



March 18, 2014

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

<https://ftcpublic.commentworks.com/ftc/springprivacyworkshop/>

Re: Spring Privacy Series: Mobile Device Tracking, Project No. P145401

I hereby submit the attached comments on behalf of the Marketing Research Association (MRA) regarding the FTC's Spring Privacy Series seminar on Mobile Device Tracking on February 19.

Sincerely,

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Director of Government Affairs
Marketing Research Association (MRA)

Comments of the Marketing Research Association

To

The Federal Trade Commission

On the Spring Privacy Series: Mobile Device Tracking, Project No. P145401

Instead of asking hundreds of questions of respondents over a series of surveys to tease out their preferences and interests when visiting retail stores, why not just track their real-world behavior once they get there? That is one promise behind the use of location tracking technology in the retail shopper space for research purposes. However, we agree with the Federal Trade Commission (FTC) that the technology “raises a number of potential privacy concerns” and appreciate the FTC hosting a workshop on the topic on February 19.¹

The Marketing Research Association (MRA) is a non-profit national membership association representing the survey, opinion and marketing research profession.² MRA promotes, advocates for, and protects the integrity of the research profession, and works to improve research participation and quality.

MRA first looked at this issue in late 2011, when we learned about a controversy involving Path Intelligence. The company launched a survey on Black Friday in two U.S. malls, tracking shoppers’ movements by the signals emanating from their cellular phones. It was intended to last through New Year’s Day, but Senator Chuck Schumer (D-NY) intervened³ and the study was stopped.⁴ Customers were notified of the survey via small signs, and the only way for them to opt out was to turn off their phones.

What are the research uses/purposes for this technology? Speakers at the FTC seminar focused on the insights into how establishments could improve their customer’s experience in their brick-and-mortar locations. Shopper location tracking helps evaluate how well a store and its products and services are laid out for customers, how people move through the store and how quickly they can find what they are looking for.

¹ <http://www.ftc.gov/news-events/events-calendar/2014/02/spring-privacy-series-mobile-device-tracking>

² The research profession is a multi-billion dollar worldwide industry, comprised of pollsters and government, public opinion, academic and goods and services researchers, whose members range from large multinational corporations and small businesses to academic institutes, non-profit organizations and government agencies.

³ <http://schumer.senate.gov/Newsroom/record.cfm?id=334975>

⁴ http://money.cnn.com/2011/11/28/news/economy/malls_track_shoppers_cell_phones/

As explained in our recent white paper on facial recognition technology's use for marketing research,⁵ there are other high-tech ways to measure these behaviors. There are also lower-tech means, such as focus groups, opinion surveys, and mystery shopping. No one tool will be the perfect solution, which means marketing researchers and their clients have to experiment to determine which mode or methodology might be appropriate for any given circumstance.

However, while the FTC seminar discussed many different uses for the location tracking technology ranging from the theoretical to the fantastic, research purposes are comparatively limited. ***Other uses may involve either an intense interest in or a complete focus on individuals, but marketing research is only interested in aggregated groups.*** That concern about the aggregate rather than the individual is why Glenn Tinley, president and founder of Mexia Interactive, suggested at the FTC workshop that the topic would be better referenced as "observing" rather than "tracking," using a term more appropriate for research.

MRA's position

MRA has taken the position since this issue first arose that location privacy in the context of retail shopper observation demands a workable opt out with appropriate transparency of the observed activity (while opt in should be pursued as a research profession best practice).

In pursuit of such a workable opt out, we do not look kindly on the only means to ending the tracking being for consumers to turn off their cellular devices' antennae. In his presentation at the FTC seminar, independent researcher Ashkan Soltani⁶ referred to the signals coming from such an antennae as the device's "heartbeat," so we do not think it makes sense to turn it off.

There are likely steps that can be taken to make the shopper tracking more transparent to consumers and ways to make the opt-out easier, such as prominent QR codes for consumers to scan with their mobile phones and notifications with one-step opt-out instructions delivered directly to consumers' cell phones. The recent launch of a mobile location analytics opt out website,⁷ in conjunction with a code of conduct for mobile location analytics firms,⁸ are good examples of innovation in the private sector towards this goal.

⁵ "The Marketing Research Applications of Facial Recognition Technology: A White Paper for the NTIA Multistakeholder Process." February 6, 2014. http://www.marketingresearch.org/sites/mra/files/pdfs/MRA_facial-recognition-MR-applications_2-6-14.pdf

⁶ Soltani's presentation slides: <http://ashkansoltani.files.wordpress.com/2014/02/soltani-ftc-mobile-device-tracking-2014-02-19.pdf>

⁷ <http://smartstoreprivacy.org/>

⁸ <http://www.futureofprivacy.org/2013/10/22/schumer-and-tech-companies-announce-important-agreement-to-ensure-consumers-have-opportunity-to-opt-out-before-stores-can-track-their-movement-via-their-cell-phones/>

However, there is room for more innovation and we feel the FTC needs to allow the private sector time to figure it out.

At the FTC seminar, Seth Schoen, senior staff technologist at the Electronic Frontier Foundation, focused a lot of the blame for any privacy concerns not on the providers of location technology, but on cell phone manufacturers and programmers. Schoen asked why the mobile devices are “screaming an identifier to everyone nearby” and why technical standards make the device identifiers “unchanging and persistent.” He also suggested a need to educate consumers about how their phones operate and what they are doing, since there are minimal barriers to entry into the location tracking business. He even posited that someone could develop a mobile app to turn off a device’s MAC address, which could be a better solution for some consumers than opting out from a set number of companies’ tracking.

Separate from the FTC seminar, the American Civil Liberties Union’s Chris Calabrese picked up this point. Speaking at a privacy event at the Microsoft Policy Center on March 5, he suggested that consumer mobile devices could someday be able to automatically communicate with real world sensors, like those seeking out location data, to inform them of the kinds of privacy choices each individual consumer wants to make.

Unfortunately, these kinds of advancements in thinking and technology are not likely to see fruition through FTC regulation. However, continued enforcement by the agency of clearly unfair or deceptive behavior will help companies focus on new ways they can deliver desired advancements in both consumer privacy and business performance.