



February 18, 2011

Federal Trade Commission  
Office of the Secretary  
Room H-113, Annex  
600 Pennsylvania Avenue, NW,  
Washington, DC 20580.

**RE:** FTC Staff Preliminary Report on Protecting Consumer Privacy -  
File No. P095416

**Dear Commissioners and Staff:**

Datran Media appreciates the opportunity to participate in the public comments on the Preliminary FTC Staff Report entitled “Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers” (the “Report”). By way of background, Datran Media is a leading digital marketing technology company that helps advertisers and publishers discover and reach their ideal audiences. Datran Media provides digital advertising solutions, audience measurement and analytics, email marketing services and media monetization. More than 1,000 top consumer brands use Datran Media to deliver advertising campaigns that exceed their branding, acquisition, retention and monetization goals.

As a leading voice in the online behavioral advertising area, Datran offers these comments on the Report’s “Do-Not-Track” proposal.

**DO-NOT-TRACK.**

The Commission advocates a uniform and comprehensive consumer choice mechanism for online behavioral advertising, *i.e.*, a “Do-Not-Track” mechanism. Report at 63 - 69. The Commission suggests that the Do-Not-Track mechanism could be implemented “by legislation or potentially through robust, enforceable



self-regulation.” *Id.* at 66. As set forth below, Datran is in favor of a clearly defined enforceable Do-Not-Track mechanism that offers meaningful choice to consumers.

A. The Scope of “Do-Not-Track” Should Be Clearly Defined and Limited to the Tracking of User Behaviors on Third-Party Websites for Purposes of Targeted Advertising

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The Report suggests that the Do-Not-Track mechanism would apply in the “behavioral advertising” context. However, the Commission does not offer a clear definition of behavioral advertising, and we are not aware of any industry-accepted definition. Datran believes that in order to implement an effective Do-Not-Track mechanism, the Commission must define clearly what Do-Not-Track means.

For example, would Do-No-Track encompass such things as tracking for (i) measurement, which is used to determine the aggregate audiences a campaign is reaching, (ii) analytics, which are used to determine how aggregated users interact with campaigns, or (iii) attribution, which is used to determine how credit for payment of advertising dollars is assigned to publishers and networks. These practices do not rely on the development of detailed individual profiles or the targeting of individuals for tailored advertising messages and thus do not carry with them the same types of privacy concerns as behavioral tracking that does rely on individual profiles. Also, in another section of the Report, the Commission proposes that consumer choice would not be necessary for certain “commonly accepted practices,” Report at 53-56, but the Commission does not address whether the “commonly accepted practices” exception would apply in the Do-Not-Track context and, if so, what would the commonly accepted practices be. Datran believes that these ambiguities in the parameters to Do-No-Track require answers in order for a Do-Not-Track mechanism to be effective.



Datran advocates a definition of Do-Not-Track that directly addresses the principal privacy concern of consumers. In our experience, consumers are most concerned with the privacy implications that flow from the practice of compiling detailed profiles of individual user by tracking them across third-party websites for the purpose of delivering advertisements targeted to an individual. We believe that defining Do-Not-Track to address this practice – and this practice only – provides clear, meaningful boundaries consistent with consumer concerns. Under this definition, things like measurement, analytics and attribution reporting – which do not give rise to the same privacy concerns as third-party website tracking aimed at building individual behavioral profiles – would fall outside the definition of Do-Not-Track. And first-party tracking and targeting would not be subject to Do-Not-Track because consumers both value first-party tracking and can easily opt-out of such tracking by choosing not to visit the website that offers first-party tracking.

In sum, Do-Not-Track needs to be clearly defined so that companies and consumers alike understand the regulatory environment in which they are functioning. A Do-Not-Track mechanism that applies to the collection of data about an individual consumer across third-party websites for the purposes of using such data to deliver individually targeted advertising based on this data provides this clear definition and is responsive to consumers' privacy concerns.

B. The Goal of Do-Not-Track Should Be Meaningful Choice

In May 2010, PreferenceCentral – a service run by Datran and described more fully below – performed a survey of 1,050 Internet users.<sup>1/</sup> The survey asked consumers to state their preferences for tailored online advertising within a behavioral economic context of real world, value-for-value trade-off options.

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<sup>1/</sup> We have attached a summary of relevant findings of the survey for the Commission's consideration. The full report can be downloaded at [www.preferencecentral.com/consumersurvey/](http://www.preferencecentral.com/consumersurvey/).



