
¹ The views expressed here are my own and do not necessarily represent the views of the Federal Trade Commission or of any other Commissioner.

² Louise Story, *Company Will Monitor Phone Calls to Tailor Ads*, N.Y. Times, Sept. 24, 2007 (Business Section). Pudding Media, a Silicon Valley start-up, asks users for their sex, age range, native language and ZIP code when they sign up for the service so it can better target the ads. Pudding Media is also working on a way to email the ad to the person on the other end of

And that was *then* – the Jurassic Age of big mainframes – when personal computers were just entering the market, the Internet was still an academic/military experiment, and AT&T was *the* commercial telecommunications behemoth.

Of course, some things never change.

And some things never stop changing. Today, the Internet, computerized data collection, and targeted advertising are creeping into nearly every aspect of our social and commercial transactions. Seventy-one percent of U.S. adults use the Internet.⁴ Nearly half of all Americans have broadband at home.⁵ Internet advertising revenues for the first half of 2007 were nearly \$10 billion – a 26 percent increase over the first half of 2006.⁶ Make no mistake: the business of online behavioral marketing is big business.

In *An Ideal Husband*, Oscar Wilde wrote, “Private information is practically the source of every large modern fortune.”

That’s especially true today with online behavioral marketing. Just last week, Microsoft announced a \$240 million agreement that gives it exclusive rights to sell worldwide ads targeting Facebook’s 50 million members. Google already invested \$900 million in MySpace, which announced that it can tailor ads based on what users write on their profile pages.⁷ Meanwhile, Google is trying to buy online ad server Double Click, Microsoft acquired aQuantive, and Yahoo purchased Right Media. With all these big-money deals comes big-time pressure to push more – and more effective – ads on the Internet.

Collectively, all this tracking of our online conduct – our searching, web browsing, social networking, emailing, and telephone chatting – all this *massive collection of our private information*, purportedly to serve precision-guided ads, can be disconcerting.

⁴ Pew Internet & American Life Project, *Demographics of Internet Users* (last updated June 15, 2007), available at http://www.pewinternet.org/trends/User_Demo_6.15.07.htm.

⁵ John B. Horrigan & Aaron Smith, Pew Internet & American Life Project, *Home Broadband Adoption 2007* (June 2007) (Data Memo), available at http://www.pewinternet.org/pdfs/PIP_Broadband%202007.pdf

⁶ Interactive Advertising Bureau, Inc., press release, *Internet Advertising Revenues Continue to Soar, Reach Nearly \$10 Billion in First Half of ‘07; Historic Second Quarter Revenues Exceed \$5 Billion for First Time* (Oct. 4, 2007).

⁷ Brad Stone, *MySpace Mining Members’ Data to Tailor Ads Expressly for Them*, N.Y. Times, Sept. 18, 2007, at C1.

Perhaps it is because we don't quite understand what websites and online advertisers are doing or how they are doing it. Perhaps it is because we feel like we don't really have any meaningful choice or control in the matter – other than websites and online advertisers.

⁸ FTC, *Privacy Online: A Report to Congress* (1998). The Commission also identified **enforcement** – the use of a reliable mechanism to identify and impose sanctions for noncompliance with these fair information practices – as a critical ingredient in any governmental or self-regulatory program to ensure privacy online. *Id.*

⁹ Felicia Williams, *Internet Privacy Policies: A Composite Index for Measuring Compliance to the Fair Information Principles* at 17 & Table 2 (Sept. 2006) (submitted as a public comment to the FTC on Oct. 10, 2007).

¹⁰ *Id.*

¹¹ *Id.* at 26. Fifteen percent of the privacy policies stated the firm would obtain permission before sharing or selling collected data.

¹² *Id.* at 27.

¹³ In fact, some privacy experts have argued that the “privacy policy” label is deceptive unless the website obtains affirmative consent from consumers before sharing their personal information. Joseph Turow, Chris Jay Hoofnagle, D

We enacted COPPA to place a parental buffer between advertisers and our children – but the rise of sophisticated behavioral marketing techniques is eroding this parental control.

So what should the Commission do?

Well, sometimes the answer to problems in cyberspace is clear, like in the case of unfair and deceptive nuisance adware. Put the malefactors under order. Disgorge their profits. Pass a law giving the FTC the authority to impose fines.

For behavioral marketing, the solution is not so certain. Behavioral marketing is complicated. In some cases the privacy tradeoff may make sense. But one thing is clear: the current “don’t ask/don’t tell” mentality in online tracking and profiling needs to end.

And while I don’t presume to have all of the answers, I do have a few thoughts: let’s start with providing better information and more meaningful choices for consumers.

■ Standardized Privacy Policies & Shorter Notices. First, some have called for standardized privacy policies – including former Commissioner Sheila Anthony.¹⁶ And some have called for shorter notices.¹⁷ The take-away from the Commission’s recent workshop on “negative option” marketing was that short, conspicuous online notices work better for consumers. All these ideas are worth exploring in the behavioral marketing context.

■ Opt In Rather Than Opt Out. Another improvement would be for more firms to allow consumers to “opt in” when it comes to collecting information – especially when it comes to sharing consumer information with third parties and sharing it across various web-based services. Consider changing the widespread opt-out default for ad-serving cookies – *why not make it opt in?* At this point, I’m not sure that government should mandate an opt-in model but, in my view, it is a far more preferable result.

■ More Competition to Protect Privacy. There is some good news here too. With all the attention on online data collection these past few months, the leading search engines

11 (Apr. 2007), available at <http://www.ftc.gov/reports/violence/070412MarketingViolentEChildren.pdf>.

¹⁶ Sheila F. Anthony, *The Case for Standardization of Privacy Policy Formats*, available at www.ftc.gov/speeches/anthony/standardppf.shtm; see also Williams, *supra* note 9, at 56.

¹⁷ *E.g.*, Turow et al., *supra* note 13, at 12-13.
