



Consumer Federation of America

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It's Time for the Federal Trade Commission to Act on Behavioral Advertising

Online activity is exploding and so is the tracking of consumers' online activities and the use of that data to target advertising and potentially for other purposes. The Consumer Federation of America (CFA), an association of some 300 nonprofit consumer organizations, believes that behavioral tracking and targeting involves practices that are inherently deceptive, including suggestions of relationships that do not exist and use of information about consumers that they never willingly divulged to the seller. The Federal Trade Commission's (FTC) reliance on industry self-regulation and nonbinding principles falls woefully short of the action needed to protect consumers' privacy.

A recent poll conducted by one of CFA's member organizations, Consumers Union, shows that the public is very concerned about behavioral advertising. More than three-quarters of the respondents (77%) said that tracking the pages that they go to online would be harmful because it invades their privacy and puts their personal information at risk. Only 11% of the respondent felt that tracking would be helpful because the company could provide information that matches their interests. A majority of the respondents (53%) said they are not comfortable with data gathering even if it is not linked to any personally identifiable information. The vast majority of respondents (85%) wanted to be able to opt out of behavioral tracking and almost everyone (96%) wanted companies to ask for permission before using personal information.

Industry practices concerning the collection of health, sexual, religious, political, and other forms of sensitive data are not uniform and mostly unregulated, leaving open the potential for highly personal information to be exposed. We can all recognize the danger of a situation where an employee's health condition is at risk of being revealed to his or her employer – yet the controls around this kind of data collection and use in the behavioral targeting area are slim. Behavioral targeting also opens the door to undue price discrimination and red lining. While these practices may not be yet be widespread in the marketplace, there is little standing in the way of employing behavioral data for these purposes, while consumers remain ignorant to such developments. Behavioral data is also open to civil subpoenas, court orders, and unauthorized or warrantless government access. Civil litigants and government authorities will no doubt soon realize the treasure trove of behavioral profile information held by online behavioral targeting firms. And because behavioral targeting involves the collection of large quantities of data about individuals, security breaches – both internal and external – are a constant threat and may expose consumers to the risks of identity theft.

The FTC has been aware of the development of behavioral tracking and targeting for several years, but its approach to protecting consumers has been timid and inadequate. In a 2000 report on online profiling, the FTC embraced an industry program, the National Advertising Initiative (NAI), as a means for addressing consumers' privacy concerns. However, the agency apparently did nothing to monitor and assess the effectiveness of that program as the years went by and behavioral tracking gained a firm foothold in the online advertising space. The NAI program has



turned out to be flawed and ineffective. The FTC's most recent response, a set of principles proposed a year ago, is not the solution we need. There is a deep-seeded failure in the online advertising/marketing space that cannot be addressed by half measures. Simply put, there is a fundamental mismatch between the technologies of tracking and targeting and consumers' ability to exercise informed judgment and control over their personal data. The result is that consumers suffer a persistent and substantial disadvantage vis-à-vis marketers.

That is why CFA has called for the FTC to adopt and enforce a mandatory program of consumer privacy protection that adheres to a stronger set of principles, including:

- (1) A simple consumer-friendly interface that facilitates the choice not to be tracked across all platforms to be implemented.
- (2) Robust notification about how to make that declaration and continuous contextual notification of the status of tracking.
- (3) A consistent set of basic privacy protections and definitions that consumers can understand.
- (4) Enforcement that has "teeth" to ensure compliance, so consumers can trust the system to protect their privacy.
- (5) An effective right to correct information about and categorization of the consumer that is used for marketing online.
- (6) An organized process for overseeing and updating the protection of consumer privacy protection. Seven years is too long to wait to keep consumer protection on a pace with innovation in online markets.

This is not about "killing free content" on the Internet. A well-crafted consumer privacy protection scheme will support competition and efficiency in an expanding advertising market. Advertising will continue and improve within the parameters that public policy sets.

The first step that the FTC should take is to create a "Do Not Track" registry as a simple tool for consumers who wish to block behavioral tracking. Any advertising entity that sets a persistent identifier on a user device would be required to provide to the FTC the domain names of the servers or other devices used to place the identifier. Companies providing Web, video, and other forms of browser applications would provide functionality (i.e., a browser feature, plug-in, or extension) that allows users to import or otherwise use the "Do Not Track" registry of domain names, keep the registry up-to-date, and block domains on the registry from tracking their Internet activity.

More CFA comments on behavioral tracking and targeting are at:

http://www.consumerfed.org/pdfs/FTC_sign-on_letter_Ehavioral_Advertising.pdf

http://www.consumerfed.org/pdfs/behavioral_marketing_comments_to_FTC_4-10-08.pdf

http://www.consumerfed.org/pdfs/markeybarton_letter_6-6-08.pdf

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