

Cybersecurity, Privacy and Communications Webinar: Smart TV—An Update on Targeted Advertising's New Frontier and Reflections on the FTC's Smart TV Workshop

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What Are Smart TVs and Related Devices?

- “Smart TVs” are TVs that can connect to the Internet, facilitating the use of streaming services and apps directly on the TV.
- Other devices, such as Blu-Ray players, game consoles, and streaming devices connected to TVs can provide similar functionality.
- One participant in the FTC’s Workshop described the technology as a convergence of cable TV, app companies, and TV manufacturers.



Addressable TV

- This is a related concept.
- Ads buyers target audiences instead of programs. Ad buyers analyze advanced data collected by cable set-top boxes and then deliver ads on a household-by-household basis.

What Can Users Do On a Smart TV?

- Stream shows and movies
 - Major providers like Netflix and Hulu
 - Niche content providers
- Stream music
- Social media apps
 - E.g., photos
 - Users can also participate in social media while watching TV
- Games



Data Collection

- More user choices means more data generated.
- Device IDs and IP addresses, location information, voice, camera, cookies where available, and other devices on the network.
- Data revealing viewer preferences and habits.
 - May collect data on what users watch, searches conducted, and content browsed. These data can be associated with a user's device ID and/or IP address.
- Automated Content Recognition
 - One company says it collects data about publicly available content displayed on users' televisions. These data are then associated with a user's IP address.
 - Smart TV can also collect audio commands



Data Use and Sharing

- The data collected are used to analyze viewing patterns and to recommend content to users.
- Some Smart TV providers share viewing data with companies that analyze aggregate viewing patterns.
- Some Smart TV providers share viewing data and device identifier data with advertisers, who can combine this information with information from other sources to deliver targeted ads on Smart TV.
- FTC tech lab study: Smart TVs may communicate with manufacturers' servers, but so far they appear to share less with third parties than web sites do.



Benefits to Industry

- Develop content that more viewers like
- Better advertising and measurement
 - Can measure effectiveness by associating ad views with subsequent purchases
 - Can target ads to consumers
 - Fewer wasted ad dollars
- Cross-device tracking and filling in “gaps” arising from fragmented viewing





Benefits to Consumers

- More content providers and choices
- Better content
- Fewer ads (ads become more valuable, so fewer need to be sold) or no ads (if users use subscription services)
- More relevant ads
- “Second-screen experiences”

Privacy Risks Identified at the Workshop

- The FTC and others at the Smart TV Workshop warned that the data collected by Smart TVs can be highly revealing.
 - Could unveil viewers' religious beliefs, political views, sexual orientation, health conditions, job status, etc.
- Consumers may not understand the scope of data collection, use, and sharing if their reference point is “dumb” TVs. This translates to an emphasis on transparency.



Potential Privacy Frameworks: DAA Principles

The Digital Advertising Alliance's (DAA) Self-Regulatory Principles for Online Behavioral Advertising, Self-Regulatory Principles for Multi-Site Data, and subsequent guidance apply to the use of information collected over time and across unaffiliated web sites, apps, and devices.

- **Transparency**
 - First-party notice—e.g., website, app, or online service
 - Third-party notice—e.g., advertising technology providers
 - “Enhanced notice” on websites/apps and in ads
- **Consumer Control/Choices**
 - Interest-based advertising (opt-out)
 - Sensitive health or financial data (opt-in)
 - Material changes to existing policies (opt-in)
 - Collection/use of data by “Service Providers” (opt-in)
- **Data Security and Accountability**
- **Prohibitions on use of multi-site data for employment, credit, health, and insurance eligibility**



Potential Privacy Frameworks: NAI Code

The Network Advertising Initiative (NAI) adopted its first self-regulatory code of conduct in 2000

- The 2015 NAI Code of Conduct contains requirements similar to the DAA's Self-Regulatory Principles, but members also must disclose:
 - Ad delivery/reporting practices;
 - Technologies used;
 - Data retention period;
 - Adherence to NAI Code; and
 - Use of health-related interest segments.
- Members must require by contract that first parties disclose IBA practices/opt-out and make “reasonable efforts” to confirm that first parties comply with such requirements.
- Restrictions on merger of PII with non-PII and transfers to third parties
- Additional requirements for data access, quality, security, and retention



Privacy Framework: 2009 FTC OBA Report

2009 FTC staff report Self-Regulatory Principles For Online Behavioral Advertising articulated best practices for online interest-based advertising.

