

FTC Cross-Device Tracking Workshop
November 16, 2015
Segment 2
Transcript

MEGAN COX: I'm excited to welcome our panelists for our second panel today on Policy Perspectives on cross device tracking. So here with me on stage, I'll just introduced briefly, Genie Barton with the Council of Better Business Bureau's, Leigh Freund with Network Advertising Initiative, Jason Kint with Digital Content Next, Laura Moy with New America's Open Technology Institute, and Joseph Turow with the Annenberg School for Communications at the University of Pennsylvania.

Thank you all for joining us today. We're excited to have you, and I know that the presentation this morning in the first panel set up a lot of issues that I know we all are eager to chime on. So to begin with, we've heard a lot about the benefits this morning.

We've talked about how consumers and businesses can benefit from cross device tracking through consumer experience. We heard a little bit about competition, security, keeping state, attribution. And I just would like to start, because I think it's important to understand the benefits for how we should approach policy, with how businesses can benefit in more detail. And maybe, Jason, you can talk about where DCN sits and how you see businesses benefiting and how that directly or indirectly benefits consumers.

JASON KINT: Sure, thank you Megan. Thank you for having us here today to talk about this. So I think it's important just to know that DCN as a trade association, what we represent. All of our roughly 70 members are trusted content companies that have a direct relationship with consumers and advertisers. So it's important to understand that.

Every brand in our membership deals with consumers inside and outside of every day, brands you know, New York Times, Washington Post, CBS, ESPN, native start-ups like Vox Media, Business Insider. So that relation with the consumer is critical to everything they do. And they're able to use cross device tracking in a way to provide personalization and benefits to the consumer as they move from device to device.

So if you can imagine a media company wanting to know a little bit more about the consumer what content they're using to help program the experience going forward. Or if the consumer starts on an article and then they move to a different device, to allow them to finish it on a different device. So those are examples.

The analogy I like to use when I think about cross device tracking is if you as a consumer walk into your public library and you decide to take out a book, let's say a book on buying homes, at the library, you hand the librarian your card. Or you log into a computer, if you will, if people still go to the library, even. And so you may go home though after doing that and want to log in at home on a desktop computer at your house. And it would be perfectly acceptable, because your relationship with the library and through that ID number to be able to do that and see that you checked out that book or when it's due back.

You may even want to be able to go on to your tablet and see the electronic version of that book. And that's a normal first party relationship, and if you're not comfortable with it, you can choose not to go to that library anymore. But if you started to see advertising at that point from third parties on buying homes, that might surprise you and make you uncomfortable suddenly. So I think that's the line we try to draw as the context and the expectations of the consumer.

MEGAN COX: Great, Leigh, did you want to comment a reaction--

LEIGH FREUND: Sure.

MEGAN COX: --about where you see businesses heading?

LEIGH FREUND: And thanks Megan for having us this morning. So I'll start with the premise that internet advertising is not evil. It supports an innovative \$150 billion economy and supports an interactive marketing business that contributes over \$530 billion a year to the US economy. So that's a big deal.

It employs a lot of Americans. We do a lot of work. Third parties place internet advertising on a lot of first party publisher sites, and that's how they monetize and be able to serve that amazing content to all of us every day that we see.

So I think consumers, brands, and publishers all benefit from a seamless consistent experience that cross device linking can help us provide. Consumers indicate they're going to stop interacting potentially with a brand if that consumer or if that experience varies across devices. They get frustrated by viewing, I think we heard this morning, 1,000 million different ads following them around, the same ad across their different devices.

And it's frustrating. So consumers view those brands, websites, apps, the store, and ads as part of the same unified experience. And I think that's a true benefit to the entire ecosystem when we talk about consumers, and advertisers, and publishers.

And marketers sometimes face challenges identifying those consumers as they move from device to device and interact differently. And I think that is something that cross device linking actually solves. There's a continuity of service benefit, I think, for everybody. It's a technology that solves for a big issue that we've experienced over the years in the internet industry, which is fragmentation. So it deflates that business continuity and threatens the business models of the companies that create the content we all consume.

Ad efficiency, I'll just add, is the last benefit of it. It prevents ad fatigue, so that number of different ads across different ecosystems and different devices. It also reduces ad waste and makes for a much more efficient consumer and advertiser experience. And yes, those are benefits to advertisers and to publishers, but they also benefit consumers both directly and indirectly by creating that uniform experience.

MEGAN COX: Great, so some of the benefits that we talked about with personal experience is probably obvious to the consumer. That the personalized experience where they keep state and

are able to pick up on something on another device, that makes it transparent to consumers. Whereas some other things might not-- a consumer might not be aware of how the ad limits on how many times they see an ad is a result of the cross device tracking. So, Joe, can you talk a little bit about consumer awareness of these technologies and how that's growing, or whether consumers are aware of all the devices that might be part of a device graph?

JOSEPH TUROW: Sure, I can talk about some. Our last study in this realm was we released [INAUDIBLE] in July from early 2015. We didn't ask specifically about a lot of cross device tracking. We were focusing to a large degree on marketing and retailing. And we did ask people about their knowledge about a lot of things related to media tracking.

