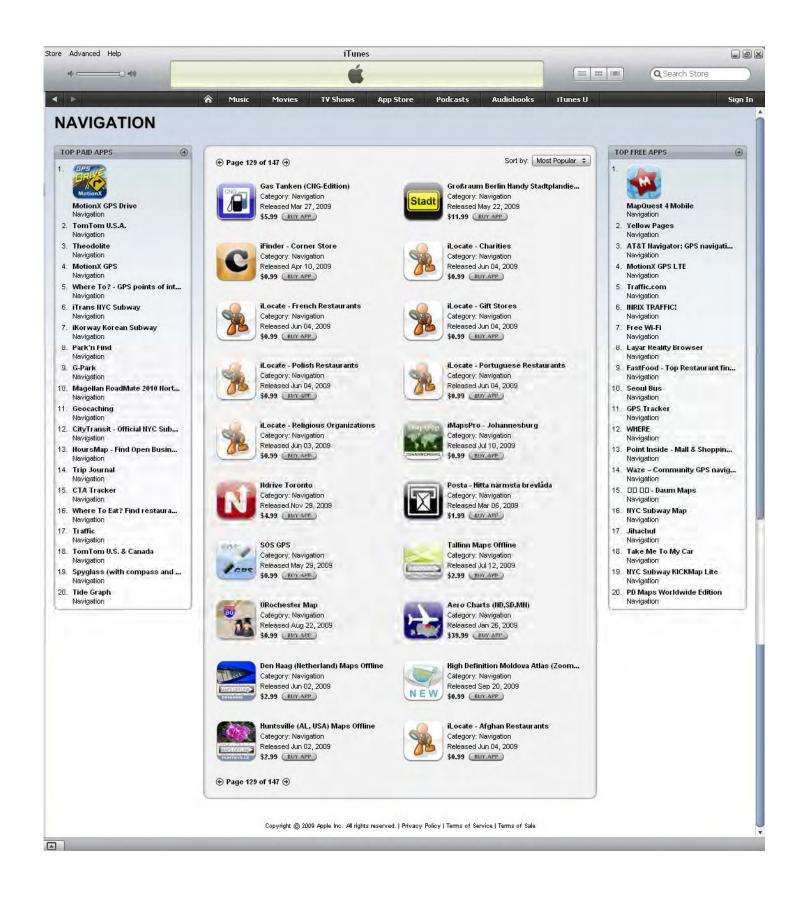




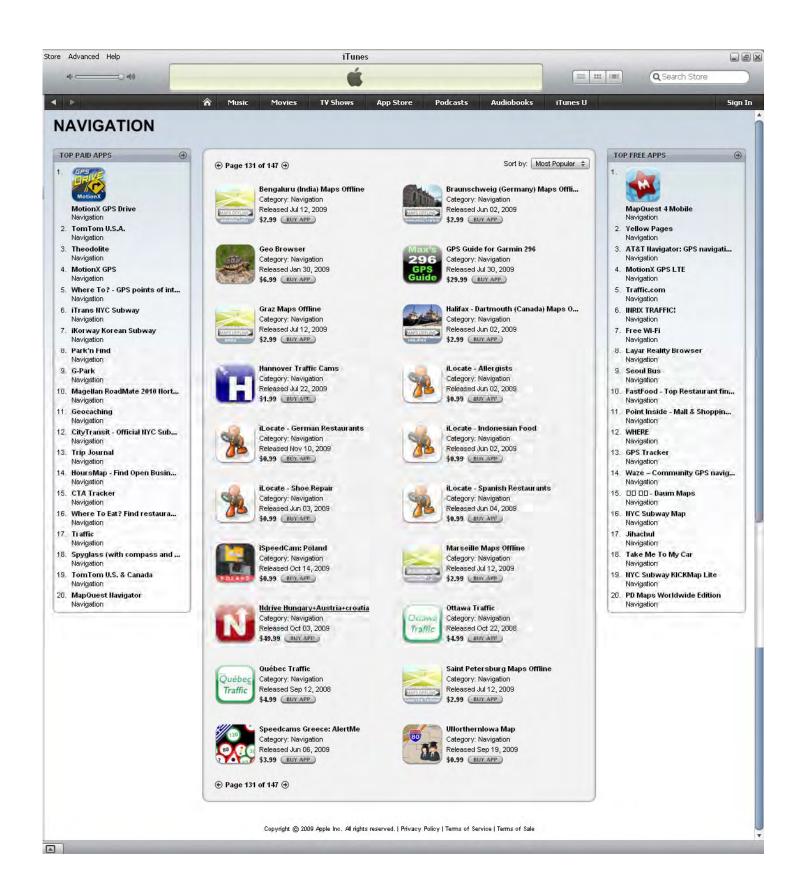










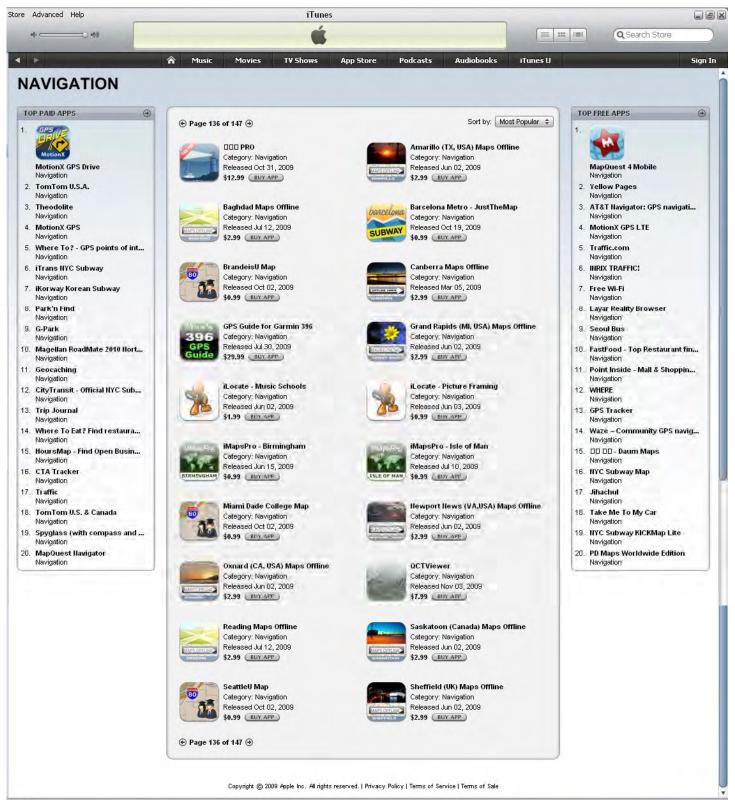




