

Morrison & Foerster Client Alert

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MoFo Privacy Minute

The New Frontier in Interest Based Advertising: FTC Shifts Focus to Cross-Device Tracking

By Julie O'Neill and Patrick Bernhardt

As consumers increasingly connect to the Internet using multiple devices—such as mobile phones, tablets, computers, TVs and wearable devices—advertising technology companies have rapidly developed capabilities to reach the same consumers across their various devices. Such “cross-device” tracking enables companies to target ads to the same consumer regardless of the platform, device, or application being used. Last week, the Federal Trade Commission (FTC) announced that it will host a workshop on November 16, 2015, to explore the privacy issues arising from such practices—signaling that interest based advertising (IBA) is still at the forefront of its agenda.

For a long time, advertisers and publishers have tracked consumers' online activities using HTTP cookies stored in web browsers on desktop and laptop computers. In response to the FTC's concerns over consumers' visibility into and control over such tracking for IBA purposes, industry responded with widely adopted ways for publishers and advertisers to provide consumers with enhanced notice and cookie-based choice with respect to such tracking.

As consumers' behavior has shifted, however, traditional cookie-based technologies are becoming less effective. Most consumers now access the Internet through apps on various platforms, in addition to web browsers, and they tend to use different devices throughout the day. This presents challenges for advertisers, publishers and others who want a complete picture of how individual consumers interact with their websites, services, and advertisements over time—as well as for those who want to know where and how they can reach such consumers. In response, companies have developed various solutions for identifying the same consumer across devices. One approach, for example, is to use “deterministic” methods that link the consumer's devices to a single account as the consumer logs into websites and services on different devices. Another is through “probabilistic” methods that infer links among devices that share similar attributes, such as location derived from IP address. In some cases, companies may combine multiple techniques for greater accuracy.

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In its announcement, the FTC explained that these new practices may raise privacy issues if consumers are not provided with adequate notice and control—and the workshop will address, among other topics, how companies can make their tracking more transparent and give consumers greater control over it. If history is a guide, the FTC will likely publish a staff report some months after the workshop, to highlight the privacy issues it sees with cross-device tracking and to offer industry guidance on addressing them.

The FTC's announcement is a natural extension of its recent workshops on [mobile privacy disclosures](#), the [Internet of Things](#), and [mobile device tracking](#). It also follows [recent news](#) from the Digital Advertising Alliance (DAA) that it has launched tools to provide in-app notice and choice to consumers about IBA practices and that it expects enforcement of the DAA Self-Regulatory Principles in the mobile environment to begin this summer.

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