The short of it is people know they are being tracked. At the same time, they don't understand data mining. They don't understand what goes on under the hood in a very strong weight. We have asked over the past 15 years, I think, maybe 10 to 15 years, a single question. When a website has a privacy policy, it means that site won't share your information with any other company.

And we have found that essentially 55% to 60% of Americans consistently say they think that's true, when it's false. That very basic bit of information, people don't understand even the words privacy policy. Most Americans think that price discrimination in online as well as in store is illegal. They think the government protects them from it. It's astounding.

And at the same time you could say, well, Americans are dumb. I don't believe that for a moment. This stuff can be really hard, and people have a life. And I think one of the issues we have to come to terms with-- I agree with the previous panel saying that this is evolutionary, the technology is. And I think Justin's really interesting presentation showed this.

While it's evolutionary, it has qualitative differences in the way people can interact with their data and understand the world. I don't think anybody can understand the complexities of this stuff. I've been studying the retailing business in this arena for the last year and a half. It's hard, and I've had to call people. I nudged them to understand it.

Regular people can't do that. And we have found not only do people not understand it, but they're very nervous about it. They're not often sure why they're nervous about it, and they're conflicted. And the last thing I'll say is we found that most Americans are resigned. While a lot of marketers say that what goes on is there's a trade off sense that Americans will gladly trade off their data in order to get relevant material.

We found that 58% of Americans agree with the following two statements not presented together. One was, I believe that I would like to control the data online marketers have about me. The other is, again, not presented together, I feel that I have a little control over the data that marketers have about me. And the notion of that resignation, I see it all the time, it's amazing that people don't talk about this resignation, from really intelligent people. And we have found that the more people knew about what goes on online, the more resigned they tended to be.

MEGAN COX: Laura, do you have anything to add to that about consumer awareness and transparency in this space.

LAURA MOY: Yes, sure I think it's hard to add to what Joe said. He put it so eloquently and comprehensively. But I will say just after that last excellent panel on some of the technological aspects of cross device tracking, I think I spoke to probably three or four people briefly who were like, wow, that panel just like, woo, over my head. And I think if it's difficult for the people in this room, it is impossible for most consumers, most consumers who maybe have a lesser understanding of online tracking in general and less time that they might devote to thinking about these issues than many of us in this room. But consumers do know that they're being tracked.

And the fact that they don't understand the extent of it doesn't necessarily mean that they don't care about it. And I think that it's pretty clear. We've seen from consumer behavior from the results of the research that Joe and others have done that consumers do care about this. We do see consumers trying to escape some of the tracking through things like cookie purging, and use of ad blockers, and other browser extensions that they might use to try to escape tracking. And I think that these are clear indicators that consumers, while maybe not understanding exactly how they're being tracked, do care about it and are concerned about it.

MEGAN COX: And Genie, you wanted to add something?

GENIE BARTON: Yeah, I did. I think that we're all in agreement that consumer understanding, and transparency, and control over the experience are things that we all want to provide. The DAA, in fact, came to provide just those things at the request of the FTC. And one of the most important innovations did not only the provision of transparency through notice, but the provision of enhanced notice. That is real time notice of collection and use of interest based advertising.

And I can't remember. Perhaps it was Justin who showed the Washington Post with the Ghostery trackers on. And at the foot of that page, there is an ad choices icon and something that says ad choices. If a consumer clicks on it, they will be taken to a place where they can learn what this kind of advertising is and be given options for opting out. Now, is this yet totally understood by consumers?

No, it isn't. And I'm not saying that consumers are stupid not to understand everything. But I was looking up what other common icons do we see and how many people understand them. And I hit on the recycling icon, which after I guess it is 15, 20 years is now understood by that 83% of people. It has had much exposure on just about every can you see.

It has been promoted by governments. About 83% now understand it. However, when you ask, what percentage of people actually know what to put in their recycling bins? It goes down to 23%. So I am not saying that is great, nor am I saying that I wouldn't want everyone in this room to understand the whole advertising ecosystem beautifully.

I would. However, I do think that both the NAI and the DAA have taken important steps to make that a reality for those people who care by the use of the icon, by just in time notice, and by education efforts. So do we all have more to do? Of course. Are we on the path to doing it? And I thank the chairwoman for recognizing that we are.

LEIGH FREUND: Yeah, and I'm sorry, if I could just add. I think this is approximately the same place we were maybe 10 or 15 years ago with ad targeting. Right? And the reality is that consumers, as Genie points out, there's lots of room for improvement. But consumers over a period of time and with good messaging can understand and have reasonable expectations about the value exchange between their privacy, and commercial enterprise, and the content that we all consume.

I think the DAA and the NAI have both done a pretty good job of building in a layered messaging system. We can talk more about other things that we do in terms of consumer education a little later in the process. But I think the awareness will continue to grow. And as Genie points out, the consumers that do want to dive into the sausage making and really understand have the tools or will have the tools to do so. And we will continue to improve those tools and make them even better.

