

# Mobile Location Analytics

## Code of Conduct

### Preamble

*Mobile Location Analytics (MLA) provides technological solutions for Retailers by developing aggregate reports used to reduce waiting times at check-out, to optimize store layouts and to understand consumer shopping patterns. The reports are generated by recognizing the Wi-Fi or Bluetooth MAC addresses of cellphones as they interact with store Wi-Fi networks.*

*Given the potential benefits that Mobile Location Analytics may provide to businesses and consumers, it is important that these practices are subject to privacy controls and are used responsibly to improve the consumer shopping experience. This Code puts such data protection standards in place by requiring transparency and choice for Mobile Location Analytics.*

### Who Is Covered

This Code is intended to provide an enforceable, self-regulatory framework for the services provided in the US to Retailers by Mobile Location Analytics (“MLA”) Companies.

### I. Principle One: Notice

MLA Companies shall provide consumers with privacy notices that are clear, short, and standardized to enable comprehension and comparison of privacy practices.

#### a. MLA Company Privacy Notice

MLA Companies shall take reasonable steps to require that companies using their technology display, in a conspicuous location, signage that informs consumers about the collection and use of MLA Data at that location. Such steps shall include proposing standard or model contract language, providing companies with model language for in-store signage, developing a standardized symbol or icon to be included with such signage, and using other reasonable efforts to promote the use of in-store signage where MLA technology is used. Such signage shall provide information about how consumers can find additional information and exercise choice. Such signage shall also include a standardized symbol intended to help alert consumers to the use of MLA and other technologies. This Code does not intend to restrict notice to physical signage only. As other forms of just-in-time notice become feasible, this Code may be updated to reflect that these notice techniques also satisfy this requirement.

The following model language, in combination with a standardized symbol, satisfies the in-store notice requirement: “To learn about use of customer location and your choices, visit [www.smartstoreprivacy.com](http://www.smartstoreprivacy.com).”

MLA Companies shall provide a detailed privacy notice at their website which describes the information they collect and use and the services they provide. This notice should be separate from and in addition to a notice describing information collected by the MLA Company’s website itself. This detailed notice shall include the following information:

- Information collected by the MLA service;
- Steps taken to protect, de-identify, or de-personalize any tracking identifiers collected and statement of commitment not to re-identify data;
- A data retention statement;
- Information about data sharing, including law enforcement access;
- Description of whether data is provided to clients in individual or aggregate form;
- Disclosure about appending additional data to any unique user profile;
- How consumers can exercise any choices required by this Code;
- A method that consumers can use to contact the MLA Company with privacy questions; and
- A consumer-friendly description of how the technology works or a link to such information on the MLA Company site or at a Central Industry Site.

#### b. Exceptions to Principle One

Notice does not have to be provided when (1) the information logged is not unique to an individual device or user, or (2) it is promptly aggregated so as not to be unique to a device or user, and individual information is not retained.

For example, simply logging device types encountered does not require notice, nor does counting the total number of times unspecified mobile devices have been detected by a network. If a company only provides aggregated data to clients but still collects and retains device-level information, this exception will not apply and notice must be provided.

MLA Companies relying on this exception shall describe the steps taken to promptly aggregate such data.

## **II. Principle Two: Limited Collection**

Unless covered by the Exceptions in this Code, MLA Companies who collect location information from mobile devices for the purpose of providing location analytics shall limit the data collected for analysis to information needed to provide analytics services. In the provision of MLA services, MLA Companies shall not collect personal information or unique device information, unless it is promptly de-identified or de-personalized, or unless the consumer has provided Affirmative Consent. MLA Companies that collect MAC addresses or other unique device identifiers shall ensure this information meets the definition of De-personalized data as set forth in this Code, unless they obtain Affirmative Consent or other Exceptions apply.

If MLA Companies append data or add third party data to a user's profile that includes a device identifier or a hashed device identifier, they shall disclose such practices in their privacy notice. Any process used to link data to a unique device identifier, shall employ methodologies that maintain the data's de-identified or de-personalized status, unless a consumer has provided Affirmative Consent to the use of MLA Data.

## **III. Principle Three: Choice**

MLA Companies shall provide consumers with the ability to decline to have their mobile devices used to provide retail analytics services. Information about how to exercise this choice shall be provided in a MLA Company Website privacy notice.

MLA Companies shall provide a link to the Central Industry Site which provides the Central Opt-Out. The MLA Company Website privacy notice may also provide a MLA Company specific opt-out.

### **a. Exceptions to Principle 3**

Choice does not have to be provided when the information logged is not unique to an individual device or user, or it is immediately aggregated so as not to be unique to a device or user, and individual information is not retained.

For example, simply logging device types encountered does not require choice, nor does counting the total number of times unspecified mobile devices have been detected by a network. Logging the total number of unique devices detected requires choice because it necessitates recording device-level information in order to distinguish new devices from previously detected ones.

