

**Statement of
The Center for Democracy & Technology
before
The Antitrust, Competition Policy and Consumer Rights Subcommittee
of the Senate Committee on the Judiciary
on
“An Examination of the Google-DoubleClick Merger and the Online Advertising
Industry: What Are the Risks for Competition and Privacy?”**

September 27, 2007

Chairman Kohl and Ranking Member Hatch, the Center for Democracy & Technology (CDT) is pleased to have the opportunity to provide a statement for the record on the risks to competition and privacy of the Google-DoubleClick merger.

Although the Google-DoubleClick merger has drawn fresh attention to the privacy issues raised by online advertising and behavioral targeting, this is by no means a new debate. In 1999, concerns about consumer profiling led the Federal Trade Commission (FTC) to hold a workshop on the issue. At that workshop, a group of online advertising companies announced the formation of the Network Advertising Initiative (NAI), an organization aimed at developing a self-regulatory framework for online advertising networks engaged in consumer profiling. After reviewing the NAI’s work, the FTC submitted a report to Congress that was approved 4-1 by the FTC commissioners.¹

In its report, the FTC commended the NAI for developing an innovative self-regulatory framework, but noted that “backstop legislation addressing online profiling is nonetheless required to fully ensure that consumers’ privacy online is protected.”² Indeed, if such legislation had been passed in the years since the publication of the report, perhaps privacy would not be a subject of today’s hearing. Unfortunately, even though the Internet has become increasingly intertwined with consumers’ daily lives, no baseline legal protections have been implemented to safeguard privacy.

In its report to Congress, the FTC recognized that the NAI guidelines would not apply to all companies engaged in online profiling. The FTC observed “unavoidable gaps” in the ability of NAI members to require their partners to comply with the self-regulatory principles.³ Over the past seven years, these gaps have widened substantially, greatly reducing the NAI’s effectiveness.

A CDT study conducted last year illuminated one facet of this deficiency in the NAI framework.⁴ Over a two-week period in May 2006, CDT collected advertisements

¹*Online Profiling: A Report to Congress (Part 2)*, Federal Trade Commission, Jul. 2000, <http://www.ftc.gov/os/2000/07/onlineprofiling.pdf>. (“Profiling Report”).

²Profiling Report at 10.

³Profiling Report at 10.

⁴*Following the Money II: The Role of Intermediaries in Adware Advertising*, Center for Democracy & Technology, Aug. 2006, <http://www.cdt.org/privacy/20060809adware.pdf>.

displayed by two deceptively installed “adware” programs – software applications that deliver pop-up ads while users browse the Web. The results of the study showed that rather than delivering ads directly from advertisers’ servers to users’ desktops, these ads pass through a Byzantine network of intermediaries: online advertising networks, affiliate networks, and ad-serving platforms. Although each of these arrangements may work differently, it is possible for these intermediaries to compile the same kinds of behavioral profiles that sparked such controversy and led to the creation of the NAI in 1999. Out of the 73 intermediaries CDT identified, however, only four were members of the NAI. In 2000 the FTC estimated that 90 percent of the network advertising industry was covered by the NAI principles, but CDT’s numbers indicate that this percentage has greatly diminished as the industry has evolved.⁵

Adware intermediaries are just a small slice of this problem. Including the Google-DoubleClick merger, no less than five major mergers and acquisitions of behavioral targeting firms have been announced this year, bringing a new wave of Internet giants into the space.⁶ This means that the same companies that provide search services, store emails, support online personal calendars, and run chat applications may begin to engage in behavioral targeting, dramatically increasing the amount and types of data that can be brought together to create consumer profiles and the ease with which such information can be shared. These kinds of business models were not taken into account when the NAI framework was developed. With so little of the industry subscribing to the NAI privacy framework -- and no baseline national law to protect users’ rights -- consumers are not being sufficiently protected.

The fact that the NAI applies to only a portion of the online advertising industry and only a subset of business models in the marketplace is by no means its only deficiency. The FTC’s upcoming workshop on this issue will showcase how changes in technology, policy, and business practice have rendered the current online privacy framework inadequate.

CDT is pleased that this Committee has taken an interest in the Google-DoubleClick merger, as it exemplifies the industry-wide privacy concerns that behavioral targeting raises. We look forward to working with you as you look further into privacy issues in this industry.

⁵Profiling Report at 10.

⁶For a list of the mergers, see *Privacy Initiatives Key to Addressing Behavioral Targeting Concerns*, Center for Democracy & Technology, Aug. 2007, <http://cdt.org/publications/policyposts/2007/11>.