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Catch These 'Pokemon Go' Data Collection Lessons

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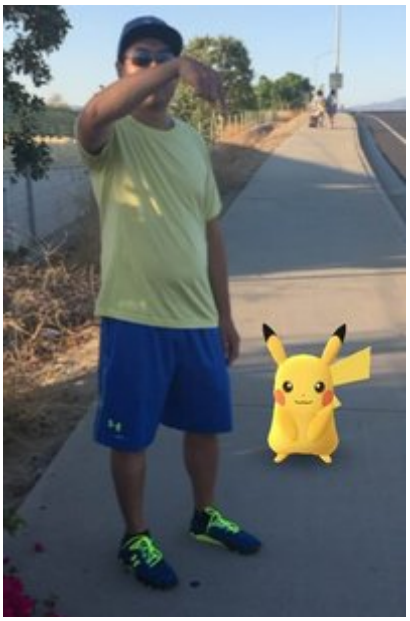
Law360, New York (July 20, 2016, 11:13 AM ET) -- This article will discuss privacy lessons learned from the meteoric rise in popularity of the mobile game "Pokemon Go." "Pokemon Go" was released on July 6, 2016 in Australia, New Zealand, and the United States. Within 24 hours, "Pokemon Go" was the "Top Grossing" as well as the top "Free" app within the U.S. Apple Application Store.[1] On July 12, "Pokemon Go" reached the distinction of becoming the most active mobile game ever with 21 million active users.[2] Currently, "Pokemon Go" is significantly more popular than Netflix with Android operating system users.[3]

For the uninitiated, "Pokemon Go" is an augmented reality mobile game developed by Niantic Inc., a former internal startup at Google Inc., that became an independent entity after being spun out on in October 2015. "Pokemon Go" is published by The Pokemon Company, of which Nintendo is part owner. The game allows players to capture virtual creatures called Pokemon in real-life locations by superimposing an image of the Pokemon within the camera view of a user's mobile device. Players can use their finger to "throw" a virtual "Poke Ball" at the Pokemon, which, if done successfully, captures the Pokemon. By roaming around in the real world, players can discover these creatures as they appear.



(Credit: Will Wong)

This article will use the "Pokemon Go" phenomenon to provide three key lessons for would-be application developers and their marketing partners:

1. Organic data collection, where an application focuses on collecting data relevant to providing the service the user seeks to use, allows developers to effectively gather data that describes user behavior, and is often acceptable by users. Artificial data collection, where data is collected independent of its relevance to the service provided, is not well accepted by users.

2. "Greedy data by design," where companies ask for greater data collection permissions than necessary are no longer viable from a user trust standpoint, and may subject the developer to "toxic" data access by creating unnecessary legal liability

3. Companies that wish to partner with popular applications such as "Pokemon Go" should realize that the data collection practices of the application may have reputational effects for them as well, and could create liability issues as the ecosystem matures.

Designing Applications for "Organic" Data Collection

Mobile advertising is bigger than ever. According to eMarketer, mobile advertising will account for more than 50 percent of all ad expenditures in 2016.[4] It is estimated that $101.37 billion will be spent on ads for tablets and mobile phones during 2016, a nearly $30 percent increase from 2013.[5] Clearly mobile advertising is big business, and it's here to stay.

For mobile advertising channels competing for these dollars, the question becomes how to best position one's offering versus the competition. For a lesson of how to do this effectively, one need look no further than perhaps the most famous online advertising company of all, Google. In 2015, Google made around $30 billion in advertising revenues.[6] It's no secret that part of what enables Google to do this is the data it collects about its customers. What many may not have given as much thought to the way data collection fits into Google's business model. Consider Google's search product. When Google collects information about what users are searching for, it collecting information that was provided as a necessary aspect of providing the service. This can be thought of as an "organic" method of collecting information as opposed to an "artificial" approach. Organic methods of data collection collect data that is provided by the user as a necessary part providing the service, such as the search terms that the user is searching for. An artificial approach would involve collecting data that was not necessary to providing the service, but rather was collected in a purely opportunistic manner. An example of artificial data collection would be a calculator application that also collected a user location data.

There are two principal advantages to organic versus artificial data collection. First, by collecting information that is provided by the user as part of the provision of the service, organic data collection methods are far more effective on collecting data on user behavior and on what actually matters to users. Second, users are less likely to see such data collection as overreaching and opportunistic when the data collected is necessary to provide the service.

Using Augmented Virtual Reality for "Organic" Data Collection

"Pokemon Go" is beautifully designed to organically collect user location data through what has become known as "augmented virtual reality." By superimposing virtual characters on the real world, "Pokemon Go" allows players to interact with geographically disparate locations in a fun and exciting way. Players are encouraged to walk around the real world and "capture" pokemon they encounter. The designers went even further and created PokeStops, which are real-world locations, often at notable landmarks, where players can find valuable game play items, such as Pokemon Eggs, and also serve as some of the best places to look for Pokemon. As such, the "Pokemon Go" designers created an environment where location data, which is necessary for the application to function, is seamlessly collected as part of the service consumers are seeking, that of exploring their own surroundings, while on a fun adventure.

