

EUROPEAN PARLIAMENT

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2009

Committee on Civil Liberties, Justice and Home Affairs

PROGRAMME

Public Seminar

Data protection on the Internet

(Google-DoubleClick and other case studies)

Monday 21 January 2008, 15:00 – 18:30

Brussels

Room PHS 3C50

(version 2.0)

FOREWORD

1. *The Internet now reaches billions of people around the world and serves as a virtual marketplace for products, information and ideas. The second generation of the Internet – sometimes referred to as “Web 2.0” – will make possible a greater interaction and connection amongst millions of Web users so that the Internet also becomes a common virtual network space for millions of people sharing information of all kinds.*

2. *Due to the global dimension of this potential audience, the Internet has also become an increasingly attractive forum for advertisers who can target their campaigns more precisely and effectively than advertising in other media. Online advertising is now a 27 billion dollar market which is projected to double over a period of four years and the willingness to control part of this market has incited numerous mergers between E-companies including, last but not least the one between Google and DoubleClick ⁽¹⁾. The reason for this extraordinary market growth is the fact that many of the online services, information and entertainment are offered free of charge to the consumers as far as they accept the advertising (whether targeted or not) and accept to be more or less tracked in their behaviour. The growing revenues derived from sales of advertising space notably via the search engines e. g. of Google, Microsoft and Yahoo, is now a strong pushing factor to offer. On the one side, more and more services free of charge and increase the diversity and breadth of free information to the Internet users, but on the other side those providers generally track back their online conduct so that the advertisements could be more focused on the potential consumer of different products and services ⁽²⁾.*

3. *The result has been the creation of “behavioural marketing” founded on computerized data collection and on targeted advertising which are creeping into nearly every aspect of the social and commercial transactions – searching, browsing, networking, emailing and telephoning ⁽³⁾. This new situation, however, raises some critical issues about the sufficiency of companies’ disclosures, the level of consumers’ understanding and control of their personal information as well as the security and confidentiality of the massive amount of sensitive personal data. Moreover, behavioural marketing directed at vulnerable individuals, such as young people and teens, clearly raises the question of the degree of privacy protection.*

4. *Amongst others, the following data privacy concerns have been recently raised:*

*- in the US by the Congress⁽⁴⁾ who held several hearings on this subject and by the Federal Trade Commission during the examination of the Google-DoubleClick Merger case ⁽⁵⁾. Therefore, the FTC stated in its opinion of 20 December 2007 that ‘... Not only does the FTC lack legal authority to require conditions to this merger that do not relate to antitrust, regulating the privacy requirements of just one company could itself pose a serious detriment to competition in this vast and rapidly evolving industry **’and considered that as a matter of principle’**. The way suggested to overcome these concerns has been (as it was the case for other occasions like the ‘Safe Harbour’ case) to develop some self-regulatory principles by the industry concerned ⁽⁶⁾.*

- in Europe by the National Data Protection Authorities meeting in the art. 29 Working Party. In a letter sent to EC Commissioner Kroes on 23 October 2007 (who is currently inquiring on the Google-DoubleClick Merger case) the Chairman of the Working Party reminded that the processing of personal data in the EU is subject to national data protection laws and that

such data processing activities in the EU shall remain subject to EU data protection principles and to scrutiny by national Data Protection Authorities of the Member States concerned according to Directives 95/46/EC and 2002/58/EC.

5. *The aim of the LIBE seminar is to examine with the contributions of the main institutional actors, industry and consumer representatives, how to better protect the freedom of expression and the pluralism on Internet by protecting at the same time the personal data of the Internet users. This debate therefore seems very timely as the EU institutions recently re-proclaimed the Charter of fundamental rights and started the work on the revision of Directive 2002/58/EC on data and consumer protection in the telecommunication domain.*

Organizational information (see also the annex)

Due to the complexity and the number of issues at stake:

- all participants taking part in the seminar are requested to send their contributions and comments in writing before the seminar (deadlin: Friday, 18 January 2008 at 12 o'clock). These contributions will be published on the hearing home page¹ so that everybody could during the debate make reference to the written contribution and focus only on the essential points of their message,

- instead of formal speeches followed by debates the works should be shaped as three "round tables" giving to the representatives of the institutions, the industry and the consumers the possibility to express their points of view or comment on the views raised in the written and oral contributions.