MEGAN COX: And Genie, do you want to give a little bit of a rounder picture about the DAA? Because it does apply to all entities of all sorts in the advertising ecosystem. And so could you talk a little bit about the obligations of third parties and first parties?

GENIE BARTON: Sure, I'm delighted to. And thank you for your recognition that we are not a membership organization. In fact, the DAA principles were created by the advertising trade associations across the entire ad ecosystem from brands to the various third parties in the ad supply chain.

And my job is to enforce these principles, which I do, through a variety of techniques for monitoring ourselves to relying on privacy dashboard that we get pro bono every week. And we do look at first parties and third parties. And first and third parties both have obligations under the principles for providing transparency, both notice and enhanced notice, and control. That is choice on easy to use opt out mechanism.

Now how it works, just to simplify it a bit, is I think of choice and notice as being provided by the party most able in a particular situation to give the notice. That is, if you are receiving an ad that is interest based, the parties involved in the delivery, and creation, and just a whole set of things to deliver that ad on a particular website page is the third party. Because the third party is involved in that landing on your page.

The web publisher might not know as well where that particular piece of real estate is going to be. So the third party in that case has the primary responsibility for ensuring that the icon is in or near that ad. Although, as we always say, the first and third parties have an obligation to work together. And the third party can work with the first party, so that the notice is delivered by the first party.

Now, in the situation where data is being collected by third parties for interest based advertising, the third parties may not have a good ability to provide that just in time notice. So the first party primarily provides that notice. In both cases, the notice links to a place on the website where users click on it and can find out what's going on. This is interest based advertising.

What is it? What do we collect? Where do we transfer it?

And there needs to be a link to an easy to use opt out that either provides an opt out to each of the third parties collecting or to an industry developed opt out. Right now the DAA consumer choice page has on it approximately, I think, 120, 125 third parties, which covers at least 90% of the third party advertising ecosystem. So if you choose the opt out all, you will be opted out on your device, well actually on your browser. Or we have-- I'm not going to go there yet. So you will be opted out from about that 90% of the ecosystem. Does that get you where you want to go?

MEGAN COX: Yes, I think that gives us a great understanding of how those entities are working to give notice to consumers. And Jason, do you want to respond with how the model is working and how you think that in cross device it could evolve, if at all?

JASON KINT: I mean, I would challenge whether it's working entirely. I mean, I think you can debate that transparency notice piece. And maybe we're building the next great recycling program. Let's put that aside, and just whether or not the consumer has a reasonable solution for choice that actually works, that's persistent. As soon as you start taking that cross devices, whether or not you're going to introduce even more issues, that's where I would debate.

Going to a website that you trust, and you've got a known relationship with, and you choose to go to is one thing. But then having dozens, 50 plus, 100 plus third party relationships fired off at that moment-- and the challenge really becomes that the first party really doesn't have the ability to control all those, just the way the web works. There's a daisy chain of third parties that get involved, and that creates issues. And even contractually, it's been very difficult to try to control that. So I go back to you can slice and dice where the issues are, but we can't deny that there is a trust issue.

We talk about this a lot in digital and in digital advertising, in particular. If you look at Pew data, Nielsen data, Trustee data, it all backs this up. Nielsen puts out data every year on trust and advertising, and digital is the lowest. And I'm the guy from the digital industry telling you this.

So there's a fundamental problem there, and I always look back at just the economics discussion. The earlier panel made this point, I've heard it before, that online behavioral advertising pays for all this free content on the web. When I look across our 70 premium publishers that most of you use in the room, I'm sure. And those are up starts. And media companies have been around for 100 plus years. Online behavioral advertising is a very low single digit percentage of their advertising. Let's pop that bubble right now. We've popped it before. I'm popping it.

We act like this online behavioral advertising pays for all the free content on the web. It doesn't. It's a low single digit percentage of our advertising. And I'm looking now at ad blocking as this

emerging issue where consumers are opting out entirely from advertising. And it's very, very concerning.

And the reaction we're having as an industry is starting to come to grips to it, but consumers are opting out entirely. And whether or not that's because of privacy or not, there's an issue here that points to. There's a quote this morning from the trade group that represents most of the ad tech companies that said, ad blocking went up from 15% to 18% in the last six months.

That's a small increase. Those were the words, small, from 15% to 18%. And I'm telling you online behavioral advertising is a low single digit percentage of advertising. So there's a disconnect there. So I think we have to face that reality before we start trying to do this across devices even more aggressively.

MEGAN COX: Genie, you wanted to ad something?

GENIE BARTON: Well I don't like to argue statistics, because we all have them. But there is a very interesting study that was done. I'm trying to remember the university. But it was done, I think, when Chuck Curran was president of NAI. It was an economic study on the importance of interest based advertising for very, very small publishers.

And while I appreciate, Jason, that you have 70 website publishers in your organization, the number of websites that mom and pop websites that have found they could monetize say hobby. Because they could use interest based advertising. I mean, if you have a knitting website, it's not particularly of interest to many advertisers. But if you're able to get advertisements that go to sites that would be interested in that population, you can get a much higher monetization. So I think that-- and I really don't want to argue.