- **Based on the following premises:**
 - Collection and use of data is ubiquitous and often invisible.
 - Consumers lack an understanding of the nature and extent of this collection.
 - Many consumers are concerned.
 - Collection and use has led to significant benefits.
 - Traditional distinctions between personally identifiable and anonymous data are blurred.
- **Four central principles:**
 - Transparency and Consumer Control.
 - Data Security and Retention.
 - Express Consent for collection and use of sensitive data.
 - Express Consent for Material, Retroactive Changes.
- **Report applies to mobile space as well.**



Privacy Framework: 2012 FTC Privacy Report

- **Simplified Consumer Choice**
 - Not required for contextually appropriate uses of data (e.g., order fulfillment).
 - Required for uses not consistent with context of transaction or relationship (e.g., secondary uses, behavioral advertising).
 - Affirmative, express consent required for:
 - Material retroactive changes to privacy provisions; and
 - Collection and use of sensitive data.
- **Transparency**
 - Clearer, shorter, more standard privacy policies.
 - More explanation of data “enhancement” practices.
 - Consumer access to data collected about them.
- **Special Concerns**
 - Mobile context—constant data flow & limited disclosure space.

Smart TV Challenges: Data Integrity

- Workshop discussion: Internet-of-things devices are vulnerable.
 - Data security risk.
 - Causes:
 - Lack of consumer awareness;
 - Long lifecycles; and
 - Obsolescence may lead to no new updates.
- Data accuracy
 - Who's actually watching?



Smart TV Challenges: Consumer Expectations

- Serge Egelman (UC-Berkeley) presented research at the workshop.
- He found that consumers are less concerned about sharing data with a server, as opposed to individuals.
- In his research on Smart TVs, most people thought that data would not leave the device.
- Many also believed that there were strong privacy laws in place, while others were cynical about enforcement.
- This is another data point underscoring the need for transparency with Smart TVs.

Smart TV Workshop: The Panel Discussions

- Some participants were critical of industry practices in the web and mobile spaces regarding the efficacy of privacy policies.
- Industry participants supported self-regulation as opposed to new laws that could stifle innovation, at least at this stage of Smart TV's development. Other self-regulatory bodies, such as the DAA and the IAB, will likely take the same position.



Smart TV Challenges: Transparency, Notice, and Choice

- Interface challenges for the device itself
 - On-screen policies?
 - One participant noted that a TV she examined had a privacy policy stretching over 40 screens.
 - Direct consumers to a different device?
 - Layered notice? Need to be creative to get privacy disclosures to consumers.
 - Don't forget FTC policy that unanticipated collections, uses, and disclosures of data need to be displayed clearly and conspicuously, outside the privacy policy.
- Interface challenges for apps
 - Do consumers register choice on the device running the app? Do they sign into their account online and register their choices?
 - Proliferation of apps means that notice and choice is not standardized.
 - Problems associated with small screens.



Moving Forward: Industry

- Industry solutions
 - Some participants wanted industry standardization.
 - The NAI representative said the “dream” was to put participants in the Smart TV space on an equal footing with the rest of the targeted advertising ecosystem.
 - Many participants thought self-regulation is best for now, as it would allow companies to experiment with what works.
 - Note that Consumer Reports said that it is planning to debut a system of ratings early next year so consumers know which devices protect privacy and security.
 - The NAI representative said that the NAI is currently working on guidance for members operating in this space.



Moving Forward: Legal Regimes

- Video Privacy Protection Act: Generally forbids disclosure of “information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider.”
 - Issues litigated include what constitutes a “videotape service provider,” what types of information “identify” a consumer, and who is a covered person under the law.
 - Workshop participants noted conflicting case law.
- Cable Act: Generally prohibits cable operators from collecting “personally identifiable information” (undefined) about any subscriber without prior consent from the subscriber, unless the information is necessary to render services or to detect fraud in accessing service. It also prohibits cable operators from disclosing subscribers’ personally identifiable information to third parties without the subscribers’ consent, unless the disclosure is either necessary to render a service to the subscriber or if it is made to a government entity pursuant to valid process.

Moving Forward: Legal Regimes (Cont'd)

- COPPA
 - Prohibits the collection of “personal information” (including persistent identifiers) from children under the age of 13 without verifiable parental consent; requires detailed notice; and provides parents with specific rights to access or delete childrens’ personal information. Applies to “websites or online services” that are directed to, or knowingly collect personal information from, children under the age of 13. Smart TV may well be an “online service.”
- FTC suggested that ECPA and the Wiretap Act might apply
- Section 5 of the FTC Act
- New/updated legislation? General pessimism at this stage.



Moving Forward: FTC

- The FTC may issue a post-workshop Staff Report.
 - This would most likely build on 2009 and 2012 FTC reports already discussed and issue recommendations on privacy and security practices for the Smart TV industry.
- The FTC will watch developments closely.
- Director Rich expressed FTC's willingness to bring Section 5 enforcement actions where appropriate, such as false privacy promises or inadequate security.
- But for now, it appears that the FTC seems content with allowing self-regulation in this space to take shape and to see how that plays out.



Takeaways

1. Be aware of technological developments in this space.
2. Know what data is collected, how it is used, and with whom it is shared (and for what purpose(s)), and make sure that that information is communicated to consumers clearly and conspicuously. You might need to be creative here.
3. Stay up-to-date on industry guidance and self-regulatory developments.
4. Monitor the FTC's comments, reports and actions.
5. Remember that existing laws and regulations already apply in this new space.



Questions?

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