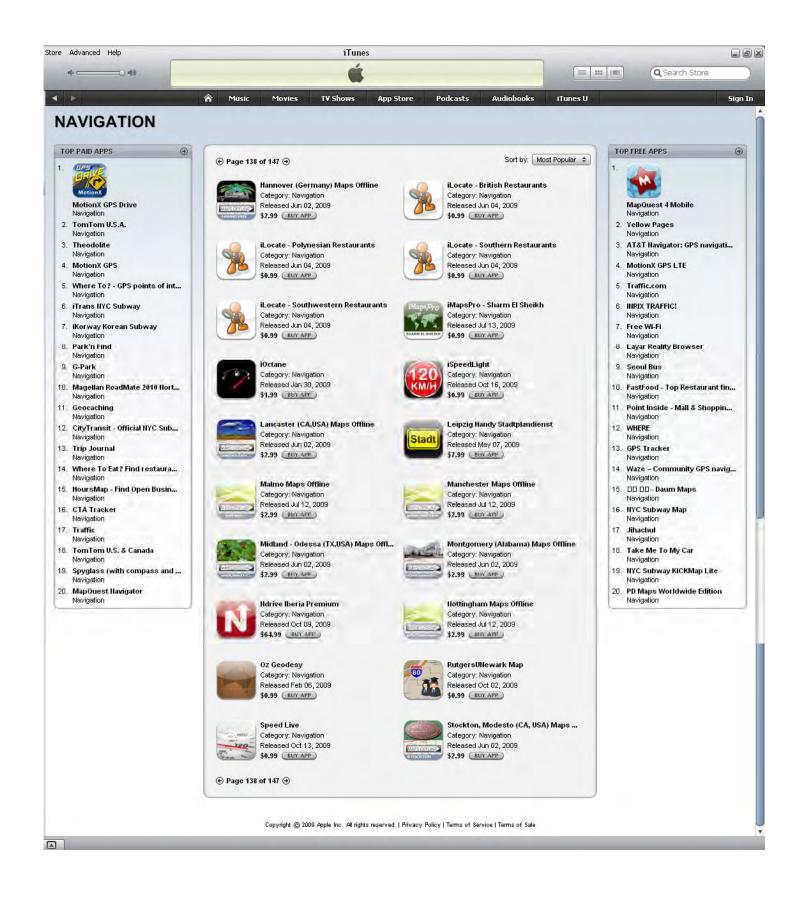


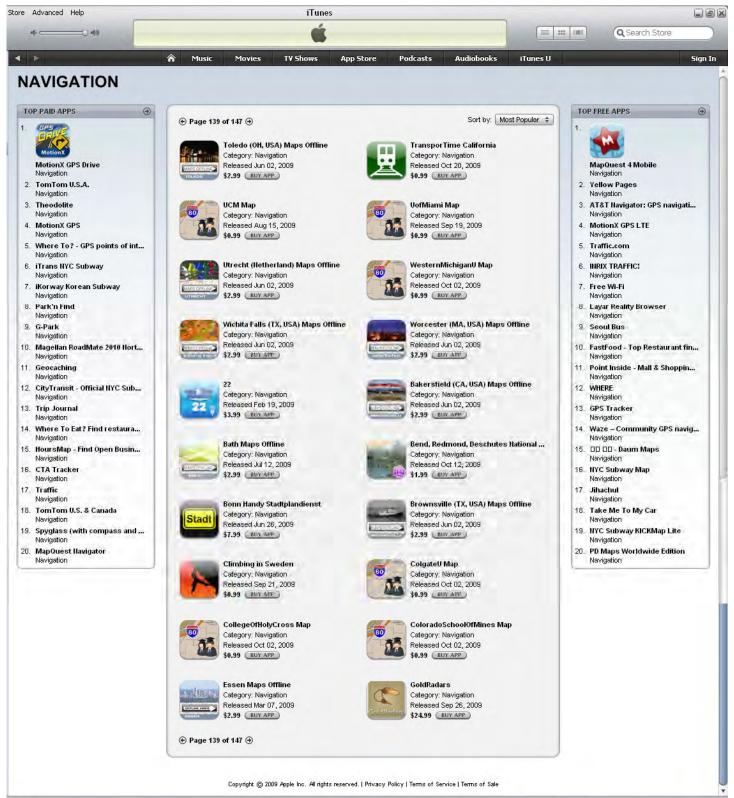




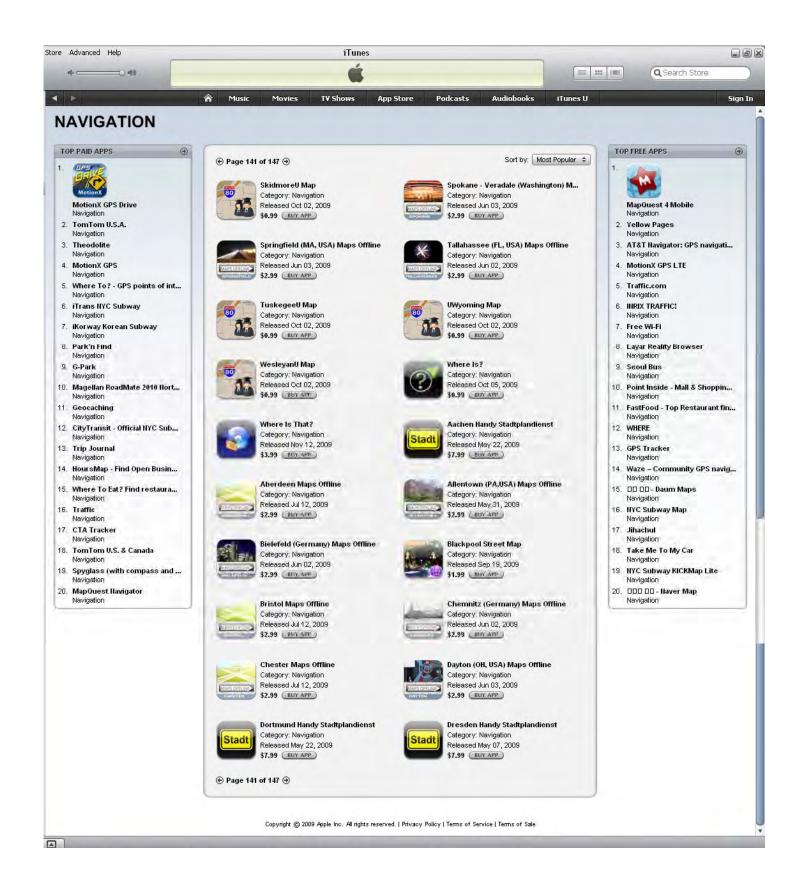








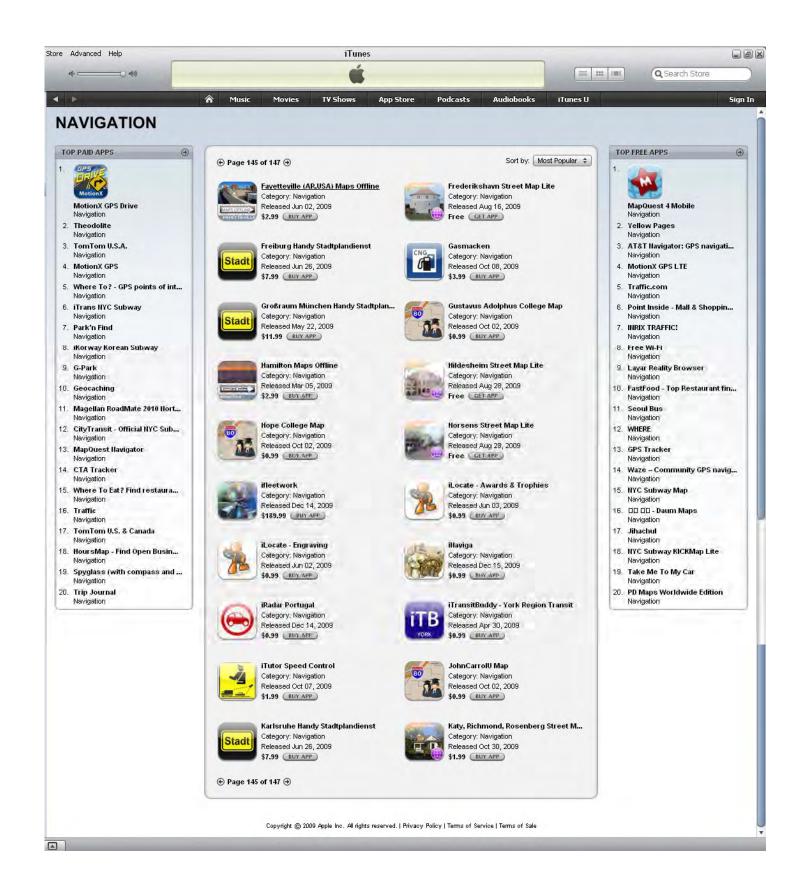