This architecture is ingenious, as it not only allows "Pokemon Go" to understand where people choose to venture in their environment; it also provides a way to encourage them to visit specific locations via PokeStop locations and other special virtual locations. Given the number of players, the existing location data is likely already quite valuable. Based on how the game functions, "Pokemon Go" tracks how fast players are traveling, and could thus determine whether users are walking, running, riding a bike, or driving. To hatch Pokemon Eggs, users have to travel a certain specified distance, often two to 10 kilometers. Users have already found that if they attempt to drive, the distance traveled won't count, as the "Pokemon Go" application can tell if you are moving too fast.

Currently, it is not known how the creators of "Pokemon Go" may use this data, but the potential

is vast. The data could be used to understand pedestrian and bike traffic patterns in neighborhoods. Or it could be used to track car travel as users drive to different PokeStop locations in search of rewards and rare Pokemon and offer oil change coupons to users the frequent certain geographic areas. Only time will tell."

"Greedy Data by Design" Disaster

Greedy data by design is where an application requests permission to collect far broader scope of data than necessary to deliver and improve the application or service. It is the seeking of legal permission to engage in artificial data collection. Think of it like a calculator application asking for permission to monitor GPS location during installation. In today's environment such a practice has at least two downsides. First, when it is inevitably discovered, it destroys user trust. Second, access to such data can become toxic to the collector, subjecting it to needless liability.

"Pokemon Go" has already experienced and attempted to recover from a greedy data by design issue during its brief existence. During application rollout, certain players noticed that when they attempted to sign in using an existing Google account on iOS, the operating for iPhones and iPads, "Pokemon Go" requested "full account access." According to Google, when an application is granted this level of access it can "see and modify nearly all information in your Google Account."[7] At least one researcher has alleged that this means that "Pokemon Go" would be able to read all of your email, send email under your account, access your Google search history, and more.[8] After public outcry, and numerous articles mentioning the issue, Niantic posted a "Permissions Update" on its website, stating that it had only ever been accessing basic Google profile data "specifically, your User ID and email address," that "no other Google account information is or has been accessed or collected," and that Google itself would reduce "Pokemon Go" permissions to basic profile data.[9]

Predictably, this has already resulted in an erosion of user trust among "Pokemon Go" players based discussions on sites reporting the issue. Assuming that this was indeed inadvertent, had Niantic paid more attention to its data collection practices during development, all of this could have been avoided. But thankfully, for Niantic, it managed to sidestep what could have been an even graver consequence. Far from being an asset, this overbroad access could easily have been toxic. Had "Pokemon Go" security been breached, attackers might have been able to access the Google account information of those had used a Google account to sign into "Pokemon Go." The creators of "Pokemon Go" could easily have created a quagmire of liability issues for themselves, and faced lawsuits from Google, their players, as well as federal and state authorities.

Considerations for Third-Party Advertising Partners

"Pokemon Go" has created some very interesting opportunities for companies looking to tap into the phenomenon. An item known as a "lure" which is available through in-application purchase can attract virtual Pokemon to the location where it is deployed. L'inizio Pizza Bar in Long Island City in New York claims that by spending $10 to purchase a lure and activating it in the store, thus attracting people using "Pokemon Go," it was able to increase sales 75 percent over the course of a weekend.[10]

Beyond merely selling lures, the creators of "Pokemon Go" are likely looking to cash in via sponsored locations. An enterprising student claims to have found the text "McDonalds" in the "Pokemon Go" code, the sequence of instructions that make up the game.[11] Allegedly, the code points to McDonalds potentially sponsoring Pokemon gyms, virtual locations where player teams can complete against each other, at certain of its locations. Niantic, the creator of the "Pokemon Go" application, confirmed to the New York Times that it had plans for sponsored locations for "Pokemon Go" in the future.[12]

Companies looking to partner with "Pokemon Go" via sponsorship need to remain cognizant of many of the same issues they would face if they themselves were providing the "Pokemon Go" functionality and collecting player data. Should another "greedy data by design" issue come to light, this could have adverse reputational effects on sponsors. Additionally, as the application becomes more mature, there may be other issues as well. For example, McDonalds could partner with "Pokemon Go" in a promotion whereby players come in and perform some sort of action, say using a sponsored PokeStop, and paying with the "Pokemon Go" application, which already has

access to user payment information through some sort of mechanism for in-app purchases, for a discount. If a data breach occurred, even if McDonalds were to escape any legal liability, the reputational damage could be significant.

Conclusion

"Pokemon Go" creates, as new technology so often does, exciting new opportunities for consumers, but also potential challenges. Application developers observing the growth and success of "Pokemon Go" can learn the lessons of organic versus artificial data collection, as well as avoiding "greedy data by design" scenarios when asking for user permission to collect data. Businesses looking to profit from this or similar trends should recognize that adverse reputational effects should something go wrong could be significant.

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