

January 31, 2011

Via electronic filing

Hon. Donald S. Clark
Federal Trade Commission
Office of the Secretary, Room H-135 (Annex P)
600 Pennsylvania Avenue, NW
Washington, DC 20580

To the Federal Trade Commission Regarding the Proposed Framework to Protect Consumer
Privacy

Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses
and Policymakers

Comments of DataXu, Inc.

Introduction and Summary

DataXu appreciates the opportunity to provide comments in reply to the Federal Trade Commission's request in "Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers." Specifically, these comments address the Commission's request for comment on a do-not-track (DNT) list.

DataXu contributed to and endorses the industry-wide comments submitted by the Interactive Advertising Bureau (IAB). Section V of the IAB's Comments — A Preliminary FTC Staff Report on Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers – Project No. P095416 addresses an issue that compels DataXu to present its own comments, when it states the following:

The Commission has appropriately determined that certain data practices do not require choice at all; however, the enumerated list of practices not requiring choice should be broadened to include other legitimate practices, including collection and use for operational purposes. Online advertisers routinely use technology companies to collect data for such operational purposes as ad delivery, ad reporting, site rendering, accounting, opt-outs, and site customization, which are necessary for the seamless workings of the Internet, support of applications and services expected by consumers, and necessary for a functioning online economy.

One example of "many legitimate data practices" is the use of third-party cookies for ad measurement, analytics and optimization. It is critically important to the advertising industry that the proposed framework does not impair an advertiser's use of cookies to measure online ad effectiveness. In fact, third-party cookies that only collect ad-related data to enable measurement, analytics and optimization offer a positive alternative to traditional online behavioral advertising (OBA) and consumer profiling.

Specifically, DataXu asks the Commission to clarify that an advertiser's use of cookies solely for ad measurement, analytics and optimization is a "commonly accepted practice" that does not require consumer choice.

Background and Comments

DataXu provides a real-time analytics and optimization media management platform that helps Fortune 500 brands understand which advertising is valuable by measuring ad placements and attributing them to purchase activity on an advertiser's website. For agencies, DataXu offers a system to transform their business models to offer digital advertisers enhanced return on their investment while reducing agency operating expenses through marketing automation.

The DataXu platform was developed by MIT technologists, including Board Member and Co-Founder Ed Crawley (a recent recipient of the [Bernard M. Gordon Prize for Innovation in Engineering and Technology Education](#).) This powerful technology does not need to track users across non-affiliate web sites or target cookies, but instead uses aggregate statistical data to infer the proper placements of ads. This helps advertisers improve performance, lower media costs, and derive unique analytical insights.

Internet-enabled innovations like DataXu's system are not only enhancing corporate productivity and competitiveness, but are the engines of domestic job creation. Indeed, DataXu was created and launched in the midst of the "Great Recession" and has -- in the last 24 months -- created more than 70 high-wage U.S. jobs, with plans to create more than 100 additional jobs in the next 18 months.

On Page 43 of the framework document, the Commission staff seeks comment on "practical considerations that support excluding certain types of companies or businesses from the framework – for example, businesses that collect, maintain, or use a limited amount of non-sensitive consumer data."

DataXu urges the Commission to distinguish use of third-party cookies to measure online ad effectiveness from use of cookies for OBA. Most online advertisers use third-party cookies to record the fact that an ad was displayed to a browser. This information is required to understand whether the ad resulted in a subsequent visit to the advertiser's web site. The correlation of an ad displayed to a browser and a later purchase or other conversion event on an advertiser web site is known as "attribution measurement." Advertisers use this information to allocate their internet ad spending towards placements that cause more conversions and away from those that fail to drive web site actions. It can also be a key requisite for validating contractual obligations between advertisers and publishers.

Importantly, advertisers no longer rely only on simple "click through" attribution because research indicates that online display ads cause consumers to consider and even purchase advertised goods regardless of whether a consumer clicked on any ads. (Indeed, only eight [8] percent of consumers are said to click to internet display ads; but of course zero percent of consumers click on TV ads.)

In addition to measurement, third-party cookies are used by ad servers to “frequency cap” ads so that a browser does not see the same ad tens or even hundreds of times. Cookies are used to ensure a reasonable frequency of ad exposure (e.g., three times in a week) so that the advertising does not reach a saturation point, which is both annoying for the consumer and wasteful for the advertiser. Use of third party cookies to frequency cap an ad campaign is both good for consumers’ internet experience as well as advertisers’ return on investment (ROI). Beyond simple measurement for attribution and frequency capping, third-party cookies enable companies like DataXu to perform advanced analytics and optimization that increases the advertiser’s ROI of digital advertising expenditures. This can be, and is, done without any OBA or behavioral targeting. DataXu creates and continuously evolves campaign-specific algorithms that predict which impressions are likely to yield specific actions on the advertiser’s site. The company’s technology does not need to track users across web sites or target cookies, but instead uses aggregate statistical data to infer the proper placements.

The Commission should recognize that entrepreneurial activity, the very engine of American enterprise and job growth, should be empowered to solve consumer concerns. The use of such advanced machine-learning techniques to improve advertising ROI is a compelling example of how our innovation economy can serve business interests, while setting “minimally invasive” consumer data collection best practices.

The existence and use of third-party technology vendors propels innovation and promotes a healthy and competitive environment. By writing regulations that are severely restrictive of 3rd party activities, but which allow 1st party activities broad latitude, the FTC is creating an incentive for vertical integration between the media and advertising industry, so that activities can be considered “1st party.” It is encouraging the accumulation and consolidation of market power by a small handful of large companies in an industry already witnessing monopolistic threats and the convergence of television, internet and cable. Inevitably the consumer will face limited choices and increased prices for media, content and online services.

Conclusion

For the foregoing reasons, DataXu urges the Commission to clarify that an advertiser’s use of cookies solely for ad measurement, analytics and optimization is a “commonly accepted practice” that does not require consumer choice.

Respectfully submitted,

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