Because the Council of Better Business Bureau's is concerned. That is our mantra, to build trust between consumers and businesses in an ethical marketplace. So I have a great deal of sympathy with anyone who has concerns with trust in the marketplace. We all do. And in fact, there is greater trust when people click on the icons.

When they see the icon, there is apparently a huge bump up in people being willing to click on it. And we have also found that when people go to the DAA website where they could opt out and just read and understand that the percentage of opt outs, and Google and Yahoo have the same experience, it's not necessarily that people want to opt out. They want to feel that they understand and have a degree of control over what's going on.

JASON KINT: I wrote about research in advertising age, if you want to read it, a couple years ago. And I've seen the data now and tested it across small publishers too. And the challenge, I'll just throw out to you, is that those smaller sites actually in many ways are better vehicles for targeting anyway. So advertising on a knitting site, you have a really good idea, actually, of who you're reaching. You don't even need the behavioral data. It's the irony of the argument.

But it doesn't matter at the end of day, whether small or large you run into the same issue here where ad blocking is going to affect you in a much more disruptive way than the benefits of

behavioral advertising. And what those small publishers really need is they need a sales force, and they need technology, which is vital. We can't overlook that.

I mean, the technology that we've built in automating the delivery of advertising and making sure it's delivering and combating lots of issues with it is phenomenally important. And that's what those small publishers need too. They need the automation, the technology. They don't necessarily need their audience to be retargeted elsewhere.

LEIGH FREUND: So, if I could just jump in. I think it's, and I don't mean any disrespect, a little bit simplistic to make the first party, third party distinction here. These two businesses are intertwined in ways that are very complex. And I think a lot of first parties contract with third parties to monetize their sites. I think third parties in general represent the pipes that facilitate two main goals that drive the internet economy.

And that is, advertisers want to reach people, and publishers want to monetize their sites. And we provide the means to do that. The third party-- we, the parties that make up my membership organization. And I think we all bear the responsibility to work together to figure out the right types of notice transparency, choice, control, education, and to solve it together, and not make distinctions among the ecosystem that aren't productive.

MEGAN COX: And I want to bring Laura and Joe into the conversation here to talk about what you were talking about with the fair information practice principles, both beyond notice, and choice, and consumer education. Are there others? The chairwoman mentioned data minimisation, security, accountability, those kind of FIPS bringing them in. So Laura, can you speak a bit about consumer education as part of that, but also how the other FIPS might play into this?

LAURA MOY: Yeah, sure. I mean, I think so-- consumer education, obviously I think that's an important goal that probably everyone up here shares. But I think that means not only general education for consumers, but just in time notifications that are really understandable to consumers are crucially important. And I think yeah, you mentioned also data minimisation that the chairwoman also mentioned. I think that is also crucially important here. And that one of the problems with cross device tracking technology is that it does facilitate this daisy chaining of information sources and information streams that previously were siloed or that consumers may actually believe are siloed.

This provides the ability of some parties to link them together, and build consumer profiles that are really persistent, and using technologies that can be respond even after consumers have taken measures to try to delete them to attempt to escape tracking. And I think that data minimisation policies that actually create a finite limit to those types of consumer profiles consistent with what consumers' expectations are, I think, are really important. And no amount of notice and choice is going to replace the need for that.

MEGAN COX: Joe, did you want to add something?

JOSEPH TUROW: Yeah, I agree. But I'd also, if I may, like to extend a little bit what Jason was saying. The business about media and, of course, device tracking for media is really important. But a huge amount of cross device tracking takes place in stores, physical stores as well as online stores. And that's a very different experience, a very different sense of why we should be concerned.

If you look historically, the 20th century was about the democratization ideal of what it meant to go into a store. Before 1850, it was an independent transaction between a peddler or a general merchandiser and the consumer. Prices were totally opaque and dependant on what the person-- how the person profiled you. The 20th century was a very big change in that, starting around 1850. We go into some details if anybody cares.

But really what's happening now, partly because of cross device tracking and the way we're working this out, is that the way consumers are being approached in stores that are physical as well as online is very much connected to the profiles that are being created about them across devices. That is changing the way people are relating to the public sphere, both in terms of the prices people get and in terms of the way they get ads, the kinds of subsidies they'll get when they're approached in a store. And it really has a lot to do with very different kind of harms than the harms we typically talk about when we talk about the internet. I'm not saying that the harms that the previous group talked about are inconsequential.

They're terribly important. But I'm talking about what happens in a society where we begin to see the public sphere as a negotiated experience between a profile you don't even know you have exactly, and the prices you pay, and the ads you see, and whether you pay for Homeland and get a KY jeweler ad and I get it for free and get a Tiffany ad. And what does that mean to us? A lot of what we're talking about ultimately comes down to these questions.

MEGAN COX: I think that's a good point. So while the data points that are collected might not be new or particularly sensitive in the different silos, but the inferences from the aggregated information that can be drawn might be more sensitive or concern consumers in different ways. And I think that the NAI, for example, removed sexual orientation, or characterized it as being a more sensitive information for cross device campaigns, in particular. So Leigh, can you talk a little bit about that and how the concept of personal information sensitive categories can evolve and be considered in this space?