The survey revealed several interesting facts relevant here. First, Internet users are more likely to prefer targeted online ads when they are asked to make real-world, value-for-value tradeoffs, such as access to free content in exchange for targeted ads. Second, Internet users' attitudes and preferences significantly shift when consumers are provided with education about behavioral targeting or when they are offered the ability to control targeted ad exposure. We believe that this survey demonstrates that consumers value targeted advertising, particularly when consumers receive valuable content in exchange and when they retain control over their exposure to targeted ads.

Because online behavioral advertising increasingly supports the convenient access to Internet content that consumers want, Datran believes that the goal of the Do-Not-Track mechanism should not be to stop tracking, but rather to give the consumer meaningful choices about whether they want to be tracked and how the collected data can be used. Many of the Commission's questions regarding Do-Not-Track revolve around the issue of how a Do-Not-Track mechanism could provide transparent, meaningful choice to consumers in an effective manner. At the most basic level, Datran believes that meaningful choice in the Do-Not-Track context means choice that enables consumers to understand and control their targeted advertising experiences.

Datran believes that a persistent browser-based mechanism along the lines of what the Commission has suggested is the right approach to Do-Not-Track. The benefit of a browser-based mechanism – rather than a tool that blocks ads – is that consumers can communicate their preferences about not being tracked directly to the website publisher. The Commission should eschew endorsing all or nothing tools to enforce Do-Not-Track that would impede consumers' ability to express individualized preferences to specific publishers because publishers are in the best position to determine how to honor consumer choice. For example, a website has the ability to offer free access to content if a



consumer agrees to opt in to tracking or, alternatively, to require payment for access to content if a consumer rejects targeted advertisements. We believe that this type of functionality is consistent with consumer preferences as demonstrated by our research described above, and would allow publishers to earn ad revenue or access revenue, which will support high quality website content.

Once a Do-Not-Track mechanism is in place, businesses will be incentivized to provide choice to consumers, and the market will dictate what choices consumers believe are meaningful. Put another way, if consumers require different or more sophisticated choice than a web publisher offers, they will go elsewhere. This will incentivize the market to develop new and better choices to consumers and to engage in best practices. Consequently, the Commission should not be overly prescriptive on what those choices will be – i.e., the Commission does not need to determine which more granular choices, such as category-level (e.g. market segments or product types) or company-level choices, should be available to consumers. The Do-Not-Track mechanism addresses the key privacy concern. The market should be encouraged to innovate and offer more granular choices based on consumer demand. If the FTC is too prescriptive in its approach and expresses a preference for certain types of choices rather than being broadly supportive of the choices in which consumers express interest, it could have a negative effect on the choices available to consumers and ultimately stifle innovation.

Datran's experience in offering innovative consumer choice experiences illustrates this point. Datran's PreferenceCentral is a service that enables companies to comply with the Self Regulatory Principles while providing consumers the opportunity to make brand-level choices. PreferenceCentral offers choice to consumers across brands, rather than ad networks. This has three advantages for the consumer. First, the brand opt-out is honored across



all ad networks so that consumers do not have to opt-out of multiple ad networks. Second, by opting out of a brand rather than an ad network, a consumer can continue to get the benefits of tracking – access to content and personalized ads – while having control over how the collected data is used. Third, consumers find it more meaningful to make a choice over a brand rather than choosing one ad network over another. In this way, PreferenceCentral offers meaningful choice to the consumer because the consumer can continue to receive the advertisements that they want from the brands that they trust. Our research shows that brand control over ads has a meaningful impact on the consumer's experience and increases their comfort level. As long as the Commission is not overly prescriptive on how choice is to be delivered, consumer friendly services like PreferenceCentral will continue to be developed.

#### C. Legislation Versus Self Regulation

Datran is skeptical that Do-Not-Track can be effectively enforced through self regulation alone. The Self-Regulatory Principles for Online Behavioral Advertising (“Self-Regulatory Principles”) contain many good ideas for self regulation in the online behavioral advertising area, and are the product of a lot of hard work by experienced professionals of online behavioral advertising. However, in Datran's experience, the Self-Regulatory Principles have not succeeded in effectively governing behavioral advertising for several reasons including (i) because the industry has been slow to adopt them and (ii) because many of the rules established fail to meet the Self-Regulatory Principles' stated goals.

