



## **Comments**

**from Sara Kloek**

Director of Outreach  
at the Association for Competitive Technology

*on the*

May 30, 2012 Federal Trade Commission Workshop

*entitled*

“In Short: Advertising & Privacy Disclosures in a Digital World”  
FTC Project No P114506

July 11, 2012

Thank you for the opportunity to present an innovative privacy disclosure solution continuing to emerge from within the developer community at the May 30 workshop considering the need for new guidance concerning advertising and privacy disclosures in today's online and mobile environments.

I am the Director of Outreach at the Association for Competitive Technology (ACT). ACT is an international advocacy and education organization for people who write software programs--referred to as application developers. We represent over 5,000 small and mid-size IT firms throughout the world and advocate for public policies that help our members leverage their intellectual assets to raise capital, create jobs, and innovate.

I've spent the past several months working with developers, parents, and parent developers on issues surrounding privacy. Through workshops, conference calls, hundreds of emails, in-person emails, and meetings, I've heard countless stories and questions from the developer community as they navigate federal regulations.

As the FTC and multi-stakeholder groups consider measures to address consumer privacy, app makers have been confronting the issue and developing their own self-regulatory responses. App makers are particularly concerned with consumer confidence in the safety of private information because in the absence of this assurance they face reluctant customers. They want to play by the rules and do what

is right. However, they are increasingly concerned that burdensome regulation could drive developers from the marketplace.

There are over 200,000 app developers in the United States – and that number is growing every day. As most small business app developers are making customer-facing software for the first time, they are also addressing privacy issues for the first time. App makers want to do the right thing on privacy, but do not always know whether their app creates privacy concerns or what they need to do to be rules compliant. Matters typically handled by a legal department or chief privacy officer in a larger company are now often handled by a small business owner.

Recognizing the need to boost developer education, ACT has been particularly active on this issue during the past sixteen months. In addition to frequent meetings with lawmakers and regulators in Washington, we have traveled around the country to speak at developer conferences to raise awareness about consumer privacy.<sup>1</sup> While warning developers about possible new regulations, we have also helped to identify proactive steps they can take.

At workshops and conferences, we have advised app developers to be open with consumers about the information they collect and how it is used. We have three basic principles for all our developers:

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<sup>1</sup> <http://vimeo.com/34560160>

- Have a privacy policy – even if no information is being collected. Privacy policies should be presented to users in a meaningful way so they are easily comprehended. On mobile devices this means that the information provided must be simple and clear enough to fit on a small screen.
- Be mindful of third party relationships. App makers must recognize that the SDKs (software development kits) supplied by platform providers or ad networks may contain code that uses consumer information in ways they are unaware. Even if the developer never sees the data, the responsibility still lies with the app maker to inform the user what information is shared and how it is being used.
- Developers should ensure that they collect only as much information as is needed. When this information is no longer required, it should be de-identified.

### **Family Friendly Notification: Case Study**

ACT is committed to identifying self-regulatory methods to address this problem and we work with developer groups dedicated to finding their own solutions.

One of ACT's collaborative efforts involves Moms with Apps (MWA). This informal group of more than 1,000 parent developers is focused on building family friendly apps.

ACT and MWA have spent the past two years working to identify best practices amongst family friendly app developers. Oftentimes, the first users of MWA developer apps are their own children. Because of this, the developers are extremely are conscious of privacy concerns and the collection of data because the last thing any of them want is to expose their own children's private information.

After several months of developer discussions and education through group discussions on email, Facebook, and Twitter, workshops with ACT and other industry trade associations, as well as reading through existing regulations and the proposed rule, family friendly developer participants were well informed on the current state of federal privacy legislation. With the release of the FTC report on Mobile Apps for Kids in February 2012, the group was ready to respond. MWA participants developed an easy-to-read disclosure graphic which, at the developers discretion, could be included in the app screenshots, the app itself, the developers website, or on any of their social media pages.

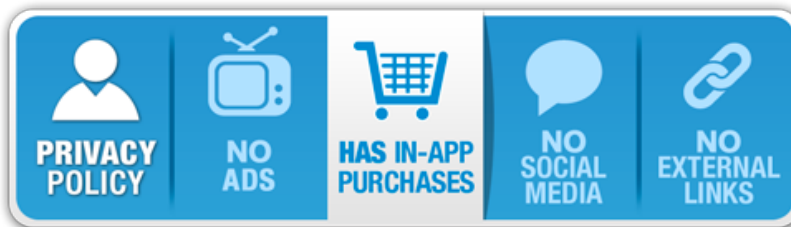
Collectively though, we all knew that the first version would not be final. The original version of the icon toolbar (shown below) was informative, but had elements that could have led to parental confusion. For example, the icon featuring soda and a hamburger was intended to convey "advertising", but didn't translate well for all parents or internationally.

### Original Version



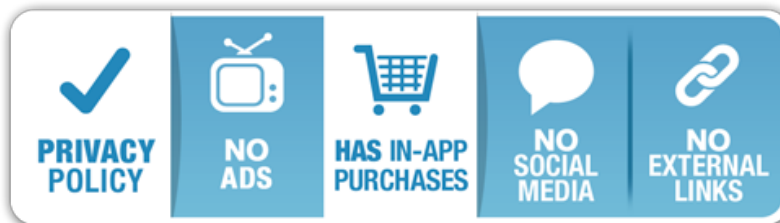
Original proposed icon with developer specific branding, tips, icons, orange and green coloring, circles and strike-throughs. Includes icons for data collection, ads, in-app purchase, social media, and links.