LEIGH FREUND: Yeah, I mean, I think we think about it pretty simplistically. And that is as the level of information gets more sensitive, the level of consent that you need from a consumer is higher. And we feel very strongly that there are some sensitive categories. Most of them are health related, but a lot of them deal with other parts of society. That they should require opt in consent, that we should really be thinking about those on a different threshold.

I'll say it's interesting our thoughts about what is personal data and what is sensitive data have evolved so much over the years. I'm going to date myself for a second. My husband and I were going through old files today over the weekend and removing things that had our social security numbers on them. And my husband reminded me that when I moved to Virginia 20 something years ago my social security number was my driver's license number, and many states had that.

And we have clearly evolved past that, so we're thinking through the concept of what data is personal and what data is sensitive.

And I think the same analysis and the same thresholds can apply online. So we need to start thinking through those things. And if there are additional categories of sensitive information, we should definitely talk about that. And I agree with Joe that there are some real harms that can come out of these things. I think those are the harms that we need to focus on and solve for.

I think there's a lot that we can do. There's a lot that we already do. I think we're focused on the right things. We're focused on finding out the right types of information and transparency, and we'll get it right.

MEGAN COX: Genie.

GENIE BARTON: Yeah, I just wanted to add something that speaks to the continuing evolution of how we look at data collection and use. When the DAA principles were first created in, I guess, 2009, 2010 framework, they were focused only on interest based advertising. By 2011, DAA was very aware of concerns about the use of data collected across sites and over time, multi-site data, to make determinations that should not be made other than with full knowledge, ability to correct, et cetera, such as eligibility for health care, or insurance, determinations regarding eligibility for loans, and other crucial life decisions. And I think that the chairwoman was really right when she said that there are certain kinds of discriminatory uses that we need to watch out for and that we need all of us to be mindful to see that those harmful uses are not made. I would differ, however, a little bit on price discrimination.

I think that the White House issued a very sensible report about price discrimination, talking about it in a very neutral way that I believe the FTC also has talked about it. And that is when I get to the point that I can get senior movie tickets, and I'm not going to tell you if I'm there yet, believe me, that is a kind of price discrimination. And that is a kind of price discrimination that I think we are all comfortable with. We are comfortable, I think, with the exchange of signing up for a Safeway or a online loyalty card in exchange for discounts.

We do need to be mindful of whether we're happy about the information exchange that is part of that, and we need to know that and be able to make a choice. And I do agree that there are dangers in price discriminations that affect a very core ability to access certain kinds of benefits. But the differences in price being offered on consumer goods, I think, and who gets targeted with a particular ad, if it is not a protected class, and there are ways of-- I know lots of people who game this system very successfully by logging on and almost buying something. And then they go away, and oh my goodness, they get discounts offered. It happened to me by accident with an iron skillet that I was thinking of buying so I was thrilled, but that was price discrimination. And sometimes yes, sometimes no.

MEGAN COX: Joe, do you have something to add to that?

JOSEPH TUROW: Well, there are pros and cons about price discrimination in a market where people know what's going on. The fact is, most Americans have no clue. In the study we did in

the mid-late 2000s, we found that most people not only thought that it's legal, but they were against it. And part of this has to do with do we want a society in which profiling that we don't understand becomes the basis for how we get treated.

And walking through the world of the store not knowing essentially the price becomes a negotiating factor. And the coupons do as well. It raises lots of questions, I think, as a society we have to deal with. And when loyalty programs are still held out as ways to discounts, I think that's part of the issue.

Today, loyalty programs are basically ways to collect data. The idea of a discount is essentially a come on to collecting data. Every marketer understands this. And it plays out in different ways, from airlines, to hotels, to what happens in Safeway. But loyalty programs are essentially data collecting engines that are cross-platform.

MEGAN COX: Laura, did you want to add something about consumers, and how they value tracking, and whether that's evolving, and how?

LAURA MOY: So I was actually-- I was going to respond a little bit to your question about sensitive data and to Leigh's comments there. And to think about personally identifiable information as well and to just say I think that we have historically had a notice and choice framework and an opt in versus opt out framework that is largely based on meaningful distinctions between information that is personally identifiable, information that is not, information that is sensitive, and information that is not. And as data sets become more easily cross-referencable and aggregable and as data analysis techniques advance, I think that those distinctions mean less and less. There is a lot of information that can be derived, a lot of sensitive information that could be derived about an individual consumer based on pieces of data that we wouldn't think of as traditionally sensitive.

And it's those derivations, it's those conclusions, that downstream consumers of data that has been funneled through multiple data streams and aggregated. It's those conclusions that could be troubling for a consumer. I mean, those are some of the things that could be troubling for a consumer, and that make these distinctions less meaningful, and suggests that maybe we really need to rethink this approach to just having opt out consent for any information that's not personally identifiable and not sensitive for our consumers.

