

GOVERNMENT

## FCC broadband privacy proposal draws dissent from marketing trade groups

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*Image courtesy of Bloomingdale's for its online shopping*

By SARAH JONES

Advertisers are voicing their concerns about a Federal Communications Commission proposal of rules for Internet service providers, which they say would impact the online user experience.

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FCC chairman Tom Wheeler laid out guidelines for broadband privacy in a fact sheet shared on Oct. 6, which will be considered and voted on at the next commission meeting on Oct. 27. Intended to give consumers more control in how their data is collected as they use the Internet, a coalition of advertising industry groups worries that the extensive definition of "sensitive information" used in the document will make browsing tedious and undermine the online economy.

"A very wide range of the business community feels that while the FCC claims that they are listening to us and making distinctions between sensitive and non-sensitive data, that they have defined sensitive data so broadly, so sweepingly that virtually almost anything that you would do on the Internet or mobile would actually fall into the category of sensitive, leading to the requirements of opt-in consent, which would just bombard consumers with numerous opt-in consents, and often for non-sensitive activity," said Dan Jaffe, executive vice president of government relations for the [Association of National Advertisers](#).

"They are covering all browser activity under their proposal in their fact sheet," he said. "That is just extraordinarily broad, and that's far broader than anything the Federal Trade Commission has ever asked for or that anybody else has asked for, so this would be a really unprecedented change in the way the various regulatory agencies would deal with privacy information. In other words, turning all information into sensitive data.

"That's just wrong, it's not going to help consumers. It's going to make commerce much more difficult and for no good purpose.

"We believe that it was good that the FCC at least agree that making a distinction between sensitive and non-sensitive data was important, but the way they've done it has failed to really solve or resolve the problem, and in fact it will exacerbate or make the problem worse."

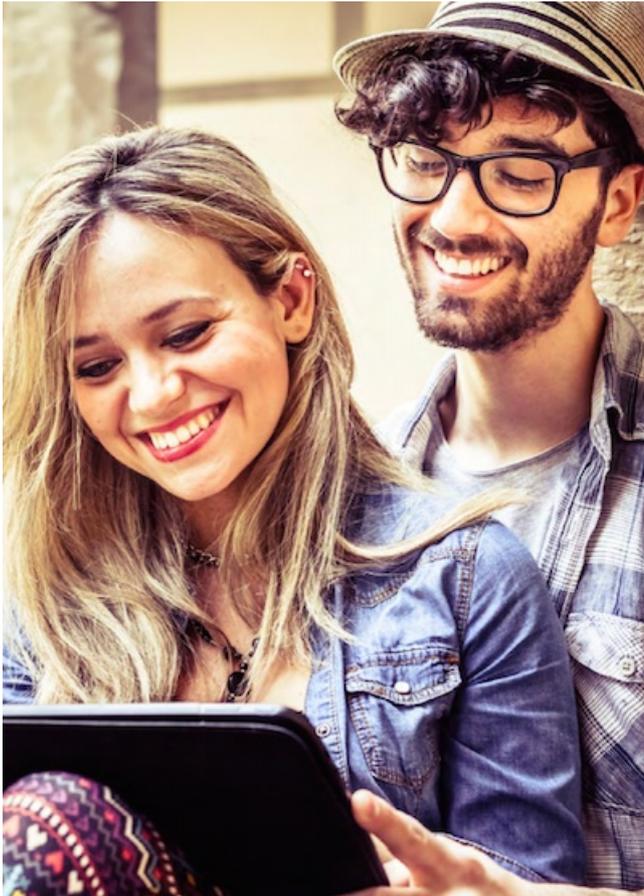
Sensitive subject

In his fact sheet, Mr. Wheeler says his recommendations are based on input he has received from consumers and the Federal Trade Commission.

With the Open Internet Order, broadband providers were classified by the FCC as telecommunications services. This subjects them to the same expectations about protecting customer information as a telephone network, outlined in the Communications Act.