¹ <http://www.europarl.europa.eu/activities/committees/homeCom.do?language=EN&body=LIBE>

Programme

15:000 - 15:10

OPENING REMARKS

Welcome by **Jean-Marie CAVADA**, Chairman of the LIBE committee

15:10 - 15:45

PANEL I

FIRST ROUND TABLE:

THE NOTION OF "PERSONAL DATA" IN THE INTERNET FRAMEWORK

The article 29 Working Party has for instance recently considered the IP address as a "personal" data and this could have important consequences on the means of collection and storing of data:

Interventions by:

- **Mr. Peter HUSTINX**, EDPS, who will present the scope of the existing privacy framework and the notion of personal data in the internet
- **Mrs. Pamela HARBOUR**, FTC Commissioner, who will present the state of the debate in the US on this issue
- **Mr. Marc Rotenberg**, EPIC
- **Mr. Alexander Singewald**, Federation of European Direct & Interactive Marketing (FEDMA)
- the **Interactive Advertising Bureau Europe** (IAB Europe) representatives
- **Google and Yahoo**
- **Mr. Thomas Myrup**, Microsoft

15:45 - 17:45

PANEL II

SECOND ROUND TABLE:

HOW THE INDUSTRY CAN MINIMISE THE THREAT FOR THE PROTECTION OF DATA WHEN DELIVERING SERVICES ON INTERNET (NOTABLY VIA SEARCH ENGINES)

Search engines contribute to the convenience and usability of the Internet. Certainly, they are also the critical and determinant element of the development of the European Information Society. Nevertheless, search engines should not be considered only by themselves as they are usually backed up with other online service such as email services, social networks, etc. which assist the end-user in the management of his/her digital social life. In this context, it is essential to ascertain the specific problems raised by the search engines, the type and the number of data retained, the interaction with the consumer, the ways how the consent for the use of data is obtained and the specific data retention policies. At the same time industry needs and consumer concerns linked to online advertising and to behavioural targeting also have to be taken in account.

Intervention by:

a) Industry representatives:

- **Mr. Peter FLEISCHER**, Global Privacy Counsel, Google,
- representatives of **Microsoft**
- representatives of **Yahoo** (to be confirmed)

b) the consumer representatives BEUC and EPIC

c) Mrs. Sjoera NAS, Dutch DPA who is working on the Article 29 Working Party future guidelines on this subject

d) Mr. Artemi Rallo Lombarte, Director of the Spanish Data Protection Authority on 'Search engines and rights of erasure and objection'

e) Mrs. Pamela HARBOUR, FTC Commissioner, who will present the possible content of the US Self-Regulatory Principles

17:45 - 18:25

PANEL III

THIRD ROUND TABLE:

HOW THE EU LEGISLATION CAN BE STRENGTHENED, AS WELL AS THE SECURITY OF NETWORKS, THE INTERNATIONAL COOPERATION AND THE GROWTH OF THE INTERNET SERVICES MARKET

Intervention by:

- **EC representative** (presentation of the proposed amendments of Directive 2002/58/EC)
- **Mrs. Pamela HARBOUR**, FTC Commissioner, who can present the experience and the strategy of the US in this domain
- **ENISA** representative (European Agency for the security of networks)
- followed by the interventions of the **EU/US industries** and **consumers representatives**.

18:25 - 18:30

CONCLUDING REMARKS

Participants:

At Institutional level

- *The European Commission Representatives of DG Competition, INFISO, JLS*
- *The European Data Protection Supervisor: Mr. Peter Hustinx (confirmed)*
- *The Article 29 Working Party President: Mr. Peter Schaar (confirmed)*
- *the Dutch data protection authority: Ms. Sjoera Nas (confirmed)*
- *the ENISA Agency*
- *the US FTC Representatives*

At Industry level

- *Google, Yahoo and Microsoft representatives*
- *IAB Europe (7)*
- *Network Advertising Initiative (8)*
- *AOL/Tacoda (9)*

At Consumers level

- *BEUC and EPIC representatives*

ANNEX

PRACTICAL GUIDELINES FOR THE DEBATE

Presentations will be limited to 5-10 minutes (see programme for details).