When a consumer exercises an opt-out choice, the MLA Company will no longer associate information with a unique mobile device identifier and will only use the identifier in order to maintain the device's opt-out status. Informing consumers that turning off their mobile devices, or turning off Wi-Fi or Bluetooth, are not considered by themselves to be choice options that qualify as an opt-out when required by this Code. This Code seeks to be technologically neutral and does not dictate a particular opt-out method in order to encourage new and effective methods to offer choice. However, any method of opt-out choice provided in order to satisfy this Code must allow a consumer to maintain full use of mobile device features.<sup>1</sup>

### **b. Affirmative Consent**

A consumer's Affirmative Consent shall be required in the following circumstances:

- 1) Personal information will be linked to a mobile device identifier; or
- 2) A consumer will be contacted based on MLA Data.

MLA companies may reasonably rely on Retailers to obtain Affirmative Consent.

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<sup>1</sup> We note that some devices do not provide consumers the ability to view the device's MAC address and thus at this time it is not feasible to provide those consumers with a choice option. In the future, it may be possible to provide a method for such MAC addresses to be collected by an opt-out mechanism.

## **IV. Principle Four: Limitation on Collection and Use**

MLA Data shall not be collected or used in an adverse manner for the following purposes: employment eligibility, promotion, or retention; credit eligibility; health care treatment eligibility; and insurance eligibility, pricing, or terms.

## **V. Principle Five: Onward Transfer**

MLA Companies that provide MLA Data to Unaffiliated Third Parties shall contractually provide that third party use of MLA Data must be consistent with the Principles of this Code.

## **VI. Principle Six: Limited Retention**

MLA Companies shall set internal policies for data retention and deletion of unique device data. MLA Companies shall set forth a data retention policy in their privacy notice.

## **VII. Principle Seven: Consumer Education**

### **a. Central Industry Site**

MLA Companies shall participate in an industry-provided, consumer-focused website that presents information about how MLA services work and how information is collected and used by MLA Companies. Such a site shall be easy to access on mobile devices and shall include information about how to exercise choice. MLA Companies shall link to this site from their privacy notices. The Central Industry Site shall also provide the Central Opt-Out.

### **b. Standardized Symbol**

MLA Companies shall develop a standard symbol that is intended to convey to consumers the concept of MLA services. Such symbol shall be used on the central industry site, on MLA Company websites, and on education materials and communications.

### **c. Education**

MLA Companies shall participate in education efforts to help inform consumers about the use of MLA services.

## **VIII. Exceptions to the Principles**

### **a. Operational Exclusion**

Data that is collected for the purpose of managing or operating a Wi-Fi network, or for analysis used to test the operation of that network, is not subject to the restrictions in this Code.

### **b. Security Exclusion**

Nothing in this Code shall be construed to limit the collection or use of data for security, fraud or legal compliance, or to protect the safety, property, or other rights of a company or its employees or customers.

### **c. Employee Exclusion**

This Code does not limit an employer's right to use MLA Data within the context of an employer-employee relationship.

### **d. Affirmative Consent Exception**

A MLA Company, Retailer or other entity that has obtained an Affirmative Consent that describes collection, use or sharing of MLA Data is not subject to the limitations in this Code for that consumer.

## IX. Definitions

**Affirmative Consent** – an individual’s action in response to a clear, meaningful, and prominent notice regarding the collection and use of MLA Data.

**Central Opt-Out** – the Central Opt-Out shall provide consumers with an opt-out that is effective across all participating MLA Companies.

**De-personalized Data** – data that is not reasonably used to infer information about a particular consumer, but that may be associated with a particular computer or device. Data is treated as depersonalized if a MLA company:

- (1) takes measures to ensure that the data cannot reasonably be linked to an individual (for instance, hashing a MAC address or deleting personally identifiable fields);
- (2) publicly commits to maintain the data as de-personalized; and
- (3) contractually prohibits downstream recipients from attempting to use the data to identify a particular individual.

**De-identified Data** – data that is not reasonably used to infer information about or otherwise be linked to a particular consumer, computer, or other device. Measures such as aggregating data, adding noise to data, or statistical sampling are considered to be measures that de-identify data under this Code if a MLA Company:

- (1) takes reasonable measures to ensure that the data is de-identified;
- (2) publicly commits not to try to re-identify the data; and
- (3) contractually prohibits downstream recipients from trying to re-identify the data.

**MLA Data** – information broadcast by consumer mobile devices.

**MLA Company** – a non-Retailer entity that uses local sensors to collect information broadcast by consumer mobile devices for the purpose of providing analytics, market research, or other similar services.

**Retailer** – an entity that maintains a commercial location where it offers goods or services for sale to consumers and that is engaging an unaffiliated MLA Company to collect/analyze MLA data on its behalf.

**Personal Information** – data considered Personal Information under this Code shall include data that is linked or reasonably linkable to an individual, including but not limited to: name, address, email address, and IMSI. For purposes of the requirements in this Code, Personal Information does not include MLA Data held by an MLA Company that has been de-personalized or de-identified.

**Unaffiliated Third Party** – a company that is not controlled by, under the control of, or under common control of another entity.