Specifically, the Consumer Choice principle is failing to give consumers meaningful choice because it relies on a cookie-based ad network opt-out system that is obsolete and incomplete. It's a commonly understood, but little spoken of truth, that consumers do not understand the distinction between different ad networks. When a consumer is presented with a choice of ad networks to opt-out



from the consumer is, at best, confused. This kind of granular choice is not what consumers want or need. In addition, the cookie-based system does not work because cookies are not durable (i.e., frequently deleted) and incomplete (even if a consumer downloads opt-out cookies for all ad networks today, when there is a new entrant tomorrow that consumer will be tracked again). Rather than promoting a cookie-based opt-out registry, a properly implemented Do-Not-Track mechanism reflecting the Commission's proposal and our comments above would be the best approach for consumers and industry.

Additionally, the industry's implementation of the Transparency principle has had mixed success. The Ad Option Icon program by the Digital Advertising Alliance has potential if the industry adopts it and ensures that it gives consumers a meaningful choice experience. Unfortunately, the choice experience required by the Principles is not meaningful because it relies on the cookie based opt-out and also because companies that use the Ad Option Icon are not required to link to a universal opt-out mechanism. For example, some publishers use the Ad Option Icon to provide an opt-out of only those networks that are currently running ads on the specific webpage – which is all that is required under the Self-Regulatory Principles. While this is certainly an improvement over no disclosure, it is still only a half measure. For those consumers that do want to opt-out, the best case is frustration because he or she would not be able to easily find the universal Do-Not-Track mechanism. The worst case will be a misled consumer who thinks that opting-out of the ad networks presented will mean he or she has universally opted-out.

Nevertheless, Datran believes that any Do-Not-Track legislation should build upon and incorporate some of the positive aspects of the Self-Regulatory Principles. These principles include, for example, an enhanced notice requirement that emphasizes transparency, a principle that the Commission has endorsed in the Report. If improved, an in-ad notice program such as the Ad



Option Icon program has great potential. In fact, Aperture, Datran's ad delivery service already includes the Ad Option Icon in every impression it serves. The Principles also address many other consumer concerns that the Commission has addressed in the Report, including clarifying data security requirements and limiting the use of sensitive data. We believe that any legislation should give effect to these principles and encourage their adoption; the lack of universal adoption has so far been the greatest barrier to successful self-regulation.

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We appreciate the opportunity to be heard on the very important issues raised above, and look forward to actively participating with the Commission in shaping the future of privacy in the United States.

Sincerely yours,

Steven Vine  
Chief Privacy Officer  
Datran Media





## *Consumer Perspectives on Online Advertising 2010*

*PreferenceCentral Benchmark Research Study,  
with support from Survey Sampling International*

# Research Plan

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- **Survey designed by Dr. Karl Lendenmann, VP Marketing & Analytics, Datran Media**
- **Online questionnaire was completed by 1050 Internet Users 18 to 64 years of age**
  - Fieldwork started May 21 and was completed May 28
  - Completion rate of 65%
  - Average duration: 10 minutes
- **Survey Sampling International (SSI) randomly selected Internet Users:**
  - Selecting 50% panel & 50% online “real-time” recruited
  - Screened for age and gender to assure proportionally-representative sample
  - Sampling across days-of-week and day-parts to minimize DOW-TOD biases
- **Error estimates are +/- 3% at 95%-confidence level (with P = .5)**