During the discussion, so as to make it possible for the highest possible number of parliamentarians to intervene, speaking time will be limited to 2 minutes per contribution or question.

The floor will be given to Members in the order in which requests are received.

Speakers wishing to supplement their speeches may do so in writing by submitting documents (preferably in English or French **at the latest by Friday, 18 January 2008 at 12 o'clock**) in advance to the secretariat (email: ip-libe@europarl.europa.eu). These documents will be circulated during the meeting.

IMPORTANT NOTICE FOR THOSE WISHING TO ATTEND THE HEARING

This seminar is open to the public. However, for security reasons, participants who do not have a European Parliament access badge must obtain a pass in advance. Those wishing to obtain such a pass should contact the seminar secretariat (ip-libe@europarl.europa.eu) **before 17 January 2008**. It is essential to provide us with your **full name, address and date of birth**. Without this information, the Security Service will not provide entry passes.

Seminar Secretariat	Telephone	Address	E-mail address
Emilio De Capitani <i>Head of Unit</i>	+32.2.284.35.08	European Parliament Rue Wiertz 60 RMD 04J034 B-1047 Brussels	ip-libe@europarl.europa.eu
Martina Sudova <i>Administrator</i>	+32.2.283.14.76	European Parliament Rue Wiertz 60 RMD 04J010 B-1047 Brussels	
Cristina Rodrigues <i>Assistant</i>	+32.2.284.23.94	European Parliament Rue Wiertz 60 RMD 04J042 B-1047 Brussels	
Maria Lazarova <i>Secretary</i>	+32.2.283.23.89	European Parliament Rue Wiertz 60 RMD 04J048 B-1047 Brussels	
Vita Grifita <i>Secretary</i>	+32.2.284.25.32	European Parliament Rue Wiertz 60 RMD 04J002 B-1047 Brussels	

¹ 13 April 2007 – Google acquires Doubleclick, a provider of publisher-side and advertiser-side display ad serving technology, for \$3.1b;

30 April 2007 – Yahoo acquires Right Media, owner of the leading online advertising exchange Direct Media Exchange, for

\$680m;

16 May 2007 – AOL agrees to acquire ADTECH AG, a provider of publisher-side and advertiser-side display ad serving technology;

17 May 2007 – WPP Group acquires 24/7 Real Media for \$649m;

18 May 2007 – Microsoft acquires a Quantive, a leading firm for digital marketing, for \$6bn;

22 May 2007 – Axel Springer (a major German online publisher and seller of online and offline ad space) and PubliGroupe (a major seller of print advertising) acquire ZANOX.de, a leading affiliate network, for EUR214.9m;

24 July 2007 – AOL acquires TACODA, a company providing a behavioural targeting advertising network (undisclosed amount)

27 July 2007 - Microsoft acquires AdECN, an ad-exchange company (undisclosed amount)

4 September 2007 – Yahoo acquires BlueLithium, a company providing analytics and behavioural targeting technologies, for \$300m

7 November 2007 – AOL acquires internet-advertising technology company Quigo.

² This is the case for "**contextual advertising**," or sending text-based ads to Internet users that relate to their search topics. For example, if a user searches for a specific automobile, he will also receive car ads with search results. By the contrary "**display advertising**" is the production for Web sites of banners ads, video linked to the main subject of the site itself (sport, culture...).

³ For instance search terms entered into the search engine alone may reveal a plethora of personal information such as an individual's medical issues, associations, religious beliefs, political preferences, sexual orientation, and investments monitored.