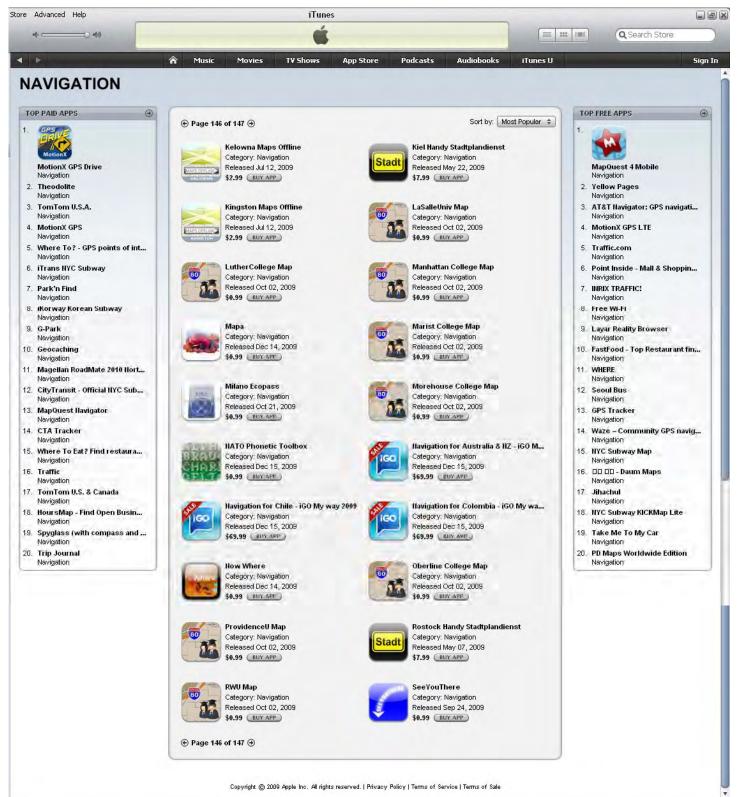






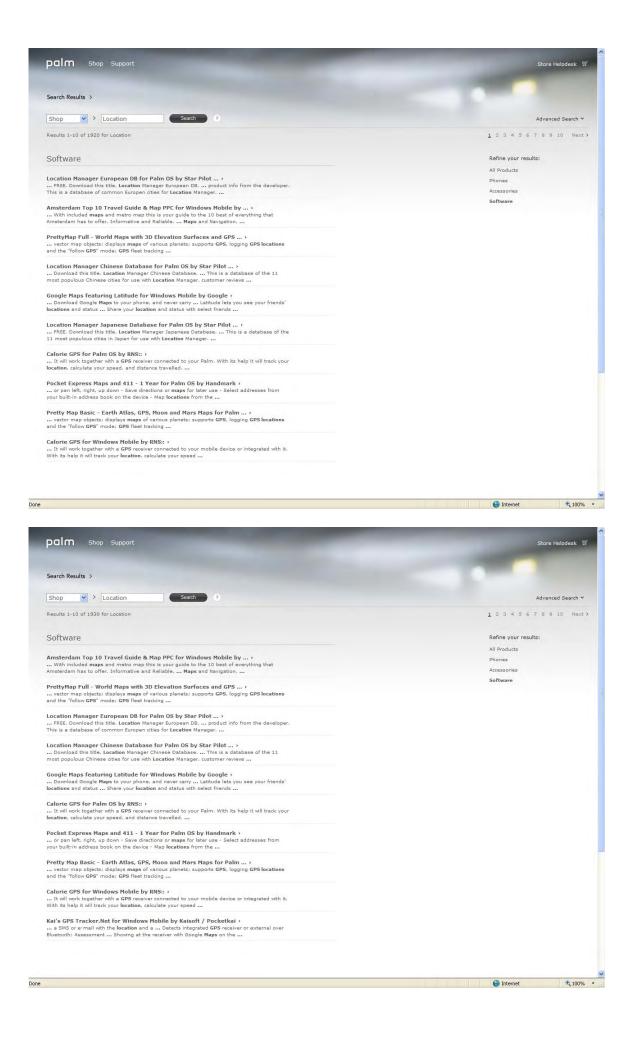


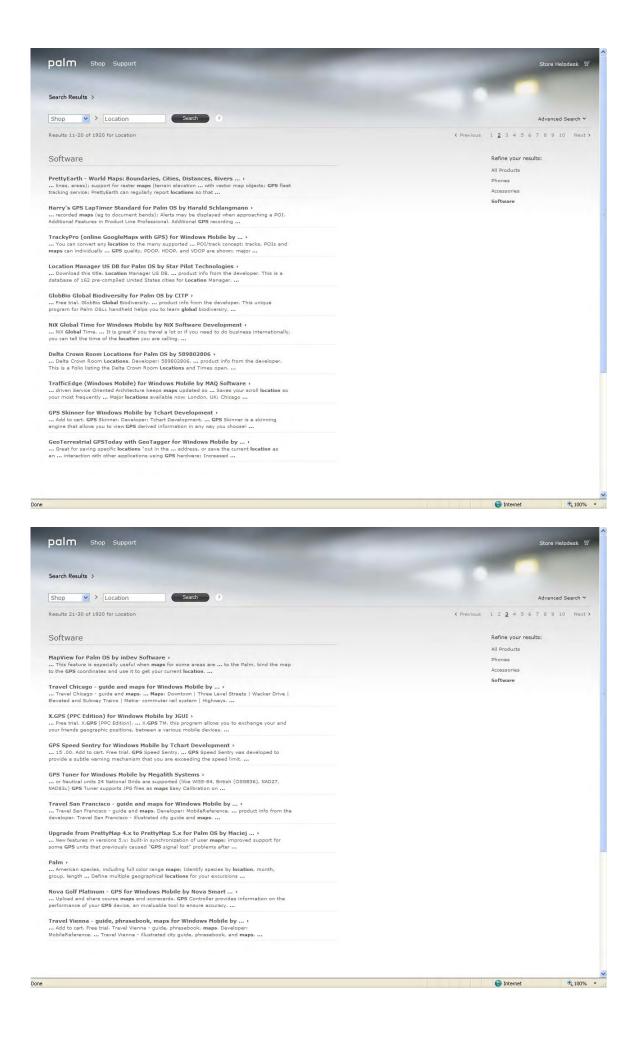


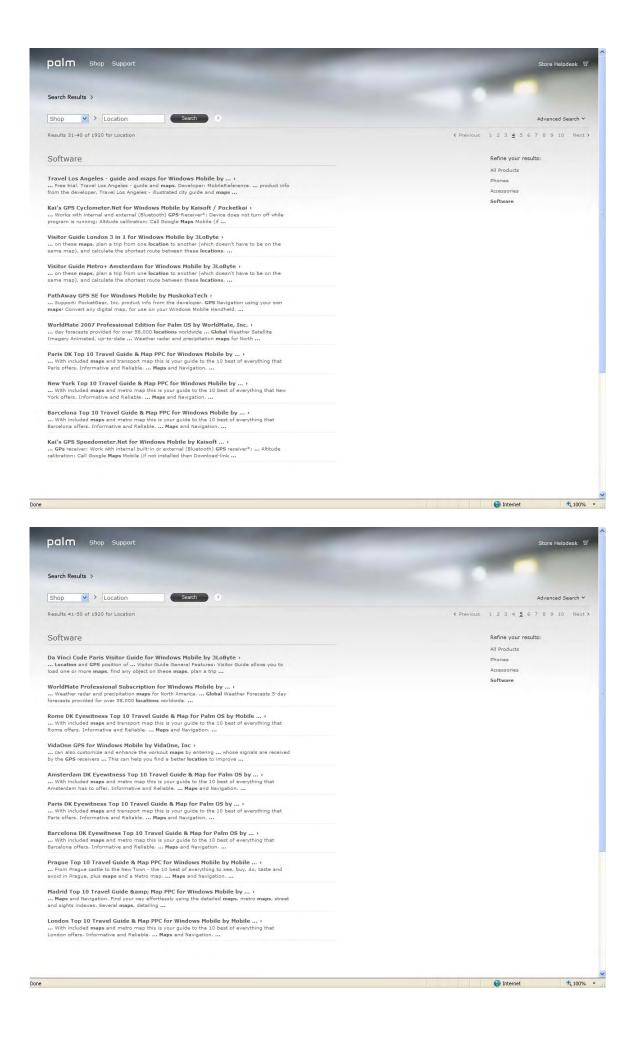


