

ALERT

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New App Privacy Disclosures Required by Apple

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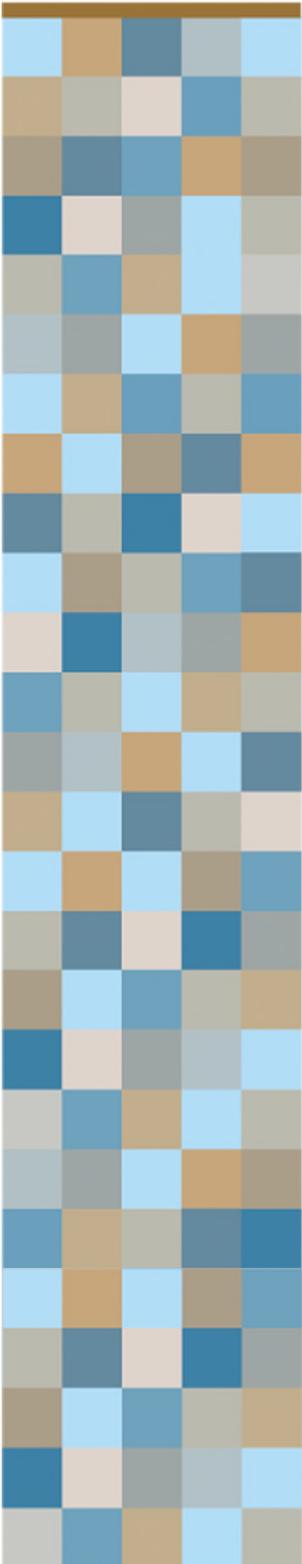
New apps and app updates submitted to Apple's App Store on or after December 8, 2020 must include new privacy information before they can be published in the App Store. Referred to as a privacy "nutrition label", app publishers will be required to disclose information regarding their apps' data collection and use practices, including the practices of third-party partners whose code is integrated into the app, which is intended to help users understand an app's privacy practices before they download the app on any Apple platform. On each app's product page, users will be able to learn about some of the data types the app may collect, and whether that data is linked to them or used to track them. Notably, for apps currently available in the App Store, there is no need to provide the new privacy disclosures until developers submit an update to that app.

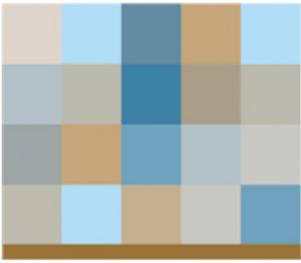
Under the new requirements, you must identify all of the types of data that are collected by you or your third-party partners, unless the data meets all of certain criteria delineated by Apple for optional disclosures. The categories of type of data collected that require disclosure include: contact information, certain health and fitness data, financial information, location, sensitive information, contacts, user content, browsing history, search history, identifiers, purchases, usage data, diagnostics, and other data. More detailed information regarding the data that falls within these categories can be found at: [Apple](#).

Data types meeting certain criteria delineated by Apple are optional to disclose. The criteria include that:

- The data is not used for tracking purposes, meaning the data is not linked with Third-Party Data for advertising or advertising measurement purposes, or shared with a data broker;
- The data is not used for Third-Party Advertising, your Advertising or Marketing purposes, or for Other Purposes, as those terms are defined by Apple;
- Collection of the data occurs only in infrequent cases that are not part of your app's primary functionality, and which are optional for the user; and
- The data is provided by the user in your app's interface, it is clear to the user what data is collected, the user's name or account name is prominently displayed in the submission form alongside the other data elements being submitted, and the user affirmatively chooses to provide the data for collection each time.

Disclosure of the above data type is only optional if all of the above criteria are met. If a data type you collect meets some, but not all, of the foregoing criteria, it must be disclosed. Per Apple, examples of data that may not need to be disclosed included data collected in optional feedback forms or customer service requests that are unrelated to the primary purpose of the app and meet the other criteria set forth above.





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Terese Arenth is a Partner with the firm and serves as Chair of its Promotional Marketing and Advertising Practice Group, as well as Co-Chair of its Cybersecurity, Privacy and Technology Practice Group, both of which are within the firm's Intellectual Property Department. Ms. Arenth concentrates her practice in promotional marketing, advertising and Internet/new media, as well as privacy and technology related matters. She also has significant involvement in the firm's intellectual property practice area and vast experience in commercial and corporate litigation.

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Attorney Advertising

You will need to have a clear understanding of how each data type is used by you and your third-party partners so that you can make the appropriate disclosures of such usage, which could include any one or more of the following purposes: third-party advertising, developer's advertising/marketing, analytics, product personalization, app functionality, or any other purpose not listed by Apple. In addition, you will need to identify whether each data type is linked to the user's identity (via their account, device, or other details) by you and/or your third-party partners.

An app publisher will also need to assess whether it and/or its third-party partners are "tracking" users of their app and, if so, which data is used for this purpose. (Sometime early next year, Apple will further require apps to obtain opt-in consent from the user in order to track the user or access the device's advertising identifier).

App publishers are required to add the URL to a publicly accessible privacy policy on its App Store product page so that users can easily access the app's privacy policy and manage their data in the app (and it is important to also ensure that there is alignment between your privacy policy, Apple's new disclosure requirements and any other public disclosures you make regarding your privacy practices). App publishers have the option, but not the requirement, to also add a publicly accessible URL where users can learn more about their privacy choices for the app and how to manage them.

This Alert provides only an overview of Apple's new privacy disclosure requirements. We are here to assist if you need additional information regarding the requirements and assistance with compliance. Noncompliance or providing inaccurate information could risk triggering a violation of the App Store's terms of use, which could result in suspension or removal of an app, or could give rise to allegations of unfair and deceptive trade practices under Section 5 of the Federal Trade Commission Act or state laws regarding unfair and deceptive trade practices or privacy.

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