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October 26, 2012

«Developer»
«Privacy_Policy_Contact»

RE: Notice of Non-Compliance with California Online Privacy Protection Act

Dear «Privacy_Policy_Contact»:

I am the Supervising Deputy Attorney General for this office's new Privacy Enforcement and Protection Unit. This letter is being sent to «Developer» pursuant to the California Online Privacy Protection Act ("CalOPPA," Cal. Bus. & Prof. Code §§ 22575-22579, copy enclosed). Protecting the online privacy of California residents is one of the Attorney General's top priorities, and the Privacy Enforcement and Protection Unit is charged with enforcing California state and federal privacy laws as well as California residents' constitutionally guaranteed right to privacy.

As we hope you are aware, CalOPPA requires that "an operator of a commercial Web site or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its commercial Web site or online service" must post a privacy policy that complies with specified requirements. Cal. Bus. & Prof. Code § 22575(a) and (b). The privacy policy must be "conspicuously" posted, and in the case of an online service, "reasonably accessible ... for consumers of the online service." Cal. Bus. & Prof. Code § 22575(a) and § 22577(b)(5). A Web site or online service operator that collects personally identifiable information ("PII") and "fails to post its policy within 30 days after being notified of noncompliance" is in violation of CalOPPA. Cal. Bus. & Prof. Code § 22575(a).

An operator of a mobile application ("app") that uses the Internet to collect PII is an "online service" within the meaning of CalOPPA. An app's commercial operator must therefore conspicuously post its privacy policy in a means that is reasonably accessible to the consumer. Having a Web site with the applicable privacy policy conspicuously posted may be adequate, but only if a link to that Web site is "reasonably accessible" to the user within the app. Under California's Unfair Competition Law, Business and Professions Code sections 17200 *et seq.*, violations of CalOPPA may result in penalties of up to \$2,500 for each violation, i.e., for each copy of the unlawful app downloaded by California consumers. Cal. Bus. & Prof. Code § 17206(a).

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It appears that your “«App_Name»” app, available through the Apple App Store and Google Play platforms, does not currently have a privacy policy reasonably accessible for consumers. Therefore this letter constitutes 30 days notice that the «App_Name» app is non-compliant with CalOPPA.

Please respond to the undersigned within 30 days of the date of this letter with the following information: a) «Developer»’s specific plans and timeline to comply with CalOPPA; or b) why you believe this app is not covered by CalOPPA.

If you have any questions regarding this letter please feel free to contact me at the above telephone number or addresses.

Sincerely,

ADAM MILLER
Supervising Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

AM:

Enclosures as noted