

Report
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Workshop 83
The Future of Online Privacy:
“Online advertising and behavioral targeting”

Organized by
Electronic Privacy Information Center (EPIC)
Center for Media and Communications Studies (CMCS), Central European University (CEU)

In collaboration with
DiploFoundation

Search engines' and Internet portals' appetite for user information for Internet advertising has been at the forefront of the international debate on threats to online privacy in 2007-2008. Their business models rely on the collection of the interests, actions, habits and traits of Internet users worldwide. A younger generation of Internet users, above all children and teenagers, spend more time using search engines, social networks and virtual communities, disclosing and sharing vast quantities of personal information that are used to compile individual digital dossiers. These profiles, which can be shared, combined and analyzed, using data-mining techniques, are the essential input for online advertisement and behavioral targeting. The resulting technical exposure of the individual behind an Internet user challenges existing privacy safeguards. Moreover, the Internet advertisement sector is consolidating and with it the different digital dossier, a trend that seems to escape any scrutiny of the effect on online privacy.

There had been limited analysis of the intersection of competition and privacy before the announcement of the proposed merger of Google and Double-Click in 2007.¹ Since a contemporary proposed merger creates privacy harms, these harms are relevant to competition analysis. Privacy harms can reduce consumer welfare. Enhancement of consumer welfare is the principal goal of modern competition analysis. In addition, privacy harms can reduce the quality of a good or service, which is a category of harm that results from market power.

Data protection authorities and government officials have started analyzing these emerging privacy topics in their national, regional and international agendas. Consumer and civil society participants at the last OECD Ministerial Meeting on the Future of the Internet Economy have pointed out that "this consolidation between search engines and online advertising companies, data retention and Internet advertising practices will give unprecedented control over personal information that will seriously affect Internet users, including children, and it will threaten competition for online marketing business". The OECD Civil Society Declaration points out "dominant Internet firms are moving to consolidate their control over the Internet. It is vitally important for the OECD to develop a better understanding of the challenge industry consolidations pose to the open Internet."

Mr. Angel GURRÍA, the Secretary General of the OECD at the closing remarks of the OECD Ministerial Meeting on the Future of the Internet Economy stated that "the OECD Privacy

¹ Peter Swire, "Protecting Consumers: Privacy Matters in Antitrust Analysis," Submitted Testimony to the Federal Trade Commission Behavioral Advertising Town Hall, October 19, 2007, available at <<http://www.americanprogress.org/issues/2007/10/privacy.html>>.

Guidelines have "stood the test of time", but that the growth of business models built around data mining and the multiplication of social networking sites require that we understand and ask ourselves: "[W]hat are the risks, what are the benefits and how to adapt policy to this new environment?"

The event discussed how online privacy will be affected by the consolidation of online marketing advertisement models and which should be the role of all the stakeholders in this critical area? The Workshop is focused on consumer privacy and data protection and new business models around online advertisement, Web 2.0, search engines, social networks and data retention practices. This topic was partially raised as an emerging issue during the closing remarks of the IGF in November 2007 in Rio as well as at the closing remarks done by the OECD Secretary General at the OECD Ministerial Meeting on the Future of the Internet Economy.

The panel was organized by the Electronic Privacy Information Center jointly with the Center for Media and Communications Studies (CMCS), Central European University (CEU), Budapest, Hungary and with the collaboration of DiploFoundation.

Panelist included:

- Joseph H. ALHADEFF, Vice President for Global Public Policy and Chief Privacy Officer, Oracle Corporation (United States), Chair of BIAC's Information, Computer and Communication (OECD-ICCP) Committee, Vice Chair of ICC's Commission on E-Business, IT and Telecom,
- Anne CARBLANC, Principal Administrator in the Information Computer and Communications Policy Division, Organization for Economic Co-operation and Development (OECD)
- Eddan KATZ, International Affairs Director, Electronic Frontier Foundation (EFF)
- Kristina IRION, Assistant Professor, Department of Public Policy, Central European University (CEU), Budapest, Hungary
- Gus HOSEIN, Senior Fellow, Privacy International. Unfortunately

Moderator: Katitza Rodríguez, Director, EPIC International Privacy Project

Unfortunately, the following speakers were not able to attend the meeting due to the latest events in Mumbai. Nevertheless, they submitted a paper, which outlines his main concerns and/or referential materials.

- Graham Greenleaf, Professor at Law at UNSW, Co-director of the Australasian Legal Information Institute (AustLII) and the World Legal Information Institute (WorldLII)
- Malcolm HARBOUR, Member of European Parliament (MEP), Committee on the Internal Market and Consumer Protection
- Jeff Chester, Founder and Executive Director, Center for Digital Democracy,

Ms. Rodríguez provided a short introduction to online advertising and behavioral targeting and the possible privacy threats and introduces Ms. Kristina Irion.