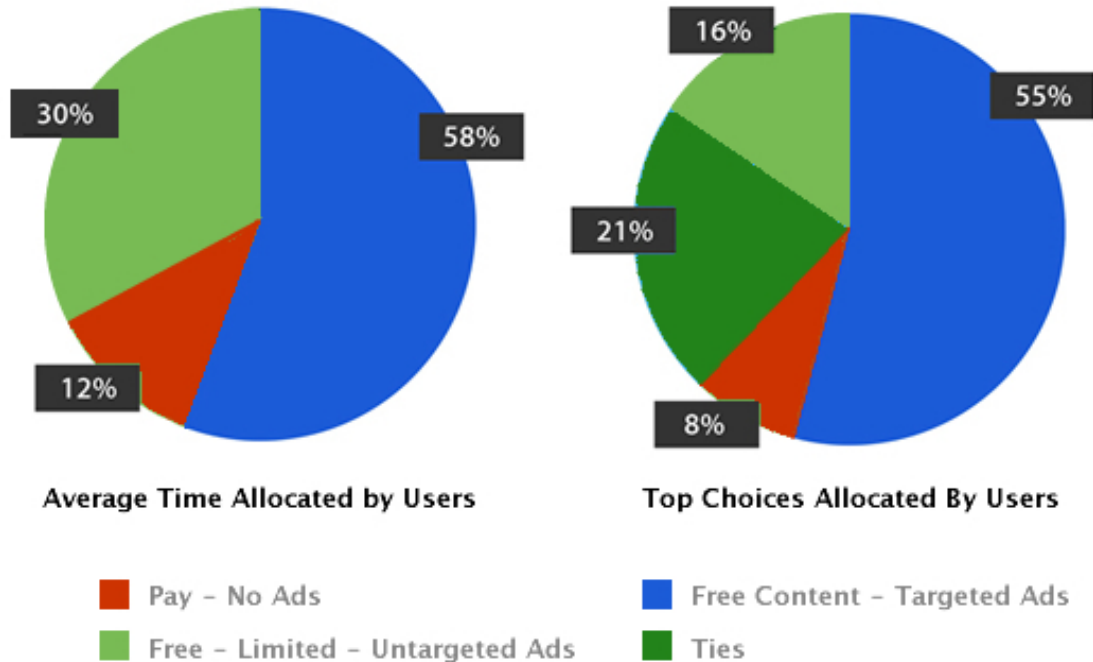
# Questionnaire Outline

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- **Current-State: “Current-state attitudes toward online advertising**
  - Agreement ratings toward tailored online advertising
  - **“Trade-off”** between free content-targeted ads vs. limited content-untargeted ads vs. pay-no ads
- **Behavioral Targeting: Impact of behavioral targeting on attitudes & trade-off**
  - Desire for tailored online advertising,...based on following behavior
  - Awareness that ads are commonly tailored by tracking online behavior
  - Change in comfort-level based on awareness and/or education
  - Agreement ratings & **trade-off** – Note shifts from “current-state”
- **Control Solution: Interest & reactions to consumer control solution (PreferenceCentral)**
  - Interest and motivations for using
  - Perceived value of key components: Control, Transparency, and Monitoring & Enforcement
  - Change in comfort-level based on availability of PreferenceCentral – Note shift
  - Agreement ratings & **trade-off** – Note shifts
- **Audience Data: Relative comfort with types of audience data**
  - Type least comfortable and then most comfortable with advertisers using
  - Comfort ratings by type
  - Change in comfort-level based on data being anonymous – Behavioral & Contextual
- **Profiling: Profile items: Internet usage & demographics**

# Current-State – Trade-Off Favors “Free Content with Tailored Ads”

- In trade-off, a majority (55%) prefer “free content-relevant, targeted” ads
- Only 8% show a willingness to pay for ad-free content



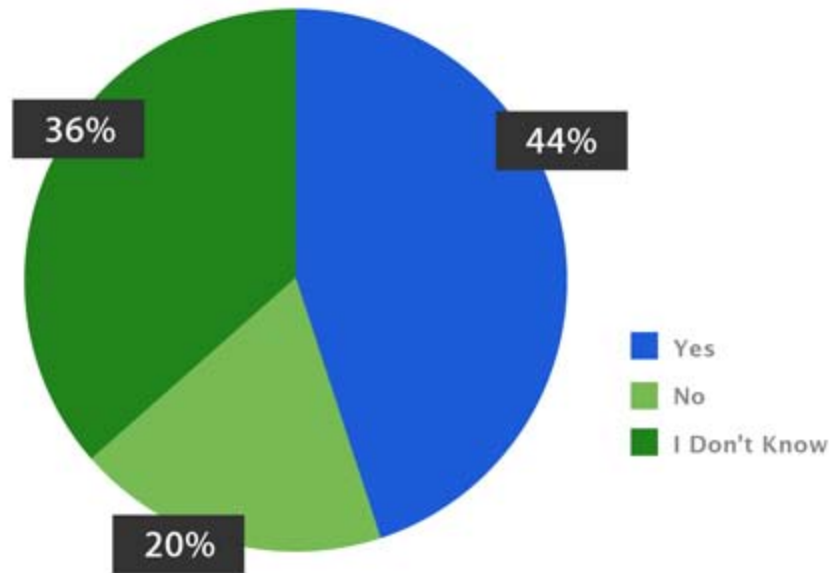
What proportion of your time online would you prefer to spend among each of the options below? Please allocate 100% of your time online between these three alternatives.  
\_\_\_\_ I prefer to receive free online information and services in exchange for relevant advertising targeted to me  
\_\_\_\_ I prefer to pay for online information and services in exchange for no online advertising  
\_\_\_\_ I prefer to receive free, but somewhat limited online information or less functional services in exchange for untargeted and less relevant advertising