⁴ "**Senate Judiciary Committee Hearing on Google-DoubleClick Merger. An Examination of the Google-DoubleClick Merger and the Online Advertising Industry: What Are the Risks for Competition and Privacy**". It was held on September 27th by the subcommittee on "Antitrust, Competition Policy and Consumer Rights". <http://judiciary.senate.gov/hearing.cfm?id=2955> Representative Joe Barton, Ranking Member of the [House Energy and Commerce Committee](#), sent a [letter](#) to Google raising 24 questions about the company's proposed \$3.1 billion merger with Doubleclick. Rep. Barton, co-founder of the House Privacy Caucus, asked Google to detail definitions of "anonymization" of consumer data, "behavioral targeting," among other things. He also asked Google to explain "the need to retain collected information for the length of time [Google retains consumer data]" and "how and why information is combined or shared across platforms." A number of [Senators](#) (pdf) and [Representatives](#) (pdf) have called for more in-depth review of the privacy questions raised by the proposed merger. Previously a dozen Republican members of the [House Subcommittee on Commerce, Trade and Consumer Protection](#) have requested a hearing into the privacy aspects of the proposed Google-DoubleClick merger. In a [letter](#)(pdf), the members stated that the privacy implications of the merger "are enormous" and a hearing is needed to understand how consumers' information is used and what can be done to better protect consumer privacy. In [complaints](#) (pdf) to the FTC, EPIC, the [Center for Digital Democracy](#) and [US PIRG](#) have detailed the reasons why the FTC needs to establish substantial privacy safeguards as a condition of the merger.

⁵ See the FTC Opinion at: <http://ftc.gov/os/caselist/0710170/071220statement.pdf> as well as the concurring Opinion of Commissioner Leibowitz and <http://ftc.gov/os/caselist/0710170/071220leib.pdf> and the Mrs. Harbour Dissenting Opinion at <http://ftc.gov/os/caselist/0710170/071220harbour.pdf>

⁶ The newly issued self-regulatory privacy principles can be found at www.ftc.gov. "To address the need for greater transparency and consumer control regarding privacy issues raised by behavioral advertising, the FTC staff proposes:

- *Every Web site where data is collected for behavioral advertising should provide a clear, consumer-friendly, and prominent statement that data is being collected to provide ads targeted to the consumer and give consumers the ability to choose whether or not to have their information collected for such purpose.*

To address the concern that data collected for behavioral advertising may find its way into the hands of criminals or other wrongdoers, and concerns about the length of time companies are retaining consumer data, the FTC staff proposes:

- *Any company that collects or stores consumer data for behavioral advertising should provide reasonable security for that data and should retain data only as long as is necessary to fulfill a legitimate business or law enforcement need.*

To address the concern that companies may not keep their privacy promises when they change their privacy policies, FTC staff proposes:

- *Companies should obtain affirmative express consent from affected consumers before using data in a manner materially different from promises the company made when it collected the data.*

To address the concern that sensitive data – medical information or children's activities online, for example – may be used in behavioral advertising, FTC staff proposes:

- *Companies should only collect sensitive data for behavioral advertising if they obtain affirmative express consent from the consumer to receive such advertising.*

FTC staff also seeks comment on what constitutes "sensitive data" and whether the use of sensitive data should be prohibited, rather than subject to consumer choice. The staff is seeking additional information about whether tracking data is being used for purposes other than behavioral advertising and whether such secondary uses, if they occur, merit some form of heightened protection. Because online advertising supports free Web content and other

benefits, the choice by consumers not to participate in behavioral advertising could reduce the availability of these benefits. The FTC is seeking comments from all interested parties on the proposed principles, including the costs and benefits of offering choice for behavioral advertising. Comments can be sent to BehavioralMarketingPrinciples@ftc.gov."

⁷ The organisation represents the internet marketing industry. It has created a dedicated website, www.allaboutcookies.org, as a resource for internet users, website owners and marketers that explains what the cookies technology is all about www.iabeurope.ws

⁸ www.networkadvertising.org The organisation has developed a set of self-regulatory principles with the full review and support of the Federal Trade Commission (FTC). Amongst other things, they require NAI member companies to post a notice to consumers about the use of 3rd party cookies, and provide an opt-out mechanism for the targeted ad programs they provide.

⁹ AOL has recently bought Tacoda, www.tacoda.com, a behavioural targeting firm