



NYCLU
NEW YORK CIVIL LIBERTIES UNION

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March 15, 2016

Via E-Mail & First Class Mail

Maya Wiley
Counsel to the Mayor
City Hall
New York, New York 10007

Re: LinkNYC Privacy Policy

Dear Ms. Wiley:

On behalf of the New York Civil Liberties Union, we thank you for your attention to our concerns and appreciate your inviting us to propose improvements to the privacy policy governing LinkNYC,¹ the public Wi-Fi network in New York City that is now available in beta mode in Manhattan. Free public Wi-Fi is a valuable and important service for New Yorkers, and we applaud the City for taking the first steps to make this a reality. But, after reviewing the policy and the franchise agreement, as well as your response to our initial questions, the NYCLU remains concerned about the vast amount of private information retained by the LinkNYC system and the lack of robust language in the privacy policy protecting users against unwarranted government surveillance. We detail our concerns in this letter and propose revisions to the policy.

First, the NYCLU is concerned about the volume of private information that CityBridge, the company behind LinkNYC, is retaining about its users. The privacy policy provides that in order to register for the service LinkNYC users must submit their e-mail addresses and agree to allow CityBridge to collect information about what websites they visit on their devices, where and how long they linger on certain information on a webpage, and what links they click.² A majority of Americans believe that this type of Internet browsing history contains sensitive

¹ CityBridge Privacy Policy, Effective January 25, 2016, <http://www1.nyc.gov/assets/doitt/downloads/pdf/Proposed-PCS-Franchise-Exhibit-2-CityBridge-Privacy-Policy.pdf>.

² You explained that the service only requires e-mail addresses for users who opt for the data encryption service. This, however, does not appear to be reflected in the privacy policy, which states that the service will collect email address for anyone registering with the service. In our recent experience connecting to LinkNYC we were asked to submit an email address as soon as we connected to the LinkNYC WiFi and were not given the option of connecting without an email addresses.

information about them—and for good reason, given that what people choose to view on the Internet can reveal their political views, religious affiliations, medical or family problems, and more.³

In response to our concern that CityBridge is amassing a database of people’s private Internet browsing histories, you stated that to the extent this information is personally identifiable it must be deleted after 12 months of user inactivity. However, the only reference we could find to a retention period in the privacy policy was this line: “We will make reasonable efforts to retain Personally Identifiable Information that you provide to us during registration no longer than 12 months after your last login.” Promising to make some unspecified “reasonable efforts” to delete data is not an adequate retention policy. Moreover, “12 months after your last login” is not the same as a 12-month retention policy. It is effectively an indefinite retention period for people who use LinkNYC in their daily lives, as the retention period will be re-set to 12 more months into the future every time they use the service.

Public Wi-Fi users should not have to agree to this unlimited collection of information in order to connect to the Internet—one of the basic necessities of modern life in New York City. While we appreciate that the privacy policy provides that this private information will be encrypted in storage and that it will not be sold or shared to third parties for their use, a massive database of this type creates an undue risk of abuse, misuse, and unauthorized access. The best practice, which we urge you to incorporate into the privacy policy, is to minimize the collection and retention of this private information to what is operationally necessary and to set a destruction policy with a fixed retention period that is tied to operational needs.⁴

Second, the NYCLU remains concerned about the lack of robust language in the privacy policy with respect to government requests for information. Law enforcement agencies in New York are some of the most frequent requestors of people’s digital information.⁵ Given the wealth of private information that is being stored, CityBridge will undoubtedly receive numerous government requests for information.

³ Mary Madden, Pew Research Center, Public Perceptions of Privacy and Security in the Post-Snowden Era, Nov. 12, 2014, http://www.pewinternet.org/2014/11/12/public-privacy-perceptions/pi_2014-11-12_privacy-perceptions_03/.

⁴ The Franchise Agreement requires that CityBridge “not collect any such Personally Identifiable Information concerning any User except to the extent necessary for technical management of the Wi-Fi service.” Public Communications Structure Franchise Agreement, Attachment SRV (Services), §4.4.4(iii), *available at* <http://www1.nyc.gov/assets/doitt/downloads/pdf/Attachment-SRV-Services-%28REVISED-FINAL-12-10-2014%29.pdf>. This requirement should be reflected in the privacy policy and apply also to the retention of any personally identifiable data, not only to the collection.

⁵ Twitter transparency report, <https://transparency.twitter.com/country/us>; Tumblr transparency report, <https://www.tumblr.com/transparency>.

The current policy states only that, if there is a government request for information, CityBridge “will take reasonable attempts to notify you of such request, to the extent possible.”⁶ The equivocal language of this policy fails to provide any assurance to users that they will be notified of government requests for information. Notice is crucial for providing users with the opportunity to argue against the reasonableness of such requests and for ensuring that courts are ultimately deciding the validity of government information requests, especially overbroad requests that infringe on the First Amendment right to anonymously view materials on the Internet.⁷

For these reasons, the privacy policy should at minimum assure users that if there is a government request for information they will be provided notice through the email address that they provided during registration or through any other personally identifiable information in CityBridge’s possession, unless there is a lawful judicial order barring CityBridge from doing so. If there is such an order, the notice should be given as soon as the order is lifted.

Finally, the NYCLU seeks clarification on CityBridge’s policy regarding sharing of data collected by the environmental sensors and cameras on the Links. The policy states that “[CityBridge] will not give any data collected by environmental sensors or cameras to anyone other than the City or governmental law enforcement,” with a few exceptions. One of those exceptions is with “advanced, written permission from the City.” We would like to know whether the environmental sensors and cameras will be routinely feeding into any City or NYPD systems, including the Domain Awareness System; if so, that should be made explicit in the privacy policy. We further request adding language to the privacy policy that promises that LinkNYC users will receive notice if the City provides written permission to CityBridge to share information from environmental sensors and cameras with any third parties.

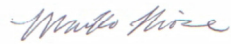
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⁶ We appreciate your clarification that the Services Attachment to the Franchise Agreement contains assurances that CityBridge will only disclose personally identifiable information “to the extent required by law enforcement as part of a criminal investigation or an investigation related to national security, provided that [it has] a good faith belief that such disclosure is reasonably necessary to satisfy law, legal process or enforceable government request.” Attachment SRV (Services), §4.4.4(i). We recommend that this language be included in the privacy policy, rather than solely be in the services attachment.

⁷ See, e.g., *Amazon.com LLC v. Lay*, 758 F. Supp. 2d 1154, 1167-69 (W.D. Wash. 2010) (quashing a state government’s subpoena for all information relating to Amazon sales in the state over nearly a seven-year period, including people’s purchases of expressive materials such as books, films, and music, because it failed to comply with First Amendment standards).

We applaud and support the City's goal of making the Internet more accessible to all New Yorkers, but this effort should not result in creating a class of residents who otherwise cannot afford the Internet and must pay for their access with their right to privacy. We urge you to revise the current privacy policy in the ways outlined above to ensure that New York's municipal Internet access will best protect people's right to search for and receive information privately on the Internet.

Sincerely,



Mariko Hirose
Senior Staff Attorney



Johanna Miller
Advocacy Director