

Before the
Federal Trade Commission
Washington, D.C.

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In the matter of
Mobile Device Tracking Request for Comments

COMMENTS OF
THE COMPUTER AND COMMUNICATIONS INDUSTRY
ASSOCIATION

1 Introduction

In response to the Federal Trade Commissions (FTC or the Commission) call for comments on February 19, 2014 regarding mobile device tracking in retail settings¹, the Computer & Communications Industry Association (CCIA) submits the following statements.

CCIA is an international, nonprofit association representing a broad cross section of computer, communications and Internet industry firms. CCIA remains dedicated, as it has for over 40 years, to promoting innovation and preserving full, fair and open competition throughout our industry. Our members employ more than 600,000 workers and generate annual revenues in excess of \$200 billion.²

Location data can be used to harm consumers if it is collected too broadly and without their control. That same information, however, can be used to enable incredible services that directly benefit consumers. At the FTCs workshop on retail location tracking on February 19, however, mobile devices were at times portrayed as nothing more than avenues for data breach.

¹Call for comments available at: <http://www.ftc.gov/news-events/events-calendar/2014/02/spring-privacy-series-mobile-device-tracking>.

²A complete list of CCIA's members is available online at <http://www.ccianet.org/members>.

CCIA believes that this is an inaccurate representation and welcomes the opportunity to offer some clarifications.

These comments will set out three broad areas of advice for the FTC: 1) That the FTC should balance the benefits of location-aware services against the risks of true harm to users; 2) That location-aware services are a net good for users given the breadth of existing uses and the potential for innovation in the space; and 3) That contrary to the theme of the February 19 panel of mobile devices as simply a vector for location data breach, many devices interact with the existing networks in privacy enhancing ways.

2 A Proper Analysis of Benefits and Harms

The Commission can protect consumers privacy in this space without crippling innovation by focusing on cognizable harms while balancing such concerns against the benefits of a technology. By doing this, the FTC can ensure that uses of retail-based location technologies that enhance consumer welfare are not stifled as the agency determines how best to protect consumers.

To accomplish this, the FTC should focus on harms that are concrete and recognizable. The Commission certainly should be concerned with uses of mobile tracking that could cause specified harm to consumers. For example, use of data that leads to an adverse eligibility decision for credit, insurance, or employment could be such a harm.³ In contrast, harms that are merely hypothetical or speculative and do not involve specific monetary harms or other cognizable or measurable effects should not be part of the Commission's analysis. Government intervention in any nascent industry based on speculative harms, whether they be about consumers feelings or a hypothetical parade of horrors, risks overstepping the proper role of the agency. On the other hand, focusing on areas where the Commission has real evidence of harms provides the proper boundaries for an assessment of whether the Commission should get involved and what it should do in this

³It is worth pointing out that often these heightened harms already have legal structures that protect consumers. In this case the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq.

space.

In addition, the Commission should assess the economic impact of any potential approach. For example, the Commission should analyze the value of new retail mobile analytics to stores and their customers and then weigh any positive impact against whatever harms have been identified by the evidence. Indeed, it is vital for the Commission to include its own Bureau of Economics to measure the associated economic harms and benefits of this industry before undertaking any efforts to issues rules or guidelines.

This type of analysis of harms and benefits is particularly important with regard to the new interactions that arise between consumers and retailers. There is still a lot to be learned about what uses of this data will be valuable to all parties, when and why consumers might want to take advantage of these new retail-location services, and where the proper balance might be between cognizable privacy concerns and beneficial uses of consumer information by retailers. Without a robust analysis of the impact of the uses of these technologies, a hasty approach based more in fear than in facts could ultimately harm consumer welfare by preventing the development of the potential benefits outlined below.

A careful analysis will also encourage innovation and competition. When companies face potential agency scrutiny based on unbounded factors, those companies will operate under a cloud of uncertainty. As a result, they are much less likely to invest in new technologies, such as employing engineers to build out new products. Driving that sort of innovation and investment through carefully constructed regulation, enforcement, and advocacy should be the framework for any Commission approach, including with mobile retail technologies.