And then with respect to just discriminatory uses and adding on a little bit to the chairwoman's comments and echoing things that others have said on the panel, including Joe, I think it's not so much that we're necessarily worried with information about consumers that it will be used in ways that are intentionally discriminatory. But many times in these data streams about consumers could be used in ways that they do have a disparate impact on different socioeconomic groups, that could have a disparate impact that perpetuates social disparities that we already see in our society.

So for example, if you took some characteristics about an individual consumer that suggested that she might be a consumer who's more likely to attend an Associates degree program at a for profit university, and you showed her an ad for that. And then you took another consumer whose

characteristics suggested that she might be interested in a four year program at a four year university, and showed her an ad for that. Those types of ad choices and category assignments for those consumers could be things that, in fact, perpetuate disparities that already exist.

MEGAN COX: That's an interesting point. I would just note now that if you do have any questions you want to write down on our cards, our paralegal support, Carrie Davis and [INAUDIBLE], will be collecting those, so we can consider them for our panelists. And now I'd like to talk a little bit more, Jason, about that ad blocking that you mentioned earlier. And what can we see from that? We've read articles recently about the growing popularity of these and the new tools that allow for ad blocking. And some of our earlier speakers spoke about how this could be for a security reason, for opting out of ads, blocking ads, or also for bandwidth reasons. Can you talk a little bit about what we can take away from this growing popularity, and what policies might help consumers with those concerns?

JASON KINT: Sure, yeah. I think importantly, I've been trying to say this more and more recently because of all the press attention, it's something we need to unpack. We really need to do the research first. I think, especially here in the States, we've been a little behind the rest of the world in acknowledging and accepting there's actually a problem. People debated the research. But I've seen the research from many different angles, directly from publishers. And it's a real problem, and it's growing. And I humbly suggest going from 15% to 18% of consumers in six months is a big trend, a big deal.

The best framework I've seen in trying to break it apart is to look at three different areas. Security is one. Privacy, which we're focused on here, is another. And then performance and experience is the third. I also suggest there's a strong correlation between all of them. The pixels and the tags that get loaded on web experiences that then fire off 10 other friends into the transaction where you end up with 100 pixels on a page often leads to a poor performance. It also leads to potential privacy issues and security issues.

So understanding the relationship between three also matters. But we're in the research and education phase of this. I think the solution-- as far as we should go right now is the solution is actually the consumer. We've spent billions of dollars across our industry, and I agree very much that this applies to everyone, first parties, third parties, advertisers, ad tech, publishers. We've spent billions of dollars on ad technology, and I don't believe the consumer was a big enough part of the investment, if at all.

If you think about the ad tech stacks and all that we can do in trying to target the consumer and follow them as an industry, the consumer benefit wasn't clearly there. I get very, very concerned when I see people trying to rush toward solutions that involve better targeting and better data collection. That's frightening that the first solution we're running to is more targeting and more data collection. We need to understand this and get back to pleasing the consumer. And otherwise, we're going to continue accelerating into a bigger wall.

MEGAN COX: Genie, did you want to react to that?

GENIE BARTON: Well, I can say that I agree that the user experience is something that should be of concern to anyone who is involved in this. And I think there have been statements by Randy Rothenberg of IAB and Bob Liodice of-- IAB is the Interactive Advertising Bureau. And Bob Liodice of the Association of National Advertisers saying we need to get this right. And right now it isn't right. I also think that it shows that consumers will vote with their feet when they are unhappy about something, and that the marketplace will cause us to make corrections, and that no one wants a cluttered page or their data being eaten by ads that don't show, and that the industry is taking steps to remedy those situations.

And that these are, as far as, I know, although I agree more study needs to be done, that the user experience is the primary driver of the proportion of people that have adopted ad blocking technologies. The fairness or not industry-wide and consumer-wide of those technologies, I will leave for another day. Because that would be such a spirited debate. You would never get out of here.

MEGAN COX: Thank you. If I could turn now, we've got several questions from the audience about this industry self-regulatory efforts and what tools might be developing for opt outs on those fronts for single device opt out for across the device graph. So Leigh, Genie, could you speak a little to the efforts there to develop those tools, and what the challenges are you might be facing?

LEIGH FREUND: Yeah, I think, I mean, I'll start, and then you can add. OK, Genie? The DAA issued guidance this morning that applied its principles to, right there, cross device linking. And they are taking a per device approach, and I think that is an important first step. It recognizes that the principles do apply to cross device linking. And I think that is a really, really important first step.

Could we evolve as the technology evolves? Absolutely. But I do think that we do have consumers in mind as we're thinking through these things. So at the NAI with every technology that we see, we take a thorough and very thoughtful approach, I think, to self-regulation with our members. And I would challenge the issue that we don't have consumers in mind when we're doing it.

Because if consumers don't click on the ads, if consumers are interested in those ads, ultimately the entire business model fails. So consumers are a part of a lot of what-- our companies are investing millions of dollars of capital and intellectual capital in developing products, and services, and privacy by design in ways that help consumers and that try to be transparent to consumers. So we start with the question with every technology at the NAI, does the code apply? I think the answer in this case is pretty clear. This is an additional new technology that enables behavioral advertising, which our codes all discuss.