Acting on the idea that consumers have a right to control how their personal information is used, the FCC has created rules that reflect today's technology. While the proposed rules do not limit an ISP's ability to collect or share data, the guidelines call for increased transparency and allow consumers to dictate their preferences on collection of data.

ISPs would be required to notify consumers about their collection and use of their data at time of sign up and when privacy policy changes.



*The FCC says its goal is to give consumers control*

For personal information deemed "sensitive," ISPs have to give consumers the option to opt-in or opt-out of having this data used. While this includes details such as health information, social security numbers and financial information, advertisers argue that the list of sensitive subject matter goes too far.

In a letter, the American Association of Advertising Agencies (4A's), American Advertising Federation (AAF), Association of National Advertisers (ANA), Direct Marketing Association (DMA), Interactive Advertising Bureau (IAB) and Network Advertising Initiative (NAI) call the inclusion of browsing history and application use an "unprecedented step."

According to the letter, the FCC's sister agency the FTC has never included browsing history or application use in its definition of sensitive material.

An FTC report from 2012 offered its support of allowing consumers to opt-out of having their online activity tracked for use in online behavioral advertising. However, the commission has made a distinction between sensitive and non-sensitive data in regards to notification and consent.

The FTC suggested that consumers be asked to opt-in to having sensitive data used, while giving them a notice and a choice about non-sensitive information.

In their response, advertisers say they support the FTC guidelines, seeing them as the balance between giving consumers control and enabling online advertising to continue. In addition, the group says the proposal of opt-in notifications for what it deems non-sensitive information is likely to aggravate consumers as they are bombarded with messages while they browse.



*Image courtesy of jeweler Boucheron*

"I think if [consumers] understood what they would be facing they would be [against the proposal]," Mr. Jaffe said. "I'm not sure until you actually have a bombardment of opt-in requirements that consumers are necessarily going to understand it, but certainly the business community understands it, and I think they're going to hear a great deal of opposition from a lot of different groups, and already have received a lot of opposition."

Going further, the statement points to the impact of digital advertising and ecommerce on the U.S. economy, saying that this potentially disruptive experience puts this economic grower at risk.

The letter also shares the group's displeasure at these particular rules being shared so late in the process before the vote later this month. According to the writers, this has not allowed enough time for the public or the commission to consider and share their thoughts on the proposal to the extent that this calls for.

"Just because you put something on the schedule doesn't mean that it's absolutely in concrete, but the concrete is starting to set," Mr. Jaffe said. "So we're hoping that before that happens that the FCC will carefully reconsider this and back away and allow people time to comment on what we think is a very significant change and an adverse change."

#### Consumer consent

The "creepiness cliff" for consumer data collection always seems to be one step away, yet consumers have become more tolerant to various practices as the shopping experience improves and brands act in a more mannered way, according to a new report by L2.

Brands are moving their CRM programs to cloud-based solutions that better integrate data collected from diverse channels. As data silos collapse, brands can better shape data collection practices to minimize customer repulsion ([see story](#)).

More than 50 percent of consumers believe that three out of four targeted sales are irrelevant, and therefore a nuisance, according to a report by Boxever.

Consumers are vexed in their relationship with data, wanting the benefits of targeted offers but decrying zealous and sloppy results. Further, consumers are ambivalent about the underlying premise of targeted offers, which mandates that private information be forfeited ([see story](#)).

"If you bombard people with opt-in notifications, you're either going to really slow down the whole of the Internet and mobile experience, or people are going to have to rather blindly just opt-in without any consideration," Mr. Jaffe said. "When you start to select data that's truly sensitive, then people should slow down and think about what they're doing."

"We agree that when people start collecting sensitive data, higher standards should be applied," he said. "We do that with our own regulatory system with Digital Advertising Alliance requirements, which allows people to opt out and

has a notification if you're doing interspace advertising and whether you are tracking people's behavior across the Internet or across mobile.

"But this sweeping approach, in our view, is just not really workable and in an effective way it's going to actually be adverse to not only business interests but to consumers' interests. Because if people don't opt-in, we'll not be able to collect information and allow better targeting of advertisements so that people will only be getting ads that are less likely to be relevant to them."

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