

## **“Audio Beacons” are on the FTC’s Cross-Device Tracking Radar**

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Yesterday, the Federal Trade Commission (FTC) issued [warning letters](#) encouraging twelve unnamed app developers to provide clear disclosures about any use of “audio beacon” technology to monitor the television-viewing habits of US consumers. According to the FTC, these developers’ mobile apps potentially included code to implement audio beacons. This technology, which was highlighted at the FTC’s Cross-Device Tracking Workshop in November, relies on sounds to track consumers across devices. It works by embedding inaudible tones into television commercials and other programming, and these audio signals then can be recognized by a mobile app that has permission to access a device’s microphone. (More information is available in our earlier workshop [client alert](#).)

The FTC discovered that several mobile apps included a software development kit created by Silverpush, which offers audio beacon technologies. While it appears that this specific functionality only has been deployed outside the United States, the FTC is concerned that the code found in these apps maintains the same capabilities. The FTC notes that audio beacons run silently in the background, collecting information, even when consumers are not actively using their mobile devices.

Jessica Rich, the Director of the Bureau of Consumer Protection, suggested that failure to notify consumers about this type of practice could raise privacy concerns. In its form warning letter, the FTC stated that the identified apps provided no disclosures—“either contextually as part of the setup flow, in a dedicated standalone privacy policy, or anywhere else”—about any audio beacon functionality. The warning letter cautioned that these apps also require permission to access the device’s microphone in light of “no evident functionality in the application that would require such access.”

The FTC warned that if an app permits third parties to monitor television-viewing habits and the app’s privacy policy or its user interface states or implies otherwise, this might violate Section 5 of the FTC Act. It encouraged

app developers to review its 2013 [Mobile App Marketing Guidance](#), which suggests developers “be transparent about your data practices” and “honor your privacy promises.” Today’s letters suggest that the FTC’s interest in mobile application and cross-device data practices will continue to be a priority in its privacy work in the coming months.