

Chapter 8

Behavioral Advertising Ethics

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ABSTRACT

Behavioral advertising is a method for targeting advertisements to individuals based on behavior profiles, which are created by tracking user behavior over a period of time. Individually targeted advertising can significantly improve the effectiveness of advertising. However, behavioral advertising may have serious implications for civil liberties such as privacy. In this chapter, we describe behavioral advertising ethics within the context of technological development, political and legal concerns, and traditional advertising practices. First, we discuss the developmental background of behavioral advertising technologies, focusing on web-based technologies and deep packet inspection. Then, we consider the ethical implications with a primary focus on privacy of behavioral advertising technologies. Next, we overview traditional market research approaches taken to advertising ethics. Following that, we discuss the legal ethics of behavioral advertising. Finally, we summarize these cross-disciplinary concerns and provide some discussion on points of interest for future research.

INTRODUCTION

Behavioral advertising is a method for targeting advertisements to individuals based on their actions. Market researchers construct behavior profiles by tracking user actions, such as purchases, recommendations, or reviews. Advertisers use an individual's behavior profile to tailor advertisements

to that individual. An online behavior profile can be built by tracking the websites people visit on the Internet. The development of new behavioral advertising technologies, such as Deep Packet Inspection (DPI), makes the construction of behavior profiles possible in contexts where it was previously impractical. Behavioral advertising is currently a challenging public policy concern with interdisciplinary ethical implications as evidenced

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by recent efforts by the U.S. Federal Trade Commission (FTC) to encourage best practices.

New behavioral advertising technologies raise challenging ethical questions that this chapter seeks to address. How should consumers and advertisers approach the tradeoff of privacy for improved advertising effectiveness? What level of control over behavioral tracking should consumers have? Is first-party behavioral advertising more ethical than third-party behavioral advertising? Are there important ethical differences between web-based and network-based behavioral advertising? Is an opt-in default more ethical than an opt-out default? More specifically, who owns data regarding online behavior? How should traditional market research ethics affect behavioral advertising? Do current behavioral advertising technologies violate legislation or are they in some other way ethically dubious? We aim to clarify the scope and ethical implications of these questions.

Many of these ethical questions are civil liberty concerns. Civil liberties are rights in freedom. For example, the freedom of religion, freedom of speech, the right to keep and bear arms, the right to not be discriminated against, the right to a fair trial, and the right to privacy are all civil liberties. These freedoms limit government power and prevent governments from unduly intervening in the lives of citizens. Because many of the ethical issues regarding behavioral advertising ethics are fundamentally consumer privacy concerns, we have chosen this as a focus for this chapter.

Privacy is a particularly challenging ethical concern because it is inherently difficult to define. George Washington University Law Professor Dan Solove (2008) describes privacy as a “concept in disarray” (p. 1) that “[n]obody can articulate” (p. 1). Possibly the best-known definition of privacy comes from an 1890 law review article by Warren and Brandeis wherein they stated that privacy is “the right to be let alone” (Warren & Brandeis, p. 193, 1890). As data processing became more important Alan Westin (1967) recognized that being

left alone was insufficient; he describes privacy as “the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others” (p. 7). This recognizes that providing control to individuals is an important aspect of privacy. A more recent control-based definition by Jim Harper (2004) emphasizes even further the importance of the individual consumer. Harper (2004) calls privacy “the subjective condition that people experience when they have the power to control information about themselves” (p. 2). For the purposes of this chapter, we will assume Harper’s control-based definition of privacy because it acknowledges both that privacy means different things to different people (i.e. that it is subjective) and that privacy involves an element of consumer control.

The FTC (2000a, 2000b) has voiced concerns that behavioral advertising violates consumer expectations of privacy. However, the difficulty of defining and valuing privacy hampers efforts to compare the economic benefits of behavioral advertising to the cost of constraining civil liberties (Solove, 2008; Szoka & Thierer, 2008). In an empirical study on the effectiveness of behavioral advertising,¹ Yan, Liu, Wang, Zhang, Jiang, and Chen (2009) reported that the information collected to construct a behavior profile can be used to improve advertising effectiveness² by at least 670% (Yan et al., 2009). This tension between powerful economic incentives and important civil liberties has resulted in scrutiny from the FTC (2000a, 2000b, 2007, 2009), U.S. Senate (Privacy Implications, 2008), and the U.S. House of Representatives (What Your Broadband Provider, 2008, Communications Networks, 2009).

Advertising-based business models are common on the Internet. The FTC (2000a) reported to Congress that Internet advertising revenues for 1996 totaled \$301 million. By 2001, Internet advertising produced \$7.2 billion in revenues (Internet Advertising Bureau [IAB], 2002). In 2007,

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