Base total = 1050 (Error estimate = +/- 3% at 95% CL)



# Behavior Targeting – Websites Visited to Show Tailored Ads

- Minority of consumers desire tailored ads, when given this single, simple-option
  - Primary reason: Dislike for annoying online ads – Secondary is privacy

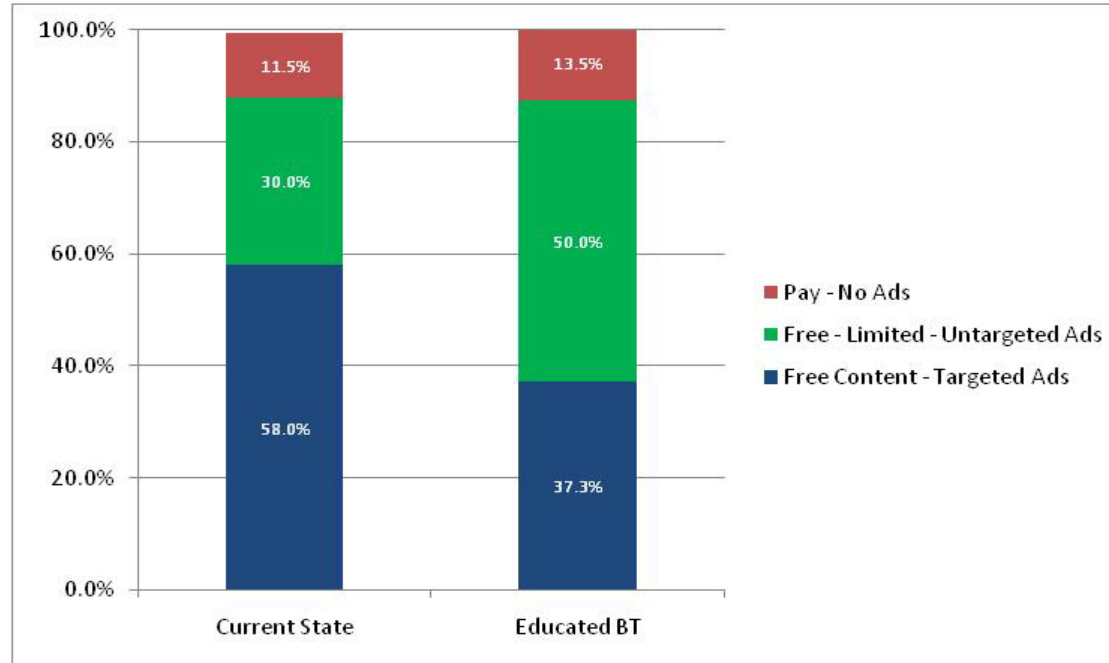


*Q3: Would you want the websites you visit to show you ads that are tailored to your interests?*

*Base Total = 1050 (Error estimate = +/- 3% at 95% CL )*

# Behavioral Targeting -- “Free-Targeted” Preference Is Dramatically Reduced

- “Awareness” reduces trade-off for “free content-targeted ads” (- 36%)
- Consumers shift to “free limited content-untargeted ads (+63%)
- Percent showing a preference for paying for ad-free content remains close to 10%



Q8. Now, what proportion of your time online would you prefer to spend among each of the options below? Please allocate 100% of your time online between these three alternatives.

