

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

July 9, 2018

Mr. Tim Cook
Chief Executive Officer
Apple, Inc.
1 Infinite Loop
Cupertino, CA 95014

Dear Mr. Cook:

The Energy and Commerce Committee is reviewing business practices that may impact the privacy expectations of Americans. We write today to learn more about the capabilities of Apple's iPhone devices, in particular the collection and use of consumer data and microphone functionality of iPhones. Recent reports have indicated that consumer data gathered through cell phones, including location information and recordings of users, may be used in ways that consumers do not expect. We seek Apple's assistance in understanding whether these reports could apply to Apple products.

According to media reports published in November 2017, Android phones collect information on nearby cellular towers even if location services, WiFi, and Bluetooth capabilities are disabled, no third-party apps are installed or running, and the phones lack subscriber identification module (SIM) cards.¹ The report explained that this information is held locally on the phone until network capabilities are reestablished, at which point the data is sent to Google.² Additional information provided to the Committee suggests that this behavior is not limited to cellular tower data but is also gathered for nearby WiFi hotspots and Bluetooth beacons. Other behaviors that could have an impact on consumer protection issues were also raised, such as the fact that reenabling location services for one app on an Android phone reenables location services for all apps on that phone. These reports raised questions about how other mobile operating systems function.

¹ Keith Collins, *Apple collects Android users' locations even when location services are disabled*, QUARTZ (Nov. 21, 2017), <https://qz.com/1131515/Apple-collects-iPhone-users-locations-even-when-location-services-are-disabled/>.

² *Id.*

Consumers have a reasonable expectation of privacy when taking active steps to prevent being tracked by their device. Considering that many consumers likely believe that a phone that lacks a SIM card, or one for which they have affirmatively disabled location services, WiFi, or Bluetooth – such as through turning on “Airplane Mode” – is not actively tracking them, this alleged behavior is troubling. While we understand that the cited reports relate to Android phones, we wish to understand whether similar behavior could occur in Apple products as well.

Recent reports have also suggested that smartphone devices can, and in some instances, do, collect “non-triggered” audio data from users’ conversations near a smartphone in order to hear a “trigger” phrase,³ such as “hey Siri.”⁴ It has also been suggested that third party applications have access to and use this “non-triggered” data without adequate disclosure to users.

In the wake of the privacy scandals that surfaced earlier this year, you made several comments to the press around Apple’s beliefs about privacy, including “[w]e’ve never believed that these detailed profiles of people that have incredibly deep personal information that is patched together from several sources should exist”⁵ and “[w]e felt strongly about privacy when no one cared.”⁶ However, users have consistently had access to apps through the App Store that you have highlighted as contradictory to Apple’s values, including Google and Facebook apps. Only a few weeks ago Apple announced changes to its App Store rules that were characterized as attempting to limit how much data third-party app developers can collect from Apple device users.⁷ These statements and actions raise questions about how Apple device users’ data is protected and when it is shared and compiled.

Therefore, pursuant to Rules X and XI of the United States House of Representatives, we ask that you respond to the following questions by no later than July 23, 2018.

1. When an iPhone lacks a SIM card, is that phone programmed to collect and locally store information through a different data-collection capability, if available, regarding:
 - a. Nearby cellular towers;
 - b. Nearby WiFi hotspots; or,
 - c. Nearby Bluetooth beacons?

³ See Sam Nichols, *Your Phone Is Listening and it's Not Paranoia*, VICE NEWS, June 4, 2018, available at https://www.vice.com/en_au/article/wjbzzy/your-phone-is-listening-and-its-not-paranoia.

⁴ Apple, *The Basics*, <https://www.apple.com/ios/siri/> (last accessed June 22, 2018).

⁵ Tripp Mickle, *Apple CEO Tim Cook Calls for Privacy Regulation*, THE WALL STREET JOURNAL, Mar. 28, 2018, available at <https://www.wsj.com/articles/apple-ceo-tim-cook-calls-for-privacy-regulation-1522257430>.

⁶ Saheli Roy Choudhury, “Tim Cook: Apple felt strongly about privacy when ‘no one cared,’” CNBC, June 25, 2018, available at <https://www.cnbc.com/2018/06/26/apple-ceo-tim-cook-on-privacy-news-and-the-us-mid-term-election.html>.

⁷ Sarah Frier and Mark Gurman, *Apple Tries to Stop Developers From Sharing Data on Users’ Friends*, BLOOMBERG, June 12, 2018, available at <https://www.bloomberg.com/news/articles/2018-06-12/apple-cracks-down-on-apps-sharing-information-on-users-friends>.

