

**Office of the Secretary
Mr. Donald S. Clark
Federal Trade Commission
Room H-113 (Annex X)
600 Pennsylvania Avenue, NW
Washington, DC 20580**

Re: Comments for November 16 Cross Device Tracking Workshop

Submitted Via <https://ftcpublic.commentworks.com/ftc/crossdeviceworkshop/>

Dear Secretary Clark,

Rocket Fuel Inc. provides these comments in advance of the Federal Trade Commission's public workshop scheduled for November 16, 2015, entitled "Cross-Device Tracking" to provide a point of view on data usage and privacy considerations. These comments are related to cross device identification techniques related to advertising technology.

The ability to identify and reach the same consumer across more than one device represents the next, logical step in marketing methodology, and has become an important area of innovation in ad tech. When done in a responsible and privacy-friendly way, cross device identification is a reasonable and unobtrusive way to anonymously identify intended individuals, and provide them with a useful marketing message. At Rocket Fuel, for example, we use technology to make predictions based on known, anonymous data points, and the consumer remains anonymous to us throughout our prediction process. This means more tailored messages can be delivered to consumers, better ad supported content and services can be made available online and on consumers' mobile devices, and less expensive products may be made available to consumers due to more efficient ad spend.

While the technology used to identify the same anonymous individual across different browsers and devices may be different than technology used to identify a user's activity over time on the same device and browser, it's still possible to provide transparency, notice and choice in the same way as what is presently available. The Digital Advertising Alliance's (DAA) Self-Regulatory Principles for Interest-Based Advertising and Self-Regulatory Principles for Multi-Site Data successfully detail a framework for providing transparency and notice to consumers. As companies like Rocket Fuel predict the identity of the same user across more than one device to provide them with more relevant and useful advertising, and increase the efficiency of companies' marketing budgets by cutting down on wasted ad spend, we are able to do so in a responsible manner.

In principle, cross device identification techniques bear some similarity to long-standing, accepted practices, such as the use of targeting or segments to predict that an individual may be interested in a particular product or service that a business offers. Cross device identification allows companies to do the same thing - use one fact or educated guess about an individual to choose which offer or product to advertise.

Probabilistic vs. Deterministic

There are many different methodologies that ad tech companies use to “connect” more than one device, web browser or identity to a single consumer. But at a high level and for convenience, they are classified into two methodologies: “deterministic” methods and “probabilistic” methods.

Deterministic methods for identifying the same individual across different devices or web browsers often rely on first party data or personally identifiable information (PII), such as an account login or email address. Deterministic methods are generally more accurate, because they rely on authenticated, consistent account logins or personal information. Generally speaking, deterministic methods should be used only after the user has provided consent to do so.

Probabilistic methods for identifying the same individual across different devices or web browsers are not based on first party data or PII, so other data points that may include the location of a device, anonymous identifiers like cookies or a unique combination of anonymous factors such as browser plugins and installed font packages, may be used. Identifications may also rely on the individual’s interaction with advertising on their device, in which case a company relying on probabilistic means of cross device identification would use factors such as time of day, IP address or UserAgent to make their prediction. It’s possible that in such cases, more than one individual uses the same device, making probabilistic methods less accurate than deterministic methods, but also more privacy friendly. By definition, probabilistic methods for identifying the same individual across more than one device or browser are not exact, and each suspected identification is associated with a probability that the match is, in fact, correct.

Given the differences in the types of data used to make cross-device associations using probabilistic versus deterministic methods, and the privacy implications of each, there could be different criteria for informing how consumers should be provided with notice and a means of expressing their choice, how the consumer’s expressed choice should be acted upon, and how the cross-device data should be used.

It’s also worth noting that there aren’t heightened security risks related to cross device identification, compared to standard data collection practices. There are not new types of client-side interactions that need to take place or new files that are stored locally. Since the determination is being made on the server side, as a probabilistic calculation or deterministic choice, consumers are not in danger of special security risks related to cross device identification.

Transparency and Informing Consumers

Since consumers may not reasonably expect that deterministic cross-device identifications made using their login or personal data might also be used to influence the delivery of messages or content across more than one of their devices or browsers without notice, a distinct and separate communication from the entity that is making the deterministic cross-device identification may be required. The distinct and specific message could explain how the individual’s data may be used across multiple devices, including the opportunity to opt out of cross device identification. By going out of its way to inform consumers of important changes to the way their data is used, entities utilizing a deterministic approach for cross-device identification may establish trust and generate goodwill within their user base, increasing the chance that consumers will respond positively to tailored content and marketing messages they receive as a result.

Consumers reasonably have the same expectation and understanding regarding data that is collected and used to make probabilistic cross-device identifications, as they would other, anonymous or pseudonymous information that might be collected and used for interest-based advertising (IBA) purposes. Since the data cannot be used to identify a unique person, but instead only a series of devices or browsers, the data is arguably less invasive than cross-device identification based on deterministic methods. However, it is still important to inform consumers that cross device identification may be occurring, how it is occurring and what they can do to opt out of future cross device identification or IBA. Since companies making probabilistic-based identifications may not have a direct relationship with consumers, providing a description of their cross-device product in their privacy policy, including a means for opting out, is a best practice. Furthermore, any companies with probabilistic-based cross device identification products that use them to serve advertising should include notice and choice with all IBA. It is also possible that consumers will be naturally curious about messages they may receive on one device that seemingly stem from a digital interaction that occurred on a different device. For example, they may wonder why they are receiving ads on their phone for a product that they looked at earlier in the day on their laptop. So it's important that consumers be provided with transparency and notice regarding these techniques, along with the means to opt out of future interest based advertising, including cross device identification.

Acting on Consumer Choice

Under the current self-regulatory regime, consumers opt out choices are attributed to a single identifier. Participating companies stop serving IBA based on the identifier that has been opted out. When a consumer opts out of interest-based advertising from a company that makes cross-device identifications, the company may also consider taking the following additional actions:

Opt out of related IDs - If a consumer opts out of interest-based advertising, and the opt out is received from a distinct identifier associated with one device or browser, a company may consider opting the consumer out of other identifiers associated with the ID that the opt out request was received from. If a company has determined that a device ID should be associated with other device IDs for the purposes of considering which marketing message or ad to serve, the company may also consider (i) no longer including the opted out device (as the user has expressed that they do not want information from that device used for IBA), or (ii) consider opting out all devices that they have associated with that device for IBA.

Opting out of householding - Householding is the practice of associating multiple user IDs into a single "household". Companies that receive an opt out request from a user associated with one identifier should also consider opting the user out of any "households" with which they may be associated.

Conclusion

The current self-regulatory regime demonstrates that interest-based advertising can be conducted in a responsible and privacy friendly manner, providing consumers with transparency, notice and choice about data usage. The same principles and guidelines can be applied to cross device identification, and additional considerations based on the method of cross device identification should be considered. Rocket Fuel appreciates the Commission taking the time to solicit feedback on this advancement in technology, and we look forward to working with the Commission to help establish recommended best practices.