\_\_\_\_ I prefer to receive free online information and services in exchange for the use of my data to target relevant advertising to me

\_\_\_\_ I prefer to pay for online information and services in exchange for no online advertising

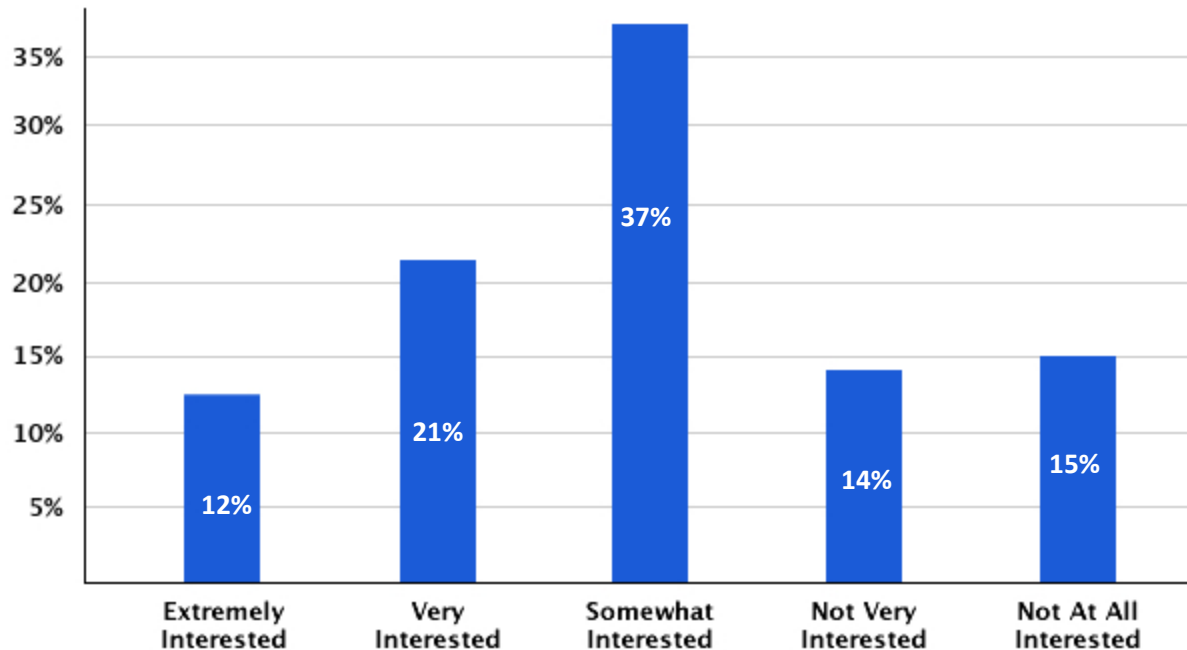
\_\_\_\_ I prefer to receive free, but somewhat limited online information or less functional services in exchange for untargeted and less relevant advertising that does not use my data

Base total = 1050 (Error estimate = +/- 3% at 95% CL)



# Consumer Control Solution – Consumer Interest in Using

- **70% of internet users are interested in using a consumer control solution**
  - A third are either extremely or very interested
- **Primary reason: Control of ads seen/not seen – Secondarily over information**

