

FTC encourages app developers to ensure disclosure

March 21 2016, by Nancy Owano



Credit: Peter Griffin/Public Domain

Twelve app developers were sent warning letters on Thursday from staff at the Federal Trade Commission. The subject at hand: The use of SilverPush software. They are developers whose apps are available for download in the Google Play store and appear to include the SilverPush code.

The FTC letter senders called attention to something called Section 5 of the Federal Trade Commission Act which deals with Unfair or Deceptive Acts or Practices.

The letters warned the app developers that if their statements or user interface state or imply that the apps in question are not collecting and transmitting television viewing data when in fact they do, that the app developers could be in violation of Section 5 of the [Act](#).

What then is SilverPush? The FTC news release about the letters described it as a piece of software that can monitor a device's microphone to listen for [audio signals](#) that are embedded in television [advertisements](#).

The software is designed to monitor consumers' television use through the use of audio beacons emitted by TVs. The letters noted the software would be capable of producing a detailed log of the television content viewed while a user's mobile device was turned on for the purpose of targeted advertising and analytics. Consumers cannot hear the beacons but the software can detect them. So what if the consumer is not aware that this is going on?

SilverPush has stated publicly that its service is not currently in use in the United States, said the FTC news release, but app developers have been encouraged to notify consumers that their app could allow third parties to monitor consumers' television viewing habits—should the software begin to be used in the United States.

Jessica Rich, Director of the FTC's Bureau of Consumer Protection, said in the news release what many privacy advocates have said in the past. "Companies should tell people what information is collected, how it is collected, and who it's shared with."

The warning letters did note that [app developers](#) ask users for permission to use the device's microphone, despite the apps not appearing to have a need for that functionality. The letters also noted, however, that nowhere do the apps in question provide notice that the app could monitor television-viewing habits, even if the app is not in use.

In the righthand corner of the news release page sat a link to a "Sample Warning Letter to App Developers Using 'Silverpush' Software.

"Dear Sir or Madam:

We recently discovered that your mobile application " _____ " includes a [software development kit](#) created by the company Silverpush. Silverpush makes available for application developers a 'Unique Audio Beacon' technology that enables mobile applications to listen for unique codes embedded into television audio signals in order to determine what television shows or advertisements are playing on a nearby television. This functionality is designed to run silently in the background, even while the user is not actively using the application. Using this technology, Silverpush could generate a detailed log of the television content viewed while a user's mobile phone was turned on."

SilverPush represented that its audio beacons were not currently embedded into any television programming aimed at U.S. households. The letter went on to say that, "However, if your application enabled third parties to monitor [television](#)-viewing habits of U.S. consumers and your statements or user interface stated or implied otherwise, this could constitute a violation of the Federal Trade Commission Act."

The letter said that "We would encourage you to disclose this fact to potential customers, empowering them to make an informed decision about what information to disclose in exchange for using your

application."

The letter also said that, in the coming months, "Commission staff will continue to monitor your [mobile](#) application." They said they would encourage them to contact the senior attorney in their Division of Privacy and Identity Protection, if they had any questions.

SilverPush is described as "the go to platform" for companies to understand if their latest TV commercial made waves on social [media](#). The FTC is a bipartisan federal agency with a mission to protect consumers and promote competition.

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