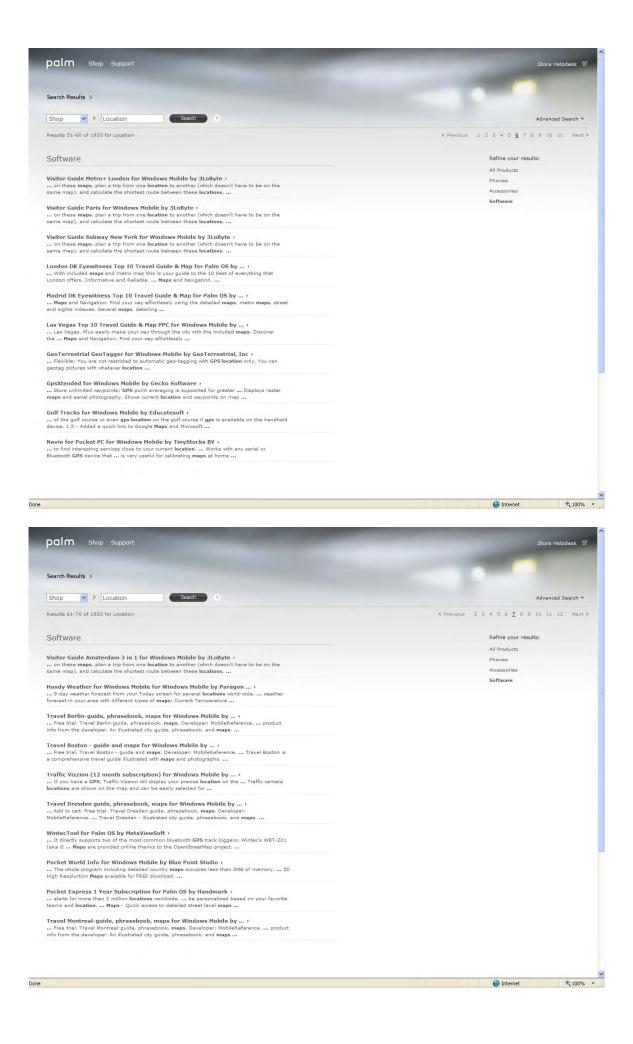


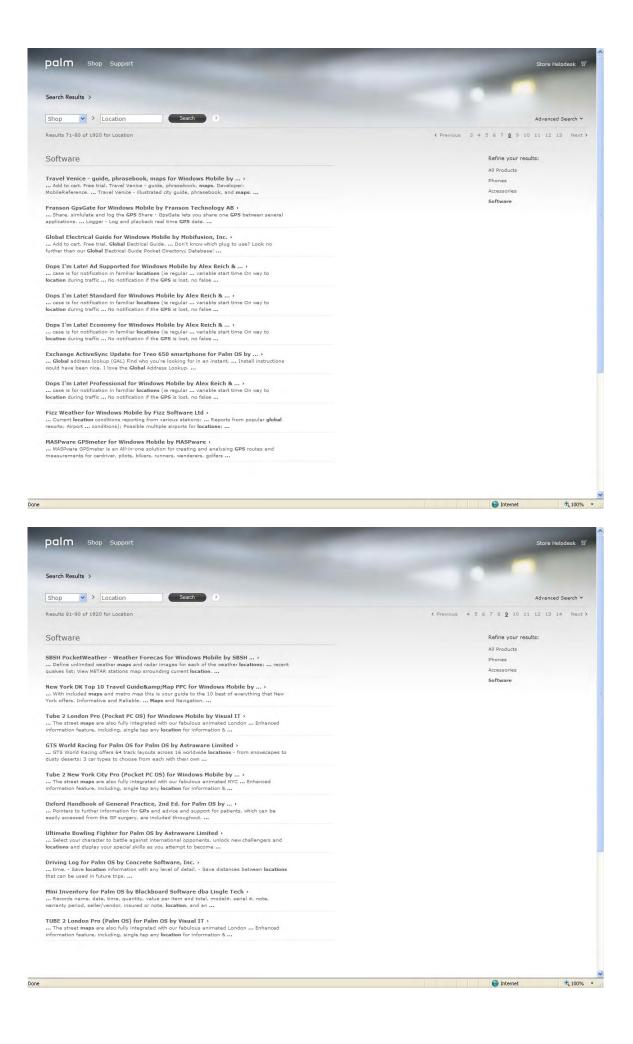
## **ATTACHMENT F**

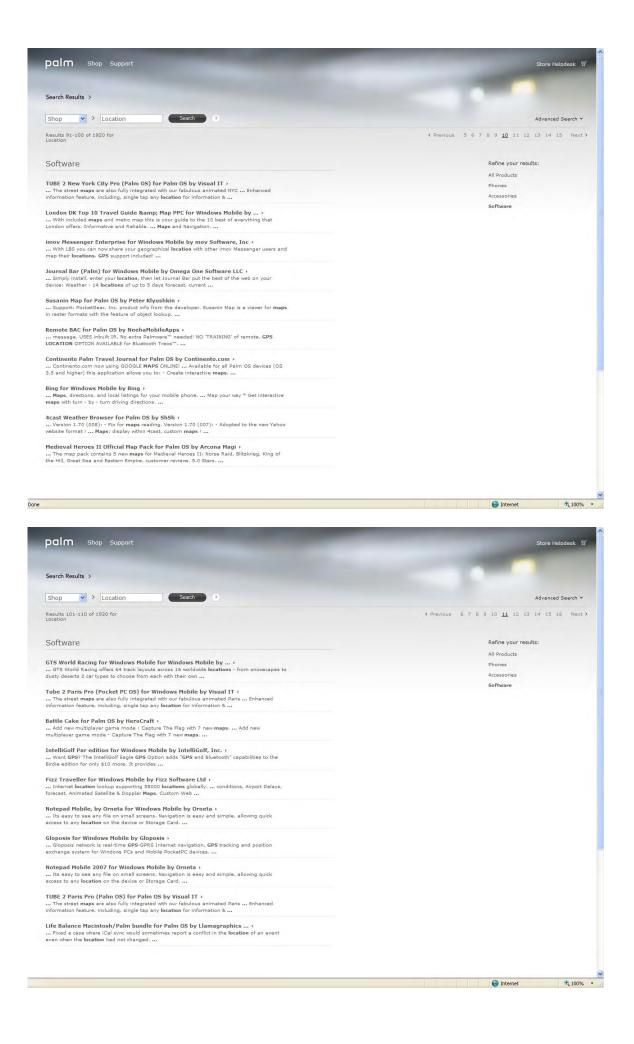