And if so, is the code clear on its face? Does the existing structure provide companies with the ability to comply with the code? I think in many cases if we're talking about technology that can't be cookie based, we're developing a new opt out tool that allows companies to disclose to consumers the fact that they are doing that on a real time basis. And what else do we need to do

to apply our code and the DAA principles to the technology? And so we take an exhaustive effort with our members to determine the next steps.

And we do keep consumers, advertisers, publishers, the FTC, everybody in mind as we try to develop those. And I think we've got the best privacy experts on the planet in our industry working on solving those issues. And I think that it's not OK to stop at a single set of code or principles. We are continually evolving it, and I think in the area of cross device, it's still a new technology. I think talking about solving cross device linking overstates the ability of the technology the way it exists right now.

It's nuance. It's diverse. There's lots of different business models and lots of things going on. And so I think our self-regulatory approaches to continue to be thoughtful and think through the issues. We started with great guidance this morning, and I think we will continue to work on making sure that transparency notice control, education, and outreach is something that's very important.

Just as an aside, we had the privilege to speak at the Call for Action Conference, which is a consumer based group. And we were explaining to them about the NAI and things that they do. And one of the members of the audience said, but if I have a cookie on my computer, that means I've been hacked, right? So clearly there's a lot more we can do in terms of education for consumers.

And I think that's going to be something that we will continue to evolve. But we take all of those things in mind and develop a thoughtful approach. It's not just about notice and choice. It's about all of the different ways that we can provide clear notice to consumers and clear choice.

MEGAN COX: Thanks. Genie, do you want to touch on the DAA and anything else you might want to clarify?

LEIGH FREUND: I do if I might. I didn't know that this was going to be released today. But I was happy, because we've all been working on it for a very long time. And I would like to say that the word evolution is probably the best word here, because self-regulation evolves. It evolves from need. ASRC started when there was concern about the truthfulness of advertising. That was many, many years ago. That concern remains. And NAD and the FTC continue to weed out the bad apples.

The DAA started with the OBA principles. I've explained how it went to the multi-site data principles and recently as more people have moved to mobile, to the application of the principles in mobile. And I would like to say that it was in 2012 that the accountability program first looked at cross device tracking. Many people don't know that, but because the principles are functional, they are not like some laws. And the FTC Section 5 is functional as well.

If a use becomes looked at as unfair, if statements are deceptive, then both the FTC and the DAA have concerns about that. We looked at a house holding the case that's a probabilistic method of tracking. And we were first checking, because we wanted to be sure that the opt out worked, given this house holding technology. And we discovered that yes indeed the company had

provided a link between their cookie based and cookie hardened opt out and their probabilistic opt out. But we were also concerned, because although the company explained that it did cross device tracking, what it didn't say was the scope of the opt out it was providing on that device.

And so we said, look, you cannot yet, and not all industry can yet given the many flavors of cross device tracking, provide a one stop opt out. We haven't got time to go into that. But it's not possible. Moreover, some people would like a granular opt out given they may have sensitivities about an ad appearing on their work email that they actually want to see. But anyway we then went and made clear that the principles apply to any kind of tracking, not just cookie based.

And we continued to work. And the application, I love showing this, of the self-regulatory principles of transparency and control to data use across devices is that next step. What it does is it makes clear and honestly what the scope of an opt out is. I think of it as a black hole. If you opt out on a device, then no data for interest based advertising leaves that device.

And no interest based ads come into that device. So my idea is the black hole idea. Now, should we go on to the universe idea and the granular star by star idea? I believe we should, but we're not there yet. And we are both, NAI and DAA, continue to work very seriously on providing consumers with the choices they want in ways they can understand.

MEGAN COX: Thank you. So I think we only have a couple minutes left, and we've heard about the future in the self-regulatory space. But if I could go down the line with Jason and our other panelists to talk about what you see the future holding in this space, particularly as solutions to some of these issues that we've heard about today. I'd be interested in your thoughts.

JASON KINT: Sure, you want me to start. I think we're going to continue to have more and more tension in terms of trying to deliver what the consumer experience should be and what the consumer wants. So I think this ad blocking trend is very, very important. I think it's going to continue to accelerate. And I think Genie is right.

I mean, the market will need to evolve and solve that. But it's going to continue to accelerate. And we're not keeping pace with the technologists and the consumers right now. And we're talking about issues from 10 years ago, while ignoring, I think, fairly obvious signals from the consumer that we need to pay a lot more attention to. And so I wrote a piece last week.

Now that the do not track definition, how the W3C is finally decided, we've got a clear signal from a lot of consumers that they don't want to be tracked. And why wouldn't we listen to that signal and honor it? So I think things like that need to pick up steam, so that we actually super serve the consumer rather than the rest of the industry.

MEGAN COX: Thank you. Laura, do you have some closing thoughts to share?

