

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INTERNET BUREAU

In the Matter of

Assurance No. 15-185

**Investigation by ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York, of**

Uber Technologies, Inc.,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (sometimes referred to as “NYAG”) commenced an investigation pursuant to, *inter alia*, Executive Law § 63(12) and General Business Law (“GBL”) § 349(b), into the protection of geo-location information by, and the breach of driver private information of, Uber Technologies, Inc. (“Uber” or “Respondent”). This Assurance of Discontinuance (“Assurance”) contains the findings of NYAG’s investigation and the relief agreed to by NYAG and Respondent.

NYAG FINDINGS

1. Respondent Uber is a Delaware company with a principal place of business in San Francisco, California.
2. Uber owns and operates a mobile application platform that allows riders to connect with drivers for trips using their mobile phone. Uber collects certain personal information from riders including name, email address, phone number, and payment instrument (which is stored by a third-party payment service). Uber also collects information from drivers

to determine whether they meet the requirements to use the Uber platform, including driver licensing information, vehicle registration and licensing information, and vehicle inspection documentation, as well as information related to their use of the Uber platform.

3. Uber also collects the geographic location of riders and drivers in real time (“Geo-location Information”). Uber collects precise Geo-location Information passed from a rider’s mobile device if the rider chooses to authorize that collection. As soon as a driver begins a trip, Uber collects the precise Geo-location Information of the route of the trip from the driver’s mobile device.

4. Prior to the emergence of the technology underlying Uber’s service, New York consumers could hire a taxi or commercial vehicle by hailing one on the street and paying in cash, thereby not providing personal information or any Geo-location Information passed from a mobile device.

5. On November 20, 2014, the NYAG wrote a letter to Uber out of concern regarding how it collects, maintains and discloses its Geo-location Information including display of the information in a system providing an aerial view of the cars driving within a city, formerly known internally at Uber as “God View.”

6. Shortly before that date, Uber had retained the law firm Hogan Lovells to review the company’s privacy program and to recommend enhancements to its practices. Lawyers from Hogan Lovells’ Privacy and Information Management Practice assessed Uber’s policies and procedures related to the handling of consumer data against a set of privacy standards, such as the expectations of the U.S. Federal Trade Commission, the Fair Information Practice Principles,

and the American Institute of CPAs' Generally Accepted Privacy Principles. In January 2015, the law firm issued a report and recommendations.

7. Uber has represented that it has removed all personally identifiable information of riders from its system that provides an aerial view of cars active in a city, has limited employee access to personally identifiable information of riders, and has begun auditing employee access to personally identifiable information in general.

8. On July 15, 2015, Uber updated its privacy policy regarding how it collects Geo-location Information. Among other things, it reserved the right to collect Geo-location Information from riders even when the Uber app is not open in the foreground. In particular, the new privacy policy provides:

Location Information:

When you use the Services for transportation or delivery, we collect precise location data about the trip from the Uber app used by the Driver. If you permit the Uber app to access location services through the permission system used by your mobile operating system ("platform"), we may also collect the precise location of your device when the app is running in the foreground *or background*. We may also derive your approximate location from your IP address.

(Emphasis added.)

9. Uber has represented to the NYAG that it is not currently collecting Geo-location Information from the rider Uber app when the app is closed or in the background. Uber further represented that if it does so, it will adopt additional notification and messaging to riders regarding this collection, and permit riders to opt out without having to give up using the Uber service.

Uber Notifies NYAG of a Data Breach

10. On February 26, 2015, Uber provided notice to NYAG and the affected drivers about a data breach that was discovered by Uber in September 2014 and that occurred on or about May 12, 2014 (the “Data Breach”).

11. Uber represents that in the fall of 2014, a former employee of a competitor of Uber provided information to it suggesting that someone at the competitor company had access to what the competitor believed to be an Uber security key.

12. Upon investigation by Uber, on September 17, 2014, Uber discovered that in early 2014, an Uber engineer posted an access ID for Uber’s third-party cloud storage service on Github.com, a website designed to allow software engineers to collaborate. The engineer did not realize that the post was accessible to the general public.

13. Uber investigated use of this access ID. Uber represented that its investigation revealed a use of the access ID on or around May 12, 2014, by someone associated with an IP address that Uber could not readily attribute to authorized Uber personnel, to access a stored, “pruned” copy of an Uber database located on servers of Uber’s third-party cloud storage provider. Although Uber had deleted most personal information and “salted and hashed” passwords within the file before it was stored, the file contained driver’s license numbers capable of being matched to driver names stored elsewhere within the file.

14. Uber represented that it removed the GitHub posts and revoked the permission of the access ID and reissued access IDs to authorized users of that account. Uber also increased its use of encryption, implemented additional developmental controls that require multi-factor authentication, hired additional security personnel and enhanced security training.

15. Pursuant to GBL § 899-aa(2), any person or business which owns or licenses computer data that includes “private information,” as that term is defined in GBL § 899-aa(1)(b), shall disclose any breach of the security of the system following discovery to any resident of New York whose private information was, or is reasonably believed to have been, acquired by a person without valid authorization. The disclosure must be made in the most expedient time possible and without unreasonable delay. Pursuant to GBL § 899-aa(8), notice must also be provided to the NYAG and other state agencies.

16. GBL § 899-aa(1)(b) defines “private information” as “personal information... [plus] any one or more of the following data elements, when either the personal information or the data element is not encrypted, or encrypted with an encryption key that has also been acquired: (1) social security number; (2) driver’s license number or non-driver identification number; or (3) account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account.” GBL § 899-aa(1)(a) defines “personal information” as “any information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person.”