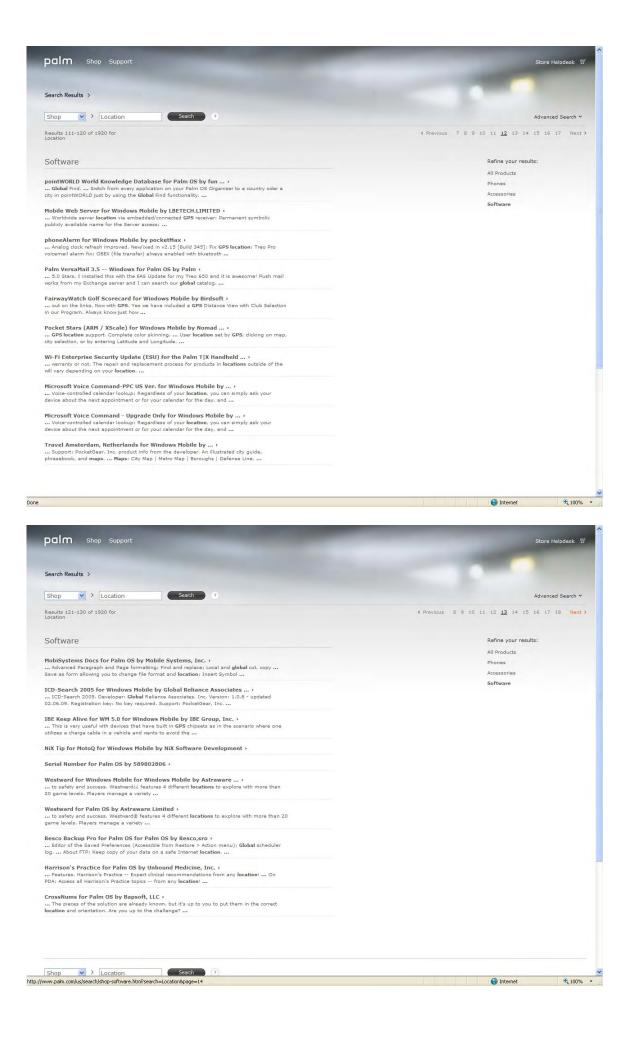


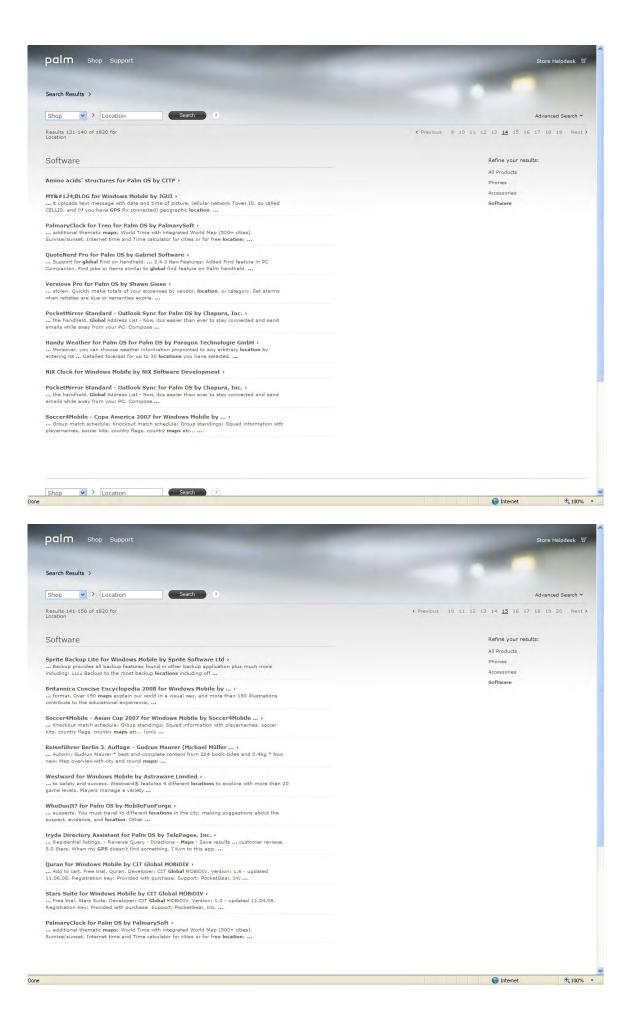


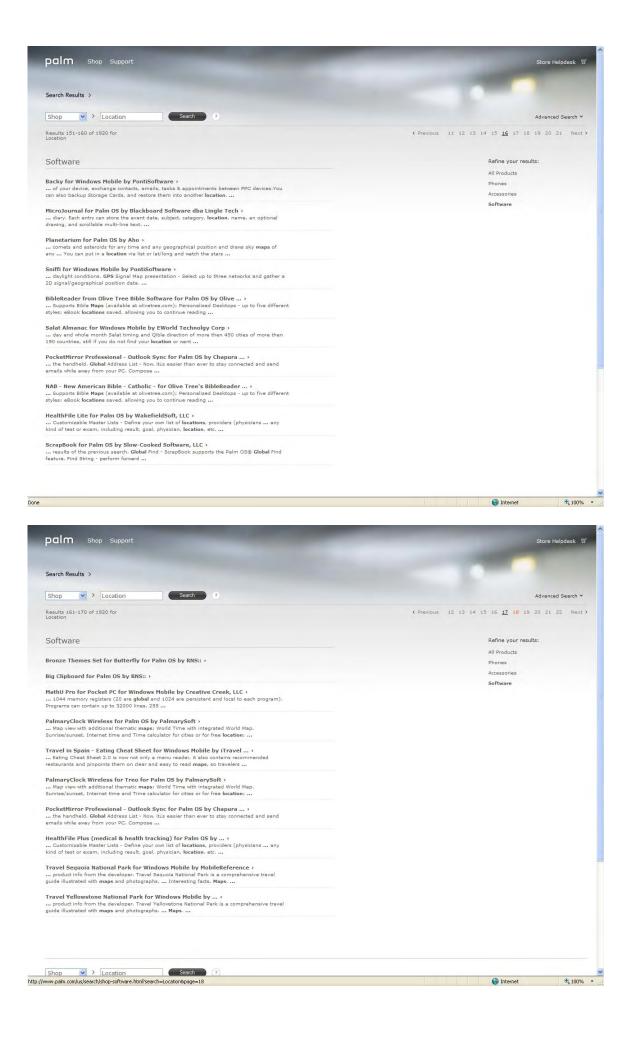


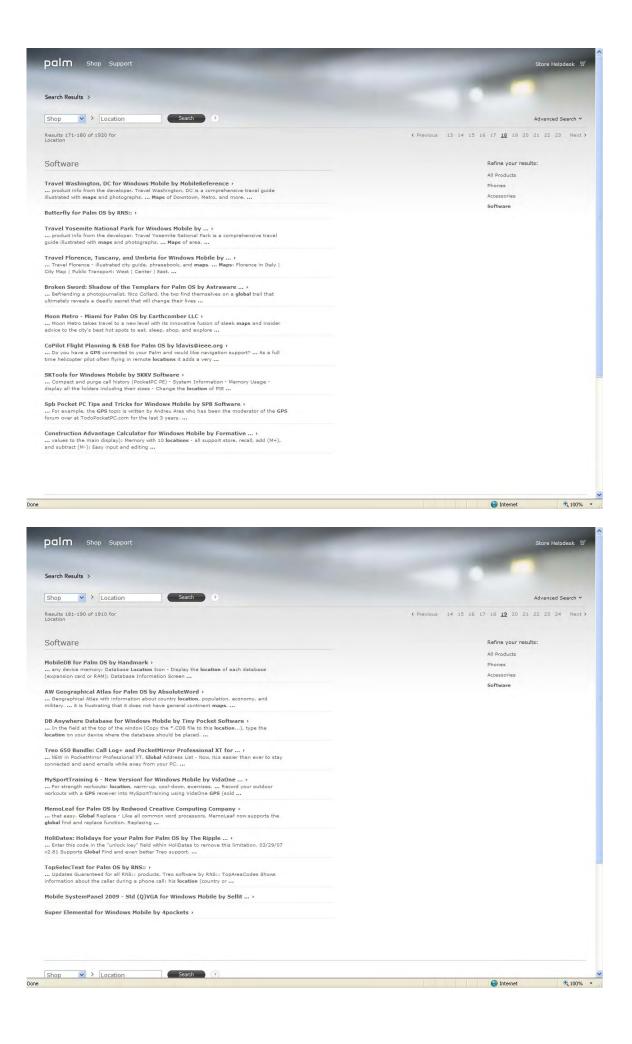