Ms. Irion started by defining what is a behavioral targeting advertisement. Among other, she quote the definition use by the FTC staff working paper (2008) "... online "behavioral advertising" means the tracking of a consumer's activities online - including the searches the consumer has conducted, the web pages visited, and the content viewed - in order to deliver advertising targeted to the individual consumer's interests." She explains how business model for Web 2.0 works (Search engine; Social network; Online newspaper; Photo sharing websites) and how those business enrich of personal data from other sources, for example by a) combining with data from other services or publicly available information; by b) data mining (describing a technology that discovers non-trivial hidden patterns in a large collection of data, which can provide insights into individual lifestyles and their social and behavioral patterns); and by trading personal data (for example, transfer of user information to third parties). She explained the difference applicable regulation & effectiveness between the European Union and The United States.

She talked about the Google-DoubleClick Merger. In April 2007, Google announced an agreement to acquire DoubleClick for \$3.1 billion, expressing intent to merge data from Google and DoubleClick to profile and target Internet users.² In response, several US privacy organizations file a complaint with the US Federal Trade Commission (FTC)³ setting forth the grounds for the Commission to establish substantial privacy safeguards as a condition of the merger.⁴ These complaints argued that the increasing collection of personal information of Internet users by Internet advertisers posed far-reaching privacy concerns, and warned that the merger of the Internet's largest search company with the Internet's largest advertising company posed a unique and substantial threat to the privacy interests of Internet users around the world.

The US Federal Trade Commission (FTC) concluded:

- Merger did not create market power in search engines and online advertisement.
- Raised privacy concerns, however, are unrelated to antitrust concerns.
- Privacy repercussions scrutinized as non-price attribute of competition, but argument dismissed.

The European Commission concluded:

- The proposed concentration would not significantly impede effective competition.
- Stressed the application of data protection laws.

Ms. Irion also explained that in June 2008, Yahoo and Google announced plans to coordinate the sale of online advertisements.⁵ The companies voluntarily agreed to delay implementation for up to three and a half months to give the U.S. Department of Justice time to review the arrangement.⁶ The US Department of Justice finally informed the companies "that it would file an antitrust lawsuit to block the implementation of the agreement. If implemented, the

² "Google to Acquire DoubleClick" (April 13, 2007), available at <http://www.google.com/intl/en/press/pressrel/doubleclick.html>.

³ See EPIC, CD, U.S. PIRG, *In the Matter of Google, Inc., and DoubleClick, Inc.*: Complaint and Request for Injunction, Request for Investigation and for Other Relief before the Federal Trade Commission (Apr. 20, 2007), available at http://www.epic.org/privacy/ftc/google/epic_complaint.pdf; Supplemental Materials in Support of Pending Complaint and Request for Injunction, Request for Investigation and for Other Relief before the Federal Trade Commission (June 6, 2007), available at http://www.epic.org/privacy/ftc/google/supp_060607.pdf; Second Filing of Supplemental Materials in Support of Pending Complaint and Request for Injunction, Request for Investigation and for Other Relief before the Federal Trade Commission (Sept. 17, 2007), available at http://www.epic.org/privacy/ftc/google/supp2_091707.pdf.

⁴ See generally EPIC, "Privacy? Proposed Google/DoubleClick Deal," available at <http://epic.org/privacy/ftc/google>.

⁵ Omid Kordestani, Senior VP, Global Sales and Business Development of Google, "Our agreement to provide ad technology to Yahoo!" June 2008, available at <http://googleblog.blogspot.com/2008/06/our-agreement-to-provide-ad-technology.html>.

⁶ Voluntary delay for regulators, available at <http://www.google.com/yahoogooglefacts/regulators.html>.

agreement between these two companies accounting for 90 percent or more of each relevant market would likely harm competition in the markets for Internet search advertising and Internet search syndication.” Google has ended their agreement with Yahoo.

She concluded that behavioral targeting still in its infancy; there are a massive personal data gathering in preparation; Privacy concern stemming from profiling and data mining; Different policy approaches in U.S. & EU; No effective policy tool tackling concentration of data collections.

Ms. Carblanc spoke about the OECD Privacy Framework: OECD Privacy Guidelines (1980); the Ottawa Ministerial Declaration on Privacy (1998) and Report on Privacy Online (2003) as well as the recommendation on Privacy Law Enforcement Co-operation (2007). She stressed “new technologies bring dramatic changes to the ways in which personal data is processed. New trends in globalization are fuelled by technological advances”. She also made the question of “How well does our traditional approach to privacy work in this environment?”