3 The Benefits of Geolocation Systems

A careful balance is vital because geolocation systems are simply tools that enable a wide variety of applications, the majority of which users consider absolutely vital. Retail establishments can gather incredibly useful aggregate data about how their customers move around the store, what products

are most popular, and when the store is most crowded, among others. Retailers can then use that information to give consumers the best experience they can, improving the flow of the physical space and getting the products that people want where they can be seen best. This sort of data can also help stores market their products more effectively and gain efficiencies in staff allocation and other ways. For example, stores can monitor in real time and in the aggregate when lines back up, allowing them to shift employees on the fly and plan ahead to avoid having customers standing in, or even leaving, the checkout line.

These location systems also carry the inherent possibility for competitive disruption that is typical of new technologies. At this early stage of their development, we cannot know exactly what types of innovative and welfare enhancing uses of the data will arise in the retail space. The uses that some of the panelists discussed at the FTC event — informing the layout of malls, discovering how people interact with retail spaces, or tailoring to customer expectations — are likely only the tip of the iceberg.

These technologies are poised to create drastic competition in a number of different business spaces, which will only lead to better services for consumers, lower prices, and more efficient and effective customer service. Most critically, these technologies can allow brick-and-mortar stores to more effectively compete with online retailers by, for example, bringing some of the benefits of online marketplaces to the physical space. Location data can help enable seamless checkout, personalized and efficient staffing, and less congested retail stores — many of the hallmarks of online shopping — giving offline retailers a new way to battle for shoppers' time and money. Because the enhancement of competition amongst retailers is a key benefit that will lead to better prices and services for consumers, we urge the Commission to use its competition expertise from the Bureau of Competition and Office of Policy Planning when analyzing how to approach this new technology.

4 Devices Actually Share the Minimum Amount Necessary

Finally, the Commission should be cognizant of the existing privacy enhancing nature of the mobile technology and the use of the data. First, the mechanics that allow retailers to recognize a mobile handset by its cellular, wi-fi, or bluetooth signal are based on unique identifiers that do not, by themselves, identify specific consumers. Devices use these identifiers to communicate on a network by relaying these unique numbers to nearby towers or antennas. For example, when a call is placed to a mobile phone, the cellular network finds the tower that the unique ID most recently communicated with, and sends a signal to that device from that tower. Without a unique number system, the mobile network would have no way of sorting out the millions of devices that want to use the modern mobile system.

Contrary to comments made at the February 19 seminar, mobile devices' method of communicating with the network does not act improperly with consumers personal information. To the contrary, these devices communicate non-personally identifiable IDs that do not communicate the actual identity of the consumer. In addition, as noted during the seminar, these identifiers are often hashed by mobile retail location services to further obscure the identity of the device itself.

An analogy may be drawn to Internet Protocol (IP) addresses in a non-mobile setting. Similar to mobile device numbers, every computer connected to the Internet must have an IP address. Some people consider IP addresses to be personally identifiable and others do not, however there is no suggestion that we should do without them, because without them the Internet cannot function. Instead, the focus is on usage of these identifiers, figuring out what is appropriate and what causes harm.

In addition, by and large the information here will be aggregated and not associated with personally identifiable information. The value in these types of analytics is in studying how large numbers of people behave on the average. Similarly, data gathered by retail establishments to be used for their own analytics and not shared outside the organization should not raise

red flags while data sold to third parties such as data brokers may.

5 Conclusion

As the FTC considers the privacy implications of retail-based location analytics, the staff should take into account the benefits to consumers, the impacts on competition, and the realities of the mobile technology infrastructure. Benefits should be, as always, balanced against actual non-hypothetical harms, and solutions should be narrowly tailored to avoid hampering truly innovative companies and services. CCIA thanks the FTC for offering the opportunity to comment on these issues and looks forward to continuing to work with the Commission on the topic in the future.