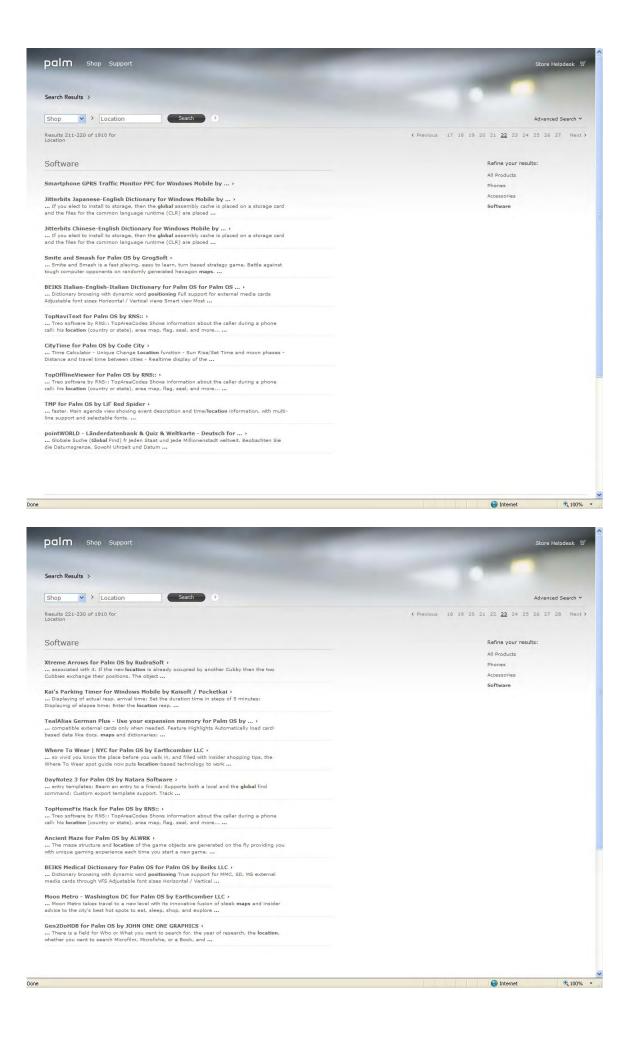


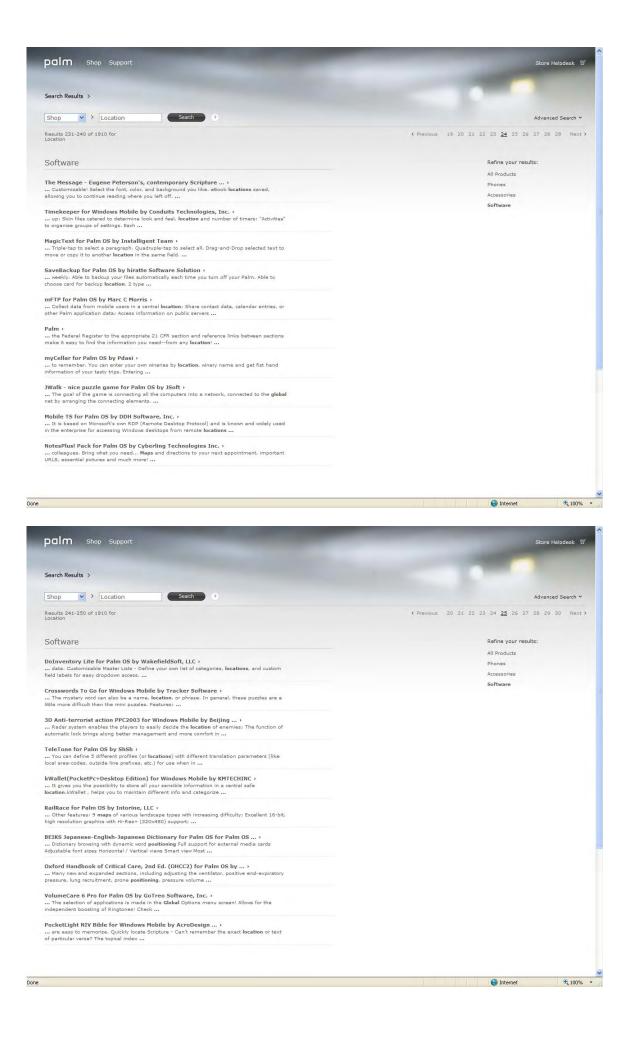


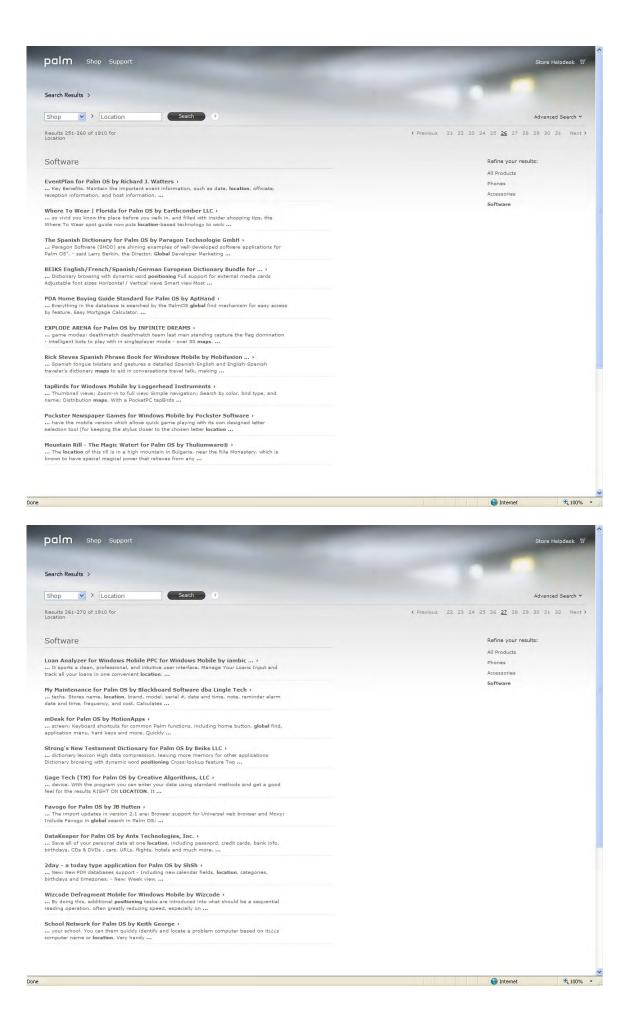