17. GBL § 899-aa(6)(a) provides that when a “person or business violated this article knowingly or recklessly, the court may impose a civil penalty of the greater of five thousand dollars or up to ten dollars per instance of failed notification, provided that the latter amount shall not exceed one hundred fifty thousand dollars.”

18. By not providing notice to affected New York residents and the NYAG about the Data Breach in the “most expedient time possible and without unreasonable delay,” Uber

violated GBL § 899-aa(2). Uber did so knowingly or recklessly in violation of GBL § 899-aa(6)(a).

PROSPECTIVE RELIEF

WHEREAS, Respondent neither admits nor denies NYAG Findings (1)-(18) above;

WHEREAS, NYAG is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63(15) and to discontinue its investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties, that:

19. Respondent shall comply with consumer protection and data security laws Executive Law § 63(12), GBL § 349 and GBL § 899-aa.

20. Respondent shall provide notice of data security breaches to affected New York residents and the NYAG when and in the manner required by GBL §§ 899-aa(2) and (8).

21. Respondent shall maintain, and to the extent already in place shall continue to maintain, reasonable security policies and procedures designed to protect private information as defined in GBL § 899-aa(1).

22. Respondent shall, at least bi-annually, review its existing internal policies and procedures regarding the collection, storage, transfer and transportation of private information, and, where necessary, amend such policies and procedures to protect more adequately the privacy and confidentiality of the private information.

23. Such policies and procedures shall provide for, at a minimum and to the extent not already implemented, the following:

- a. Designation of an employee or employees to coordinate and supervise Respondent's program designed to protect the privacy and security of private information;
- b. Annual employee training to, at a minimum, inform employees who are responsible for handling private information about Uber's data security practices, the importance of consumer privacy and their duty to help maintain its integrity;
- c. Adoption of protective technologies for the storage, access, and transfer of private information, and credentials related to its access, including the adoption of multi-factor authentication, or similarly protective access control methodologies that may in future be developed;
- d. Regular assessments of the effectiveness of Respondent's internal controls and procedures related to the securing of private information and Geo-location Information and the implementation of updates to such controls based on those assessments; and
- e. Responding to events involving unauthorized acquisition, access, use or disclosure of private information including training all appropriate staff on data breach notification law.

24. To further enhance the privacy and security of private information held by Respondent, Respondent shall:

- a. maintain and store WiFi, cell-based, or GPS-based location information passed by a mobile device using the device's location services and that is associated with other information that identifies a specific individual or a device in a password-protected environment, and encrypt the information when in transit where technically feasible;
- b. limit access to Geo-location Information to designated employees with a legitimate business purpose, and enforce this limitation through technical access controls, and a formal authorization and approval or permissions process;
- c. maintain a separate section in Respondent's consumer-facing privacy policy describing its policies regarding Geo-location Information collected from riders; and
- d. inform the NYAG if Uber adopts the practice of collection of Geo-location Information from the rider Uber app when the app is not open in the foreground and any proposed additional notice and choice mechanism for such collection.

25. Respondent shall tender to NYAG \$20,000 in costs and penalties by certified check payable to the State of New York Department of Law, and delivered to:

Eric T. Schneiderman
Attorney General of the State of New York
120 Broadway
New York, New York 10271
Attention: Internet Bureau

Any payment shall reference AOD No. 15-185.

Miscellaneous

26. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Respondent and its counsel and NYAG's own factual investigation as set forth in Findings (1)-(18) above. To the extent that any material representations made by Uber to the NYAG prior to the date of this Assurance are inaccurate or misleading, this Assurance is voidable by the NYAG in its sole discretion.

27. If the Assurance is voided or breached, Respondent agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, Respondent expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude NYAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against the Respondent, or from using in any way any statements, documents or other materials produced or provided by Respondent prior to or after the date of this Assurance.

28. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondent in agreeing to this Assurance.

29. Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Respondent shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Respondent's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which NYAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by Respondent.

30. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance. If, at any time after the execution of this Assurance, Respondent believes that any of the specific prohibitions or affirmative obligations imposed by this Assurance should be altered on account of changes in technology or the law, it may request agreement to such an amendment from the NYAG.

31. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of NYAG.

32. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the NYAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

33. To the extent not already provided under this Assurance, Respondent shall, upon request by NYAG, and no more than once per year, provide documentation and information sufficient to show that it is in compliance with this Assurance.

34. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to Respondent Uber, to:

General Counsel
Uber Technologies, Inc.
1455 Market Street
San Francisco, CA 94102

If to the NYAG, to:

Attorney General of the State of New York
120 Broadway
New York, New York 10271
Attention: Chief, Internet Bureau

35. Acceptance of this Assurance by NYAG shall not be deemed approval by NYAG of any of the practices or procedures referenced herein, and Respondent shall make no representation to the contrary.

36. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by NYAG.

37. If a court of competent jurisdiction determines that Respondent has breached this Assurance, Respondent shall pay the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

38. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding.

39. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

40. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

41. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

WHEREFORE, THE SIGNATURES EVIDENCING ASSENT TO THIS Assurance have been affixed hereto on the dates set forth below.

ERIC T. SCHNEIDERMAN
NEW YORK ATTORNEY GENERAL
INTERNET BUREAU



By: Clark Russell
Deputy Bureau Chief, Internet Bureau

Date: January 5, 2016

120 Broadway
New York, NY 10271-0332
Phone: (212) 416-8433
Fax: (212) 416-8369

UBER TECHNOLOGIES, INC.



By: Katherine M. Tassi
Managing Counsel, Privacy

Date: December 28, 2015

