

**STATEMENT OF DOROTHY ATTWOOD
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AT&T INC.**

BEFORE:

**UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
HEARING ON BROADBAND PROVIDERS AND CONSUMER PRIVACY**

September 25, 2008

Thank you, Chairman Inouye and Ranking Member Hutchison, for providing AT&T Inc. the opportunity to discuss online advertising and, more specifically, the issue that has received a good deal of recent attention, so-called online behavioral advertising. We trust that this hearing will help the discussion evolve past slogans and rhetoric to a more thoughtful examination of the facts and the development of a holistic consumer privacy policy framework that all participants in the online behavioral advertising sphere can and will adopt.

Your interest in these matters surely is warranted. Online advertising fuels investment and innovation across a wide range of Internet activities, and provides the revenue that enables consumers to enjoy many free and discounted services. Likewise, website publishers make most of their money from advertising, which revenue in turn funds today's vast wealth and diversity of Internet content and information – most of which consumers enjoy, again, for free. On the other hand, online advertising, especially next-generation forms of highly targeted behavioral advertising that involve tracking consumer web browsing and search activities, raise important consumer-privacy concerns that policymakers and industry must carefully weigh. In short,

setting proper policy in this area will be crucial to a healthy and growing Internet ecosystem that benefits consumers.

AT&T does not today engage in online behavioral advertising, but we understand the uniquely sensitive nature of this practice. We have listened to our customers and watched the debate unfold, and are responding by advocating for a consumer-focused framework. As described in more detail herein, the pillars of this framework – *transparency, consumer control, privacy protection, and consumer value* – can be the foundation of a consistent regime applicable to all players in the online behavioral advertising sphere – including not just Internet Service Providers (“ISPs”), but also search engines and third party advertising networks – that both ensures that consumers have ultimate control over the use of their personal information and guards against privacy abuses.¹

In particular, we believe that effective customer control for online behavioral advertising requires meaningful consent and therefore commit that *AT&T will not use consumer information for online behavioral advertising without an affirmative, advance action by the consumer that is based on a clear explanation of how the consumer’s action will affect the use of her information.* This concept – often generically referred to as “opt-in” – means that a consumer’s failure to act will *not* result in any collection and use by default of that consumer’s information for online behavioral advertising purposes. This affirmative consent model differs materially from the default-based privacy policies that advertising networks and search engines – which already are

¹ The policy framework that AT&T proposes here is informed by and should complement the Online Behavioral Advertising Self-Regulatory Principles issued by staff of the Federal Trade Commission in December of last year. Online Behavioral Advertising: Moving the Discussion Forward to Possible Self-Regulatory Principles, available at <http://www.ftc.gov/05/2007/12/P85900stmt.pdf>.

engaged in online behavioral advertising – currently employ. Given the obvious consumer benefits of such a model, we encourage all companies that engage in online behavioral advertising – regardless of the nature of their business models or the technologies they utilize – likewise to adopt this affirmative-advance-consent paradigm.

What is Online Behavioral Advertising?

There is no single, settled definition of online behavioral advertising in statute or case law, but the FTC and others have used the term to refer to it as the tracking of a consumer's web search and web browsing activities – by tracking either the person or a particular Internet access device, be it a computer, data-enabled mobile phone, or some other communications vehicle – to create a distinct profile of the consumer's online behavior. In this sense, it can clearly be distinguished from the simple practice of tracking a consumer's use of an individual website or obviously-related websites (such as those operated under a common trademark, trade name or conspicuously disclosed corporate affiliation), which practice does not necessarily raise the same privacy concerns as online behavioral advertising but which nonetheless can and should expressly be disclosed to Internet users. Privacy concerns about online behavioral advertising are not new – indeed, DoubleClick's (now a Google subsidiary) use of tracking cookies to collect and use information about consumer web browsing activity was the subject of an FTC proceeding in 2000.² More recently, the FTC and Congress have appropriately asked questions about the privacy implications of emerging online advertising businesses that involve the tracking of consumer web browsing and search activity. Thus, consistent with the focus of recent public discussion, we consider online behavioral advertising to be (1) the tracking of user

² Letter from Joel Winston, Acting Associate Director, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, to Christine Varney, Hogan & Hartson, Re: DoubleClick Inc. (Jan 22, 2001)(memorializing closure of FTC staff investigation).

web browsing and search activity across unrelated websites, (2) when the tracking and association of the websites or their components are largely invisible to the user, and (3) the resulting information is used to create a distinct user profile and deliver targeted advertising content.

Online behavioral advertising can take many forms. It can, for instance, involve the use by an ISP of technologies to capture and analyze a user's Internet browsing activities and experience across unrelated websites. These more ISP-specific methodologies are not, however, the only – and certainly are not nearly the most prevalent – forms of online behavioral advertising.

Advertising-network technologies have evolved beyond solely tracking consumer web surfing activity at sites on which they sell advertising. They now also have the ability to observe a user's entire web browsing experience at a granular level. Techniques include the ad network "dropping" third-party tracking "cookies" on a consumer's computer to capture consumer visits to any one of thousands of unrelated websites; embedding software on PCs; or automatically downloading applications that – unbeknownst to the consumer – log the consumer's full session of browsing activity.