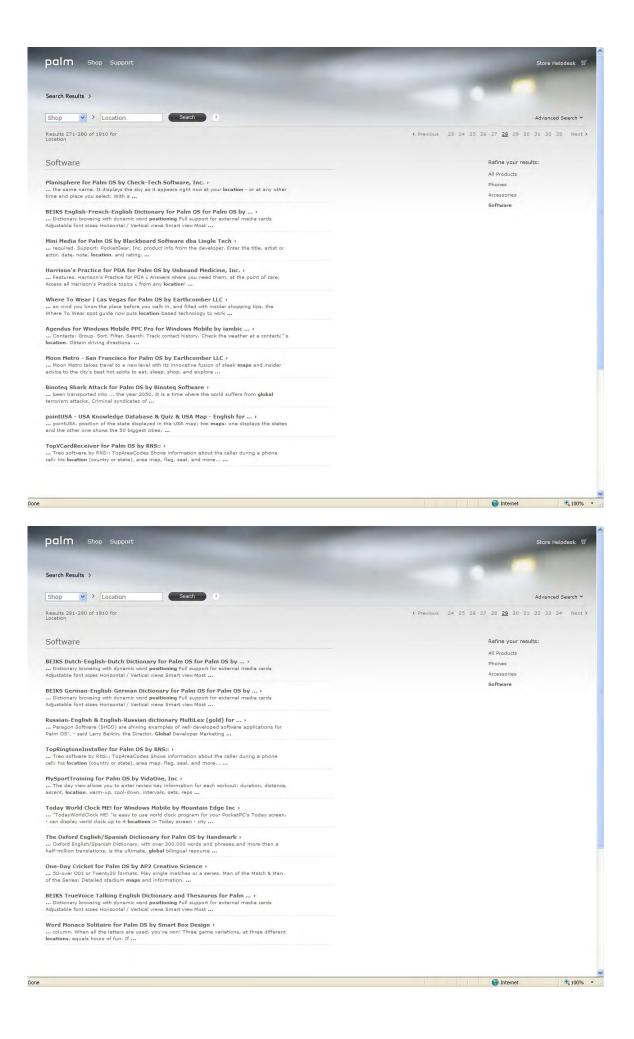


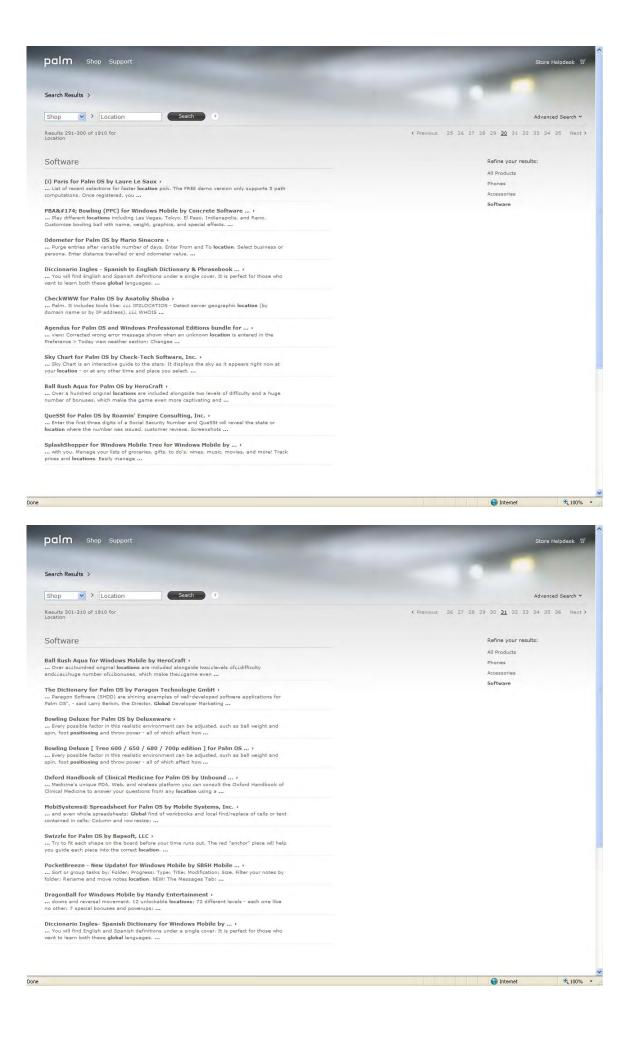
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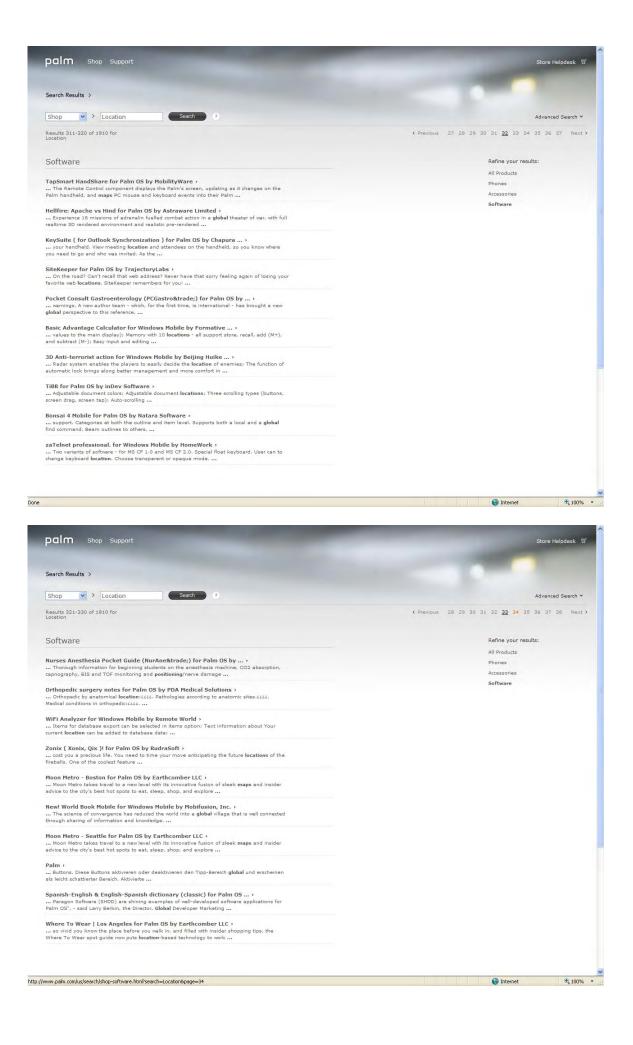


