

January 19, 2007

Federal Trade Commission
Room H-528
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580



1634 I Street, NW Suite 1100
Washington, DC 20006
202.637.9800
fax 202.637.0968
<http://www.cdt.org>

Dear Commissioner Rosch:

Thank you for taking the time to meet with us a few weeks ago. We were very pleased that you were so supportive of the spyware and behavioral targeting issues that we discussed.

Included below is an outline of what an FTC workshop about behavioral targeting might look like. As you know, much has changed since the FTC held its online profiling workshop in 1999, both in terms of the technologies available and consumer privacy expectations. More and more consumers are making use of technologies such as Web search and Web-based email, with a corresponding increase in the collection and use of the associated data for marketing purposes. Profiling information is also being used across contexts – data collected on the Web might be used to target ads on cable television or satellite radio, and databanks of information collected offline are being used to target online ads. With all of these developments in play, we feel that the time is ripe for the FTC to re-visit the privacy issues surrounding profiling and targeted advertising.

We believe that there are three main areas that an FTC workshop should seek to address: the current state of behavioral targeting, the self-regulatory landscape, and the role of the FTC going forward.

I. Current State of Behavioral Targeting

An integral first task for the workshop will be to identify the current state of behavioral targeting technology and what protections are already in place to safeguard consumer privacy. This portion of the workshop could involve both companies using behavioral targeting technology and discussants to explore the privacy implications. Topics to address might include:

- What behavioral information is being collected and how is the data being used?
- What kind of notice is provided to consumers?
- What choices are available for consumers (is it opt-in, opt-out, or are they given a range of controls)?
- What level of access do consumers have to their own compiled profiles and what opportunities are available for consumers to contribute to the targeting process (i.e., by rating ads or requesting ads for particular products)?
- How is behavioral information secured and is it stored anonymously, pseudonymously, or directly linked to an individual?
- Is behavioral information combined with other data collected offline or online, and do such practices involve higher standards of notice, choice, and access?

- Is information being used to advertise across contexts (Internet, cable television, mobile phone networks, radio, high-tech billboards, etc.) and is such cross-medium usage disclosed to consumers?
- Is information being collected for no immediate purpose or use, but simply because it may be useful to marketers or researchers in the future?

II. Self-Regulatory Landscape

Understanding the status of industry self-regulatory efforts will be key to determining how the FTC should be addressing behavioral targeting. This portion of the workshop might explore how existing self-regulatory guidelines are being used and whether such guidelines need to be updated to deal with changes in technology. The FTC played a large role in reviewing the Network Advertising Initiative (NAI) Principles for Online Preference Marketing five years ago, and it seems appropriate to explore the effectiveness of those principles and whether any changes are needed to keep pace with the current online marketing landscape. This may involve participation from companies, representatives from industry bodies like the NAI, and privacy advocates.

III. Role of the FTC

One of the main goals of the workshop will undoubtedly be to determine what the appropriate next steps are for the FTC. Using the information gleaned from the workshop's discussions surrounding the state of behavioral targeting and the self-regulatory landscape, some of the questions that this portion of the workshop might address are:

- Have privacy issues relating to behavioral targeting been identified at the workshop? If so, what is the appropriate way of addressing them? How should the FTC be involved?
- If existing privacy guidelines and principles need to be re-visited, how can the FTC be most useful in the updating process?
- Do consumers understand how behavioral targeting works? Is there an educational role that the FTC can play to help inform the public?
- Are there particular aspects of behavioral targeting that warrant further study or public discussion?
- Are the areas addressed within the scope of the FTC Act? If not, will legislative changes need to be made for the FTC to become involved or is it more appropriate for other parties to act?

We appreciate the attention you are giving to this issue and we look forward to working with you and the other commissioners to investigate it further. Please let us know how we can be most helpful to you in the development of the workshop and on any other issues that may arise.

Sincerely,

Ari Schwartz
Deputy Director

Alissa Cooper
Policy Analyst