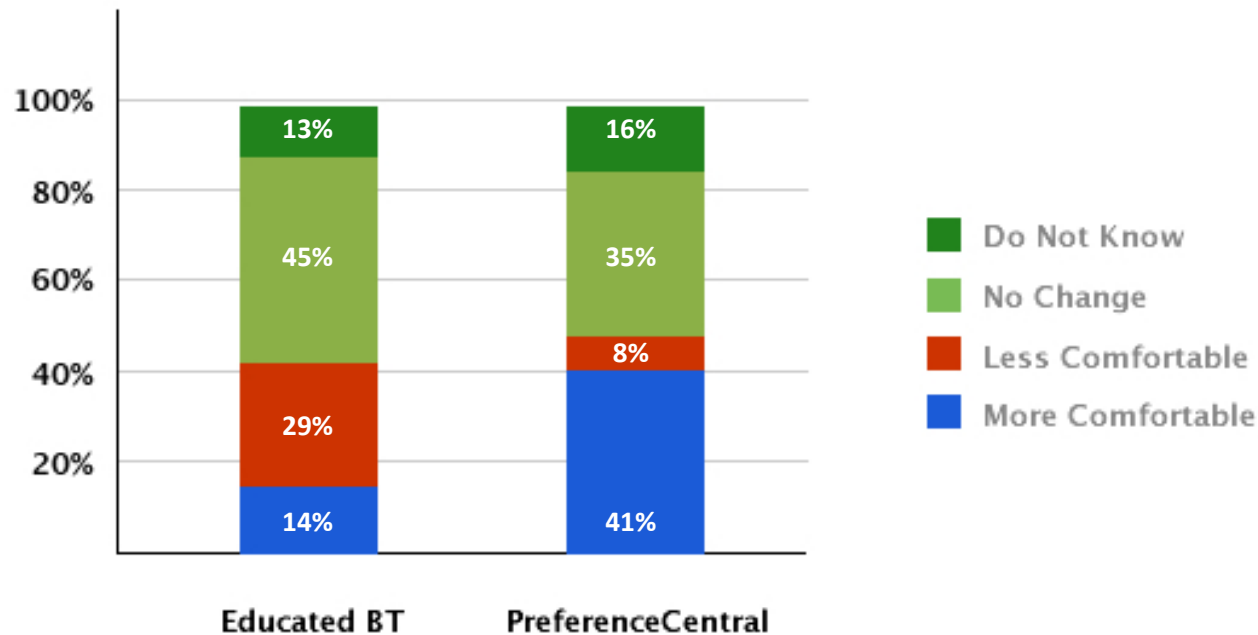


Q9: Based on this description of PreferenceCentral, how interested would you be in using this free service?

Base Total = 1050 (Error estimate = +/- 3% at 95% CL )

# Consumer Control Solution -- Assurance Over Behavioral Targeting

- Availability diminishes consumers' concerns about behavioral targeting
  - 41% become more comfortable



*Q11a: Does the availability of PreferenceCentral change your attitude towards the use of behavioral information to target relevant online ads*

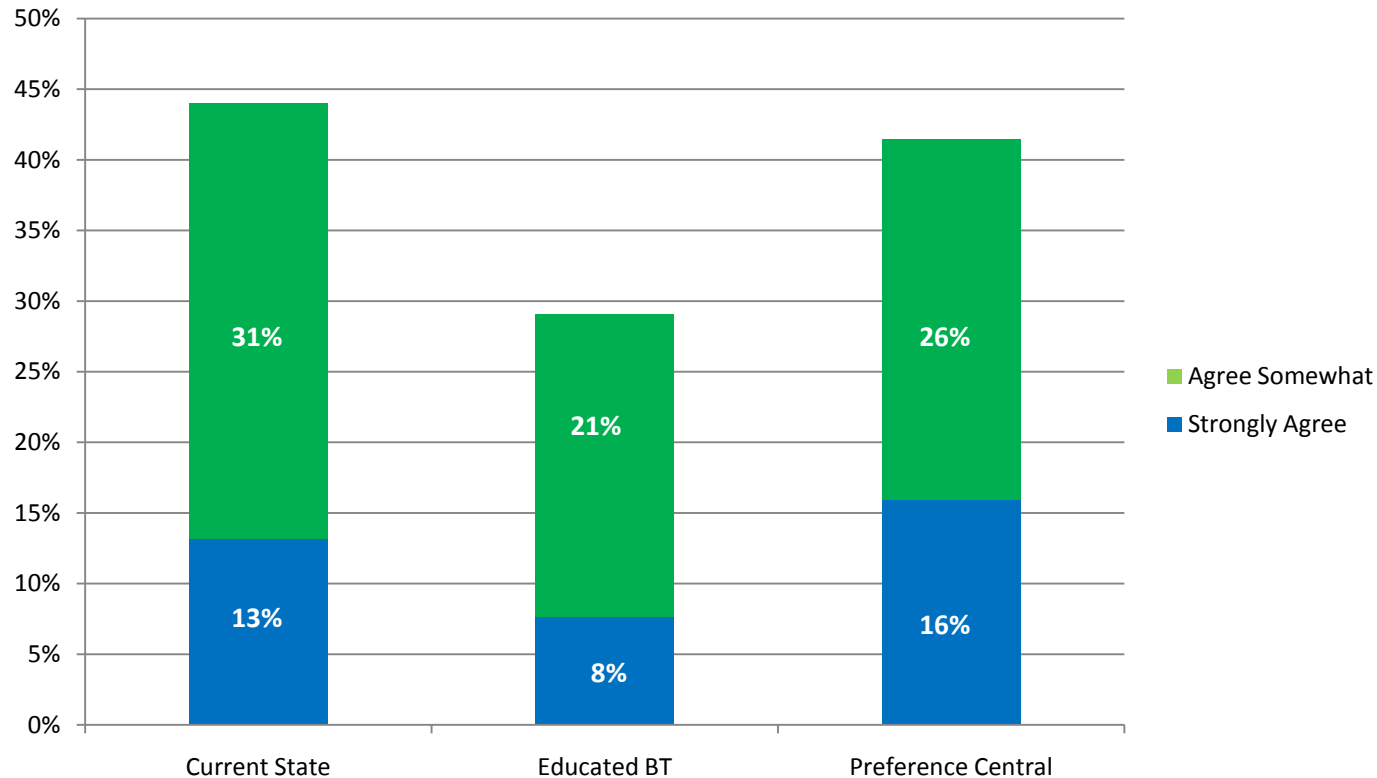
Base Total = 1050 (Error estimate = +/- 3% at 95% CL)