She said, “Internet enables to customize ads to match the interests of users:”⁷

- Ads are more relevant and less annoying they are more cost-effective to advertisers and more profitable to websites that sell ad space.
- This business will fuel the rapid growth of Internet advertising revenues from \$21.7 billion in 2007 to \$50.3 billion in 2011—an annual growth rate of more than 24%.
- It is sometimes possible to infer the actual identity of the user;

She also emphasized that the Internet enables online profiling to become invasive:⁸

- Though browsers allow users to opt-out of tracking by “cleaning out” their tracking cookies, a website may be able to restore deleted tracking cookies through the use of cookie alternatives such as “Flash cookies”;
- Certain vulnerabilities in current browser design make it theoretically possible to “sniff” a user’s browsing history, cache or bookmarks;
- The use of “packet inspection” by Internet Service Providers (ISPs) (instead of using cookies) to track online browsing amounts to illegal wiretapping.
- The government—will gain access to a “honey pot” of surveillance data that might be associated with individual users.

From an economic point of view, she mentioned that the OECD worked on a preliminary analysis of some of the most striking effects of online advertising and emerging challenges and policy debates.⁹ The OECD worked also in the Report on Participative Web and User-Created Content, which also includes sections on advertising-based models and policy implications.

The OECD policy framework for online advertisement in general: OECD E-commerce Guidelines (1999); OECD Guidance on Mobile Commerce; the OECD Privacy Guidelines;

⁷ Ref. SEPT 08 - Online Advertising & User Privacy: Principles to Guide the Debate By Berin Szoka & Adam Thierer.

⁸ Ref. SEPT 08 - Online Advertising & User Privacy: Principles to Guide the Debate By Berin Szoka & Adam Thierer

OECD Ministerial Declaration on the Protection of Privacy on Global Networks (Ottawa, 1998);

Ms. Carblanc also said that new issues arise: The tracking of an individual's activities online to deliver advertising that is targeted to the individual's interests

She highlight that those issues long predicted, are now arriving:

- Maturation of the technology, widespread broadband, and cheap storage;
 - Users may prefer ads that are tailored to their interests;
 - Users may be shocked to receive ads that are tailored to their interests;

New Trends:

- Use of age verification services to target ads for children;
- Capturing user behavior for marketing purposes at the level of the ISP;
- Increasingly detailed personal information submitted by users via social networks;
- Consolidation in the online advertising marketplace creates greater amalgamation of user profiles.

Some issues:

- Transparency and trust
- Do I understand what is happening behind the scenes?
 - Notice, consent, and control
- Can I choose not to receive targeted ads?
 - Protecting sensitive information
- Health, religion, age
 - General risks of data accumulation
- Security, data retention, secondary uses

New Approaches/Initiatives

- FTC proposed principles (4-07)
- Art. 29 opinions on search engines (4-08)
- International Commissioners Conference resolution on Social Networks (10-08)
- Future of Privacy Forum created (11-08)
- Council of Europe work on profiling (ongoing)

She asked, “Will be feeding the Global Privacy Dialogue?”. Finally she concludes with a question to the audience. What are our values today? Is should personal data (be) a commodity? Is it a matter for each of us to decide between economic benefits and protection of personal data?

Mr. Joseph Alhadeff start his presentation by referring that most of the Internet services based their business models in online advertisement. According to the speaker, the topic is still in its infancy and is being discussed only in some countries and is probably a discussion that will have cultural dimensions. He noted that the key issue is that companies should work towards granting confidence to users. He finally suggested that this discussion should be made in a multi-stakeholder and multi-jurisdictional approach.

Mr. Gus HOSEIN start his presentation by presenting the Google case, saying that the Internet advertisement model used by this company has been successful because it was able to lists and find products according to the best price.

However, he noted that Internet advertising practices need to be transparent of how process consumer's personal information. He stressed the need of privacy legislations that regulate this business practices. He also expressed strong concern when he heard from some government representatives that governments should not worry about privacy legislation when there are a large number of community members who are part of this "user-generated content sites" such as facebook. He made a pro-active proposal to move forward the discussion directly to governments so they could be aware of the need for regulation and policies to protect the privacy of Internet users. Finally, he concluded that online advertisement directed to minors, and suggests that countries should establish specific policies to prohibit and punish such practices.

Widely discussion was made during the whole conference with an interactive participation from people from the audience and through online remote participation. We were delighted to heard questions from Brazil and read a few blogs post from Cristos Velasco, who follow the discussion online (<http://www.protecciondedatos.org.mx/?cat=4>). The theme of our panel is not widely discussed in Latin America but the problem is of concern of all Internet users worldwide (Just see the latest discussion about Privacy in social networks and the new change of Facebook Term of Services (TOS)).

Finally, Ms. Rodriguez concluded that it would be go to continue contribute to the International Global Policy at next IGF as well as in other international forum in this similar topics.

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