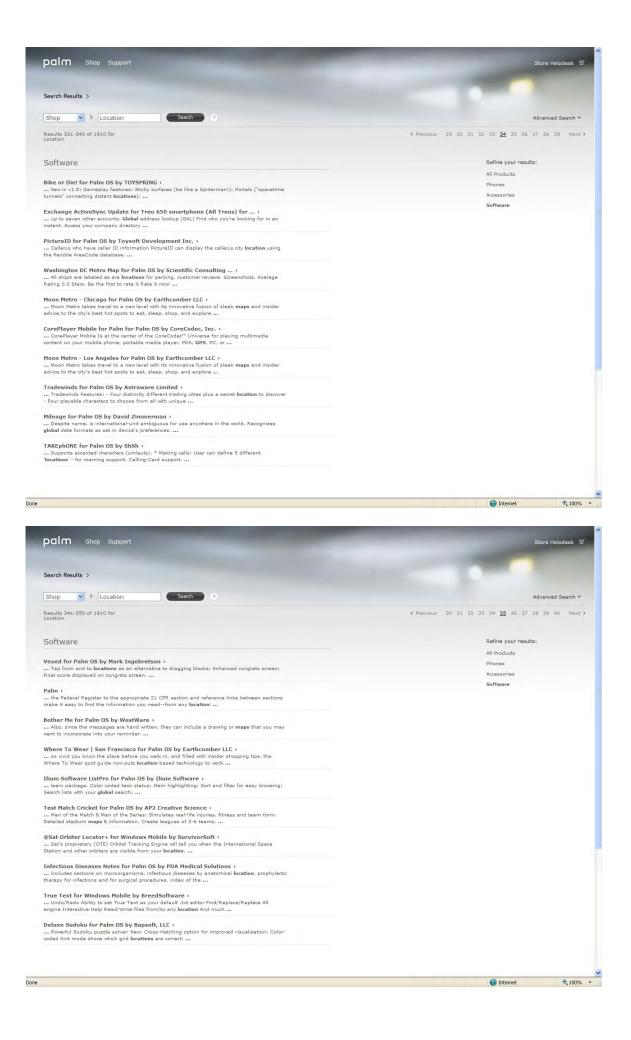


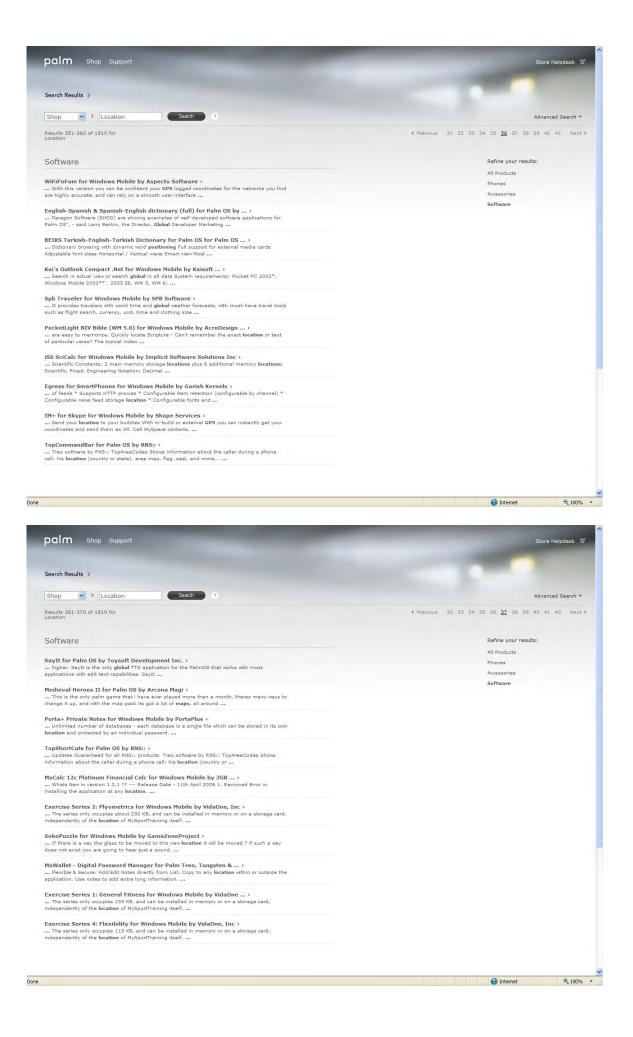












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Exercise Series 5: Abs and Back for Windows Mobile by VidaOne, Inc > The series only occupies 115 KB, and can be installed in memory or on a storage card, independently of the location of MySportTraining itself	
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3D Snow Rally City Stage for Windows Mobile by OmniG Software Inc. >	Software
Pocket Breakout for Windows Mobile by 4pockets >	
PE Checksum for Windows Mobile by Vieka >	
Spb AirIslands for Windows Mobile by SPB Software >	
Fast Sudoku - The game of centuries for Windows Mobile by PPCLINK >	
SlovoEd Deluxe French<->Russian for Windows Mobile by >	
PE File Explorer for Windows Mobile by Vieka >	
Marble Worlds for Windows Mobile by 4pockets >	
Larousse English Italian Dictionary for Windows Mobile by HNHSoft $\boldsymbol{\flat}$	
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Software	Refine your results:
Talk for Windows Mobile by 4pockets >	All Products Phones
Nizcode Photocopy Mobile for Windows Mobile by Wizcode >	Accessories
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InterType for Palm OS /Turkish/ for Palm OS by Beiks LLC > Palm OS Garnet maintains language information; as a result, no more than TWO languages with different alphabets can be displayed/used at global system level at	
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