Ad networks and other non-ISPs employ these capabilities at the individual browser or computer level and they are as effective as any technique that an ISP might employ at creating specific customer profiles and enabling highly targeted advertising. Already ad networks and search engines track and store a vast trove of data about consumers' online activities. Google's practices exemplify the already extensive use of online behavior advertising, particularly by non-ISPs. Google logs and stores users' search requests, can track the search activity by IP address

and a cookie that identifies the user's unique browser, and can even correlate search activities across multiple sessions, leading to the creation of a distinct and detailed user profile. Through DoubleClick, Google can drop tracking cookies on consumers' computers so that whenever the consumer visits web sites that contain a display ad placed by DoubleClick (which can be for virtually any product or service), the consumer's web browsing activity can be tracked across seemingly unrelated sites (e.g., CNN.com or ESPN.com). Google further has access to enormous amounts of personal information from its registered users, which its privacy policy expressly confirms can be combined with information from other Google services or third parties for the "display of customized content and advertising." And it even scans emails from non-Gmail subscribers sent to Gmail subscribers for contextual advertising purposes.

Thus, if anything, the largely invisible practices of ad-networks and search engines raise at least the same privacy concerns as do the online behavioral advertising techniques that ISPs could employ, such as deep-packet-inspection, which have application beyond mere targeted advertising, including managing network congestion, detecting viruses and combating child pornography. In short, the privacy and other policy issues surrounding online behavioral advertising are not technology-specific. The relevant touchstones are the manner in which consumer information is tracked and used, and the manner in which consumers are given notice of and are able to consent to or prohibit such practices. Those factors are entirely technology-neutral.

AT&T's Approach to Online Behavioral Advertising

AT&T does not today engage in online behavioral advertising.³ This is not because AT&T sees no value in this next-generation form of online advertising. Indeed, if done properly, online behavioral advertising could prove quite valuable to consumers and could dramatically improve their online experiences. We do, however, believe it is essential to include strong privacy protections in the design of any online behavioral advertising program, which is why we will initiate such a program only after testing and validating the various technologies and only after establishing clear and consistent methods and procedures to ensure the protection of, and ultimate consumer control over, consumer information. We further intend to work with privacy advocates, consumer privacy coalitions and fellow industry participants in a cooperative, multi-faceted effort that we trust can and will lead to a predictable consumer driven framework in this area. In any event, if AT&T deploys these technologies and processes, it will do so the right way.

Against this backdrop, AT&T has already listened closely to its customers and will adopt meaningful and flexible privacy principles that will guide any effort to engage in online behavioral advertising. We summarize this framework as follows:

³ AT&T does engage in some of the more ordinary and established aspects of online advertising. Like virtually every entity with a retail Internet presence, AT&T tracks usage on its own websites, such as att.com, in order to improve the online experience, optimize a particular site's capabilities and ease-of-use, and provide the most useful information to consumers about AT&T's products and services. In addition, like thousands of other businesses that operate websites, AT&T does business with advertising networks and has partnered with providers of online search. For example, on the AT&T broadband Internet access portal, AT&T makes space available for advertising provided by the Yahoo! advertising network, and users of the portal may be shown advertising that is based on their activity across sites signed up to the Yahoo! advertising network. Also by way of example, we have arranged for the Google search box to appear on our my.att.net site. In this regard, then, we are no different than any other website publisher.

- **Transparency:** Consumers must have full and complete notice of what information will be collected, how it will be used, and how it will be protected.
- **Consumer Control:** Consumers must have easily understood tools that will allow them to exercise meaningful consent, which should be a sacrosanct precondition to tracking online activities to be used for online behavioral advertising.
- **Privacy protection:** The privacy of consumers/users and their personal information will be vigorously protected, and we will deploy technology to guard against unauthorized access to personally identifiable information
- **Consumer Value:** The consumer benefits of an online behavioral advertising program include the ability to receive a differentiated, secure Internet experience that provides consumers with customized Internet advertisements that are relevant to their interests. But we think the future is about much more than just customized advertising. Consumers have shown that in a world of almost limitless choices in the content and services available on the Internet, they see great value in being able to customize their unique online experience. That is the ultimate promise of the technological advances that are emerging in the market today.

Call to Action

We believe these principles offer a rational approach to protecting consumer privacy while allowing the market for Internet advertising and its related products and services to grow. But, in order for consumers truly to be in control of their information, *all* entities involved in Internet advertising, including ad networks, search engines and ISPs, will need to adhere to a consistent set of principles. A policy regime that applies only to one set of actors will arbitrarily favor one business model or technology over another and, more importantly, represent only a partial and entirely unpredictable solution for consumers. After all, consumers do not want information and control with respect to just a subset of potential online advertising or the tracking and targeting that might underlie those ads. Thus, we urge all entities that engage in online behavioral advertising – including especially those who already engage in the practice – to join AT&T in committing to a policy of advance, affirmative consumer consent.