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Marketers wake up to new privacy challenges

January 3, 2011



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Luxury Daily

On Dec. 1, 2010 the Federal Trade Commission released a preliminary staff report setting forth a framework on how commercial entities should protect consumer information.

The purpose of the framework is to assist policymakers, including Congress, in their development of potential laws governing privacy and to guide and motivate industry to develop best practice and self-regulatory guidelines.

Of significant importance is the FTC's call for a Do Not Track mechanism for consumers to exercise their choice not to have their online behavior monitored and analyzed and not to have advertisements served to them based on such behavior.

This report could have enormous implications for the future of mobile marketing as the FTC's clarion is not limited to online behavior only.

Do not tack

The report squarely raises the question of whether a similar approach should also be applied to mobile marketing.

Moreover, with the increasing convergence of mobile and Web-based marketing, any

rules or guidelines imposed on online marketing are likely to affect mobile marketers as well.

The FTC observed in its report that industry efforts in developing meaningful protections for consumer information, particularly allowing consumers to prevent the tracking of their online behavior, have fallen short in recent years, and thus its privacy framework and call for a Do Not Track mechanism is now warranted.

While industry initiatives, such as the recently announced “Advertising Option Icon” launched by the Interactive Advertising Bureau, NAI and others have gained some traction in the marketplace, the FTC feels that consumers should not have to exercise their choice to opt-out on a one-off basis.

Instead, the FTC argues, consumers should have the option of a one-stop, persistent mechanism to stop all tracking on their computer.

Further, the FTC criticized this industry initiative for its lack of consumer awareness.

In its report, the FTC advocates for a uniform and comprehensive Do Not Track mechanism to be accomplished through legislation or strong, enforceable self-regulation.

The framework states that the most practical method “would likely involve placing a setting similar to a persistent cookie on a consumer’s browser and conveying that setting to sites that the browser visits, to signal whether or not the consumer wants to be tracked or receive targeted advertisements,” ensuring that consumers would not have to exercise choices on a company-by-company or industry-by-industry basis, and that such choices would be persistent.

Also, the FTC emphasized that “to be effective, there must be an enforceable requirement that sites honor those choices.”

Industry groups and press coverage have criticized the report for failing to fully appreciate the importance and value of tracking in delivering relevant and cost effective advertisements to consumers.

Without these tools, some claim, costs will increase as advertisers will not have the ability to efficiently deliver their message to consumers that fit their target audience.

Critics argue that tracking also allows advertisers and ad networks to not deliver certain ads to consumers whose surfing behavior suggests that the ad would be irrelevant to or unwanted by them.

For example, ads for feminine hygiene products would not be served to a viewer whose online history comprises Web sites geared primarily to men.

The FTC’s proposal has similar concerns for mobile advertisers.

Cookie crumbles

Although mobile advertising is currently neither as developed nor robust as the online

medium, media spend for mobile advertising and marketing is increasing and will only grow larger with consumers relying on their mobile device for more than just placing phone calls.

In fact, mobile provides advertisers and marketers with more information about consumers than online because not only does it allow tracking of what content is viewed or application used on the device, but the consumer's location as well, thus allowing retailers to send consumers passing their storefront a real-time ad to get them to walk in the door.

Allowing consumers to opt-out of tracking their location will no doubt stifle development of these types of offers.

As the transmission of these messages requires the affirmative opt-in of the consumer, allowing them to then opt-out of tracking might be in conflict with the original consent.

The method by which the FTC is suggesting consumers may elect to opt-out of online tracking – by activating a persistent cookie through their browser – may be problematic on a mobile device.

Given the limited browser options and functionality on most devices, it may be difficult, if not possible, to adopt a similar mechanism for mobile devices.

It should be noted that the FTC paper is only a “working staff report” and by no means the final word on these matters.

In fact, the FTC invites the public to comment and offer suggestions on how the framework and concepts it suggests to protect consumer privacy and bolster public confidence in online advertising may be achieved without stifling innovation and development. Comments are due by Jan. 31.

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