2. If the answers to any of the preceding questions are “yes,” are iPhones lacking SIM cards programmed to send this locally-stored information to Apple when one or more networking capabilities are established?
3. When the WiFi capabilities on an iPhone are disabled, is that phone programmed to collect and locally store information through a different data-collection capability, if available, regarding:
 - a. Nearby cellular towers;
 - b. Nearby WiFi hotspots; or,
 - c. Nearby Bluetooth beacons?
4. If the answers to any of the preceding questions are “yes,” are iPhones with disabled WiFi programmed to send this locally-stored information to Apple when one or more networking capabilities are established?
5. When the Bluetooth capabilities on an iPhone are disabled, is that phone programmed to collect and locally store information through a different data-collection capability, if available, regarding:
 - a. Nearby cellular towers;
 - b. Nearby WiFi hotspots; or,
 - c. Nearby Bluetooth beacons?
6. If the answers to any of the preceding questions are “yes,” are iPhones with disabled Bluetooth programmed to send this locally-stored information to Apple when one or more networking capabilities are established?
7. When the location services capabilities on an iPhone are disabled, is that phone programmed to collect and locally store information through a different data-collection capability, if available, regarding:
 - a. Nearby cellular towers;
 - b. Nearby WiFi hotspots; or,
 - c. Nearby Bluetooth beacons?
8. If a consumer using an iPhone has disabled location services for multiple apps, but then reenables location services for one app, are iPhones programmed to reenable location services for all apps on that phone?
 - a. If yes, how is this reenabling of locations services for all apps disclosed to a user?
9. Do Apple’s iPhone devices have the capability to listen to consumers without a clear, unambiguous audio trigger?

- a. If yes, how is this data used by Apple? Please describe any use or storage of these data.
 - b. If yes, what access to this data does Apple give to third parties, including app developers? Please describe and include screen shots of disclosures or terms of service governing such access or use as appropriate.
 - c. If yes, has Apple considered using a visual, or other alert, to let consumers know when a device's microphone is recording? Please describe why, or why not, such an alert is, or is not, provided on iPhones or other smart devices running on an iOS operating system.
10. Do Apple's iPhone devices collect audio recordings of users without consent?
- a. If no, please include screen shots and links to public disclosures made to users about this collection.
11. Please provide copies of all of Apple's policies for data collection via the microphone, or via Wifi, Bluetooth, or cellular networking capabilities on Apple's iPhone devices.
12. Please provide Apple's policies as they pertain to third party access and use, including but not limited to app developers and developer guidelines, of any data collected via the microphone on Apple's iPhone devices, particularly data not accompanied by a "trigger" phrase including "hey Siri."
13. Could Apple control or limit the data collected by third-party apps available on the App Store?
- a. Please provide a list of all data elements that can be collected by a third-party app downloaded on an iPhone device about a user, including but not limited to contact lists stored on the iPhone device and location information generated by the iPhone device.
14. What limits does Apple place on third-party app developers' ability to collect information about users' or from users' devices? Please describe in detail changes made in June 2017 from prior policies.
15. How does Apple monitor and evaluate whether third-party apps are following the App Store rules?
- a. Have any companies ever been suspended or banned from the App Store for violating the App Store rules?
 - b. In those cases, if any exist, were users notified that their data was misused in violation of the App Store rules?
 - c. If yes, please provide any screen shots of such notification and a description of the conditions under which such a notification would be sent by Apple.


- d. What recourse does Apple provide for users when their data is misused in such a case?
16. Apple recently announced that it is entering into a partnership with a vendor called RapidSOS to provide enhanced location services for 9-1-1 calls to “public safety answering points” (PSAPs). Public statements from Apple reflect that this will be active later this year with iOS 12, the upcoming version of Apple’s operating system. Please detail the data elements that will be shared with RapidSOS in this partnership.
- a. What role will RapidSOS serve in the sharing and retention of this information?
 - b. How will iOS 12 differ from iOS 11 and other previous Apple operating systems with respect to providing improved 9-1-1 call location services?

Please also make arrangements to provide Committee staff with a briefing on these topics. An attachment to this letter provides additional information about responding to the Committee’s request. If you have any questions, please contact Melissa Froelich, Robin Colwell, or Jen Barblan of the Committee staff at (202) 225-2927. Thank you for your prompt attention to this request.

Sincerely,



Greg Walden
Chairman



Gregg Harper
Chairman
Subcommittee on Oversight
and Investigations



Marsha Blackburn
Chairman
Subcommittee on Communications
and Technology



Robert E. Latta
Chairman
Subcommittee on Digital Commerce
and Consumer Protection

Attachment