LAURA MOY: Sure, yes, I think I agree with what Leigh and Genie said about the self-regulatory bodies really making an effort to come up with some solutions for consumers in this space. I also worry about developments of some of these cross device tracking technologies outside the self-regulatory space. And I think we heard a little bit about audio beacons on the

previous panel. And when I was just reading about audio beacons over the weekend, it seems like this is a technology that multiple companies are developing and that audio beacons in TV content that are then received by apps installed on your mobile device, often without your knowledge, or audio beacons actually, or just audio fingerprinting, I guess, of an in-store location by a consumer who has loaded up an app to identify the music that's playing over the speakers in the retail establishment. These are things that are developing, and I think we're going to continue to see some of these really powerful tracking technologies develop, often by players who are entering this space and are operating relatively outside the self-regulatory structure.

And I think that is something to be concerned about and for us to keep an eye out for perhaps in the enforcement space as the FTC continues to look at this. I also think that perhaps an additional solution in this space or something that is a parallel, if not directly connected issue that would benefit from attention, is this idea of data broker legislation. So we've talked a little bit about the importance of data minimization, the trouble with the increased ability to aggregate previously siloed data streams leading to these endless consumer profiles. It would be great to see some additional efforts or perhaps maybe in a future iteration of Congress some success coming up with ways to actually limit those aggregate data streams.

MEGAN COX: Thank you, Laura.

LEIGH FREUND: Can I do a shameless plug?

MEGAN COX: Sure.

LEIGH FREUND: So if you don't want to have companies that do audio beacons and other things, publishers like Jason's company should be working with NAI and DAA members to make sure that all of the code and the principles apply to that, and maybe put the bad actors out of business.

GENIE BARTON: Could I just make just one statement? For someone who believes in transparency and choice, I was not pleased to read in Ars Technica about a company I will not name, unless someone threw something at me. But I do not think that the collection and use of data from a consumer without the consumers having notice of the collection is something that the FTC finds any more attractive than I do.

MEGAN COX: And if we have just one minute left, Joe, if you have some closing thoughts you also want to share.

JOSEPH TUROW: I think education and transparency are terribly important. The more I do this work though and understanding the more about how things are working, I think transparency is more important for people in this room, for critics, for academics who can then help try to make regulations about this, rather than the public. I'm going to say something maybe a bit controversial, but I've been reading retailing privacy policies ad nauseum over the last year and a half, and others as well. I think a case can be made that there is deception going on.

The level of ambiguity that's purposeful, the lack of clarity in what is being said in what's supposed to be a contract, I think is really pretty terrible. And partly it's because things are changing. Partly it's because companies don't want people to know what's going on. And it is very, very hard to unpack what a privacy policy means.

So I think that-- and the FTC needs to deal with deception. That's part of what you guys do. And approaching privacy policies from that standpoint and including purposeful ambiguity as part of deception, I think, is an important step.

MEGAN COX: Well, thank you. And if I could ask us all to thank our panelists this afternoon, or this morning.

[APPLAUSE]

Now I'll invite Maneesha Mithal up for some brief closing remarks.

MANEESHA MITHAL: Thanks, Megan. And thanks to all of our terrific panelists. I'm going to invoke the vocabulary of the day and say that my probabilistic assessment is that people really want to get to lunch. So I will be very brief. And I just wanted to just encapsulate the conversation today with five main takeaways. The first is that there are benefits across device tracking.

I think we've heard that throughout both panels. We've talked about maintaining state, which was a terminology I hadn't heard before. We've talked about reducing the number of times consumer see an ad. We've talked about the seamless experience across devices. So there certainly are benefits associated with cross device tracking.

Second, I think we've heard that-- there's been some consensus I think it's fair to say, on the need to provide greater transparency choices and education for consumers. So that's something that we can all work towards.

Third, we've heard some consensus on the need to think about the consumer's experience, to make sure that the technologies are being engaged in a way that's not going to cause consumers to lose trust in the marketplace.

Fourth, I think we've heard that there is room for industry innovation. I think the previous panel talked about the idea of, for example, developing technology tools to make consumers aware when a device is in their social graph. So not only the choice piece, but improving the transparency piece through greater innovation and through new ideas.

And finally, we have heard that companies need to be mindful of the representations they make. Thank you, Joe, for teeing that up right before I got up here to speak. And we've talked about the fact that many companies are providing opt outs and that they need to be careful about what they are saying and what it means to opt out. And if they are unclear, or deceptive, or creating the opt out, or communicating the opt out in a way that conflicts with consumers' understanding, there may be room for a Section 5 deception action in that case.

So those are five takeaways that I jotted down as I was sitting here listening to the discussion, which I think has been excellent. So the comment period, again, closes on December 16. I really do encourage everybody to comment. We often incorporate what we hear in these workshops through the comments, through the panelists in all of our policy making and enforcement work. And I just want to give a hearty thank you to all the panelists today, all the presenters, for doing a terrific job.

And final thing I'll say is, please return your badges, because we do recycle those. So I think there's a box out front. OK, so do that. And thank you so much for being here. And I wanted to close by extending a thank you to all the people who have sat here this morning and listened to the discussion. Thank you.