### Working Version A



This Working Version A is more of a button style with blue and grey coloring. You can see this one includes icons for privacy policies, ads, in-app purchases, social media, and external links.

### Working Version B



Working Version B has slightly different colors than Working Version A as well as a check mark noting the inclusion of a privacy policy.

As you can see, the versions became tighter, clearer and more internationally accessible. Multiple ad-hoc parent focus groups participated and added feedback, giving the project an incredibly rapid development cycle.

However, no amount of research, focus groups and testing can answer all of the problems. Uncertainty due to new COPPA rules has delayed the release of a final version of the icon. Possible changes in federal regulations in general online and mobile privacy add difficulties to defining individual graphics as well as discerning the best location to display the icon.

*Working Version C*



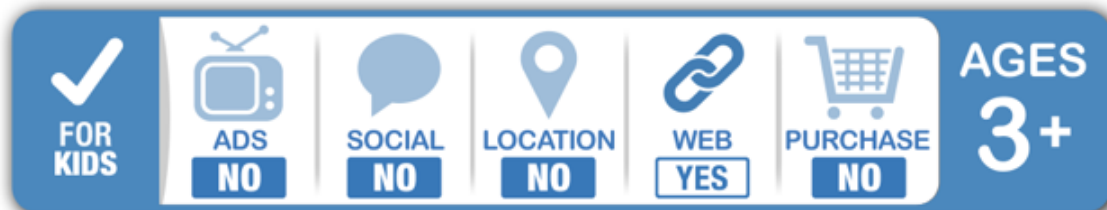
*Again, slightly different than Working Versions A and B. They have included “No” and flattened out the image.*

*Working Version D*



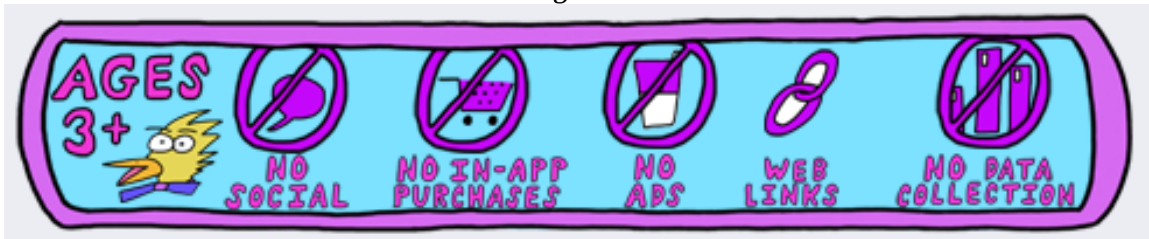
*Working Version C includes an additional icon (location data) as well as changes external links to web browsing. One notes the slight changes of the graphics in each working icon. Here the icon allows the developer to note the age-appropriateness of the app.*

*Working Version E*



*Slightly different than Working Version D in coloring, graphics and copy.*

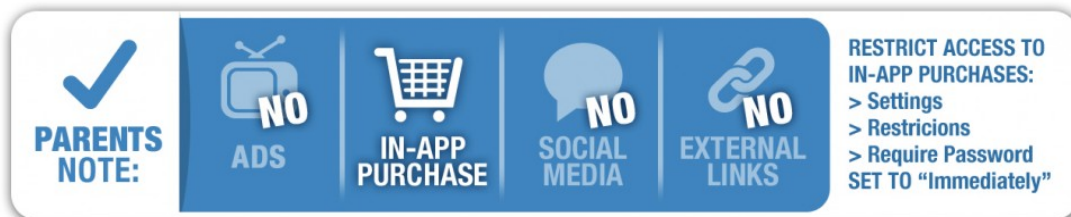
*Working Version F*



*Designed by an individual developer looking to include an icon with specific branding to the app and characters within the app.*

Critically, some developers want to display it but are worried about scaring away potential customers. Instead of being seen as useful information, it is seen more as a scarlet letter, even if the app does not collect any information. There are not answers currently on how to overcome this hurdle but the developers will continue to discuss.

*Working Version G*



*Additional tips for customers are included in Working Version G. This advises parents on how to turn off the features included in the app.*

*Working Version H*



*Slight changes and color and graphics appear in Working Version H.*



While this version of the privacy icon isn't a final solution, it's a great step initiated from within the industry to safeguard user privacy. Family friendly developers look forward to continuing to change the way children and parents use technology through apps.

### **Lessons Learned: What Parent Friendly Icons Can Teach All of Us.**

As our community works towards solutions three important lessons have emerged.

**First, collaboration is critical.** Without developers, industry, federal regulator, and consumer feedback, the icon would not be where it is today. These voices were all vital to the development of the icon and need to be included as any process continues. As other multistakeholder processes move forward, it is important to ensure that each voice is heard equally and fairly. Without each voice, failure is guaranteed.

**Second, clarity is needed.** Inability to properly define functions such as data collection and web links has made it difficult for the community to move forward. Just the same, developers want to continue to innovate but need clear guidance in order to do so. Unpredictability of US and EU privacy regulations have stifled some innovation and will continue to do so until clarity is reached.

**Third, overreaching regulatory burdens will kill innovation.** The majority of app developers are small businesses that will be unduly burdened if regulations are prescriptive and complicated. With the inability to hire expensive professionals to help them navigate regulations, developers will choose to exit the market instead of making what could be the next big thing.

ACT is excited about the future possibilities the app marketplace, and the family friendly space in particular. We look forward to continuing to work with the FTC on these critical issues.