

January 10, 2013

Kamala D. Harris
Attorney General
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Re: "Privacy on the Go – *Recommendations for the Mobile Ecosystem*"

Dear Attorney General Harris:

The undersigned associations write to express our significant concerns with the privacy practice recommendations for the mobile marketplace made in the report titled, "Privacy on the Go – *Recommendations for the Mobile Ecosystem*".¹

In your "message" introducing the "privacy practice recommendations", you note that the recommendations were arrived at after consulting a "broad spectrum" of stakeholders. Unfortunately, the universe of contributors you go on to list represents only one generic perspective, that of the privacy, academic, and mobile app platform community, and it excludes others, including end-users, whose businesses and industries would be adversely effected by the recommendations you plan to issue as guidance for those engaged in the mobile marketplace.

While we share your commitment to mobile privacy and appreciate the steps taken to involve interested companies in drafting the recommendations, the mobile ecosystem includes thousands of stakeholders that have not been included or adequately represented in this process. As a result, the recommendations do not reflect the perspective or input of the broader industry. These recommendations extend far beyond existing legal requirements under California law and there has been no assessment of their likely impact on the California economy. We are concerned that these recommendations, if implemented, will chill innovation in the marketplace, cost jobs, harm California's economy, and deprive consumers of the benefits of mobile applications, products, and services.

Our associations or the companies we represent, which include thousands of member companies in California and throughout the nation, were not invited to provide comment or feedback to your office on its recommendations, and the recommendations were never presented for public review and comment. As a result, industries involved in retail, banking, advertising, insurance, travel, gaming, entertainment and media are only now beginning to learn that these guidelines have even been drafted. The technological and policy issues arising in the mobile ecosystem are complex, and a public review and comment process can bring valuable perspectives to the drafting process. Without participation and cooperative deliberation by the broader industry stakeholders, the sweeping recommendations

¹ *Privacy on the Go – Recommendations for the Mobile Ecosystem*, January 2013, available at http://www.oag.ca.gov/sites/all/files/pdfs/privacy/privacy_on_the_go.pdf.

contained in this report could have significant and negative impacts on California's affected industries, innovation, jobs, and American commerce generally.

Industry has already been working diligently to address mobile data practices through various self-regulatory forums, including a broad and open multistakeholder process within the Department of Commerce, a process that has involved extensive public notice and comment periods. In addition, matters of mobile privacy are under deliberation in various Congressional committees and at federal agencies, including the Federal Trade Commission and Federal Communications Commission. Significant work is already underway on these matters and we are concerned that issuing recommendations specific to California will result in confusion and mixed signals among companies and consumers alike.

The mobile economy is only now beginning to emerge and is evolving rapidly. Matters of mobile privacy are best addressed through codes of conduct developed through broad industry consensus that include mechanisms for responding to shifting technologies, practices, and consumer preferences. This self-regulatory approach is flexible and adaptable over time, enabling it to address evolving privacy concerns without interfering with innovation, which benefits consumers by delivering paychecks, savings, and exciting products and services. In contrast, we are concerned that this report would lock in current business models, which could thwart future innovation in a vibrant mobile ecosystem.

In addition, we are concerned that the recommendations are unworkable and could create market confusion for businesses trying to implement best practices in their mobile business. These recommendations, which openly conflict with developing consensus standards and are not grounded in any apparent legal authority, go well beyond existing requirements under California law, as well as Federal law, and will inevitably impact countless entities that are not subject to California's Online Privacy Protection Act. As a result, these circumstances would create uncertainty in the marketplace, raise unnecessary costs for business, restrict innovation, slow economic growth, reduce benefits for consumers, and result in job losses in California and throughout the nation.

Sincerely,

American Association of Advertising Agencies
American Advertising Federation
Association of National Advertisers
National Business Coalition on E-Commerce & Privacy
Direct Marketing Association
Interactive Advertising Bureau
MPA—Association of Magazine Media