# Control Solution -- Willingness to Receive Free Content-Targeted Ads

- Control Solution assures & restores their willingness to prior “current state” levels



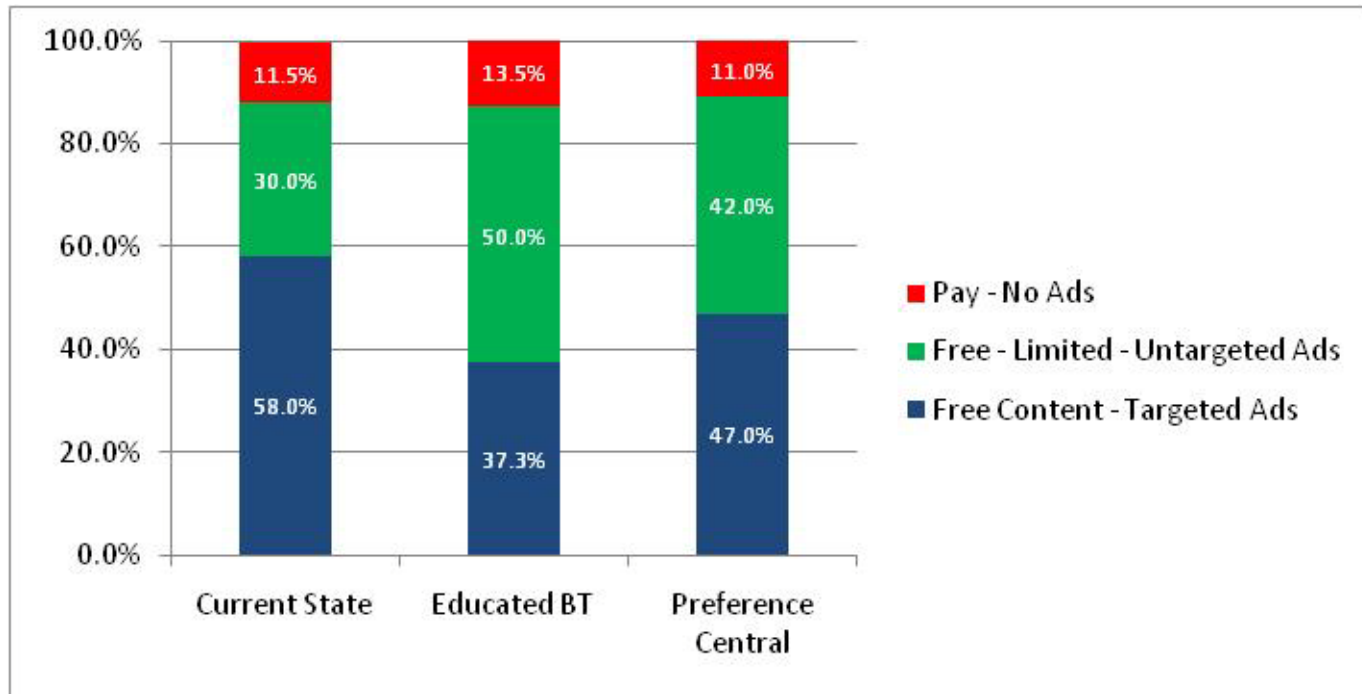
**Q12: I am willing to receive free online information and services in exchange for relevant advertising targeted to me**

Base Total = 1050 (Error estimate = +/- 3% at 95% CL)



# Control Solution – Re-inflates Trade-Off for “Free Content-Targeted Ads”

- Control solution generates interest & somewhat restores “free-tailored” preference
  - 27% increase for “free-tailored” option
- A steady minority of consumers state a preference for paying for ad-free content



Q: What proportion of your time would you prefer to spend among each of the options below?

Base Total = 1050 – Classification based on highest-point allocation

