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NEWSLETTER

"Do-Not-Track" Proposal Threatens Online Revenue Models

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Remember "Do-Not-Call" and the drastic effect it had on the telemarketing industry? Now regulators and lawmakers are rallying behind "Do-Not-Track" to combat concerns about intrusive online advertising. While "Do Not Track" is unlikely to have the same impact on online advertising as "Do-Not-Call" had on telemarketing, these new efforts still threaten to weaken the online revenues of media companies.

"Do-Not-Track" would seem to apply the principles behind the successful "Do-Not-Call" telemarketing regulations to online advertising. Currently, advertising networks use online tracking tools (such as cookies, Flash cookies and clear GIFs) to make informed guesses about a user's age, gender, income, home value and other demographic information. This ability to reach the narrow consumer segment most likely to purchase an advertised product makes online advertising more valuable for advertisers. Accordingly, online content providers like media companies can charge a "behavioral advertising" premium for online ad space. "Do-Not-Track" threatens this premium because it could block the flow of user data on which profiles are based, in turn degrading ad networks' ability to match precisely an ad with a likely customer.

In December, both the Federal Trade Commission (FTC) and the Commerce Department released privacy reports supporting the "Do-Not-Track" concept. (Both of these reports are the focus of companion articles in this *Mass Media Headlines* available here and here). The FTC report encourages companies that collect or use consumer data to offer consumers choices about how their information is collected and used online. Instead of a central registry, as with "Do-Not-Call," the report endorses an approach based on legally mandated web browser settings that would transmit information to online operators telling them to refrain from tracking.

Less than a week after the FTC released its report, Microsoft announced that it will ship a form of "Do-Not-Track" called Tracking Protection Lists (TPLs) in the next version of its Internet Explorer web browser. The TPL feature, which will be turned off by default, allows users to add lists of websites that the browser will only visit upon explicit consumer direction (such as clicking on a hyperlink or typing the address into the address bar). Users can add their own lists or subscribe to lists provided by privacy organizations. Internet Explorer will check for updates to those lists and adhere to them each time the browser is launched. Effectively, TPLs will prevent listed online ad networks from collecting information about the user's online behavior.

Congress has also shown an interest in "Do-Not-Track." At a December hearing, Rep. Ed Markey (D-MA) announced that he plans to introduce a privacy bill that will include a "Do-Not-Track" mechanism. Republicans who now control the House have also talked tough about online privacy, though they are more likely to adopt a soft approach, using the threat of legislation to spur private-sector action, such as Microsoft's TPL feature.

Consumers, however, might not be as eager to endorse "Do-Not-Track" as they were "Do Not Call." For one thing, while telemarketing calls were terribly intrusive, conjuring up the image of peaceful families disturbed at the dinner table, online behavioral advertising is more passive. In fact, many consumers appreciate receiving online advertisements that appeal to their interests. Moreover, consumers derive a benefit from online advertising in the form of free or reduced-cost content. One industry observer estimates that users could be forced to pay $20 annually for Facebook and 10 cents for each online search if privacy regulations curtail online advertising revenues. Media companies might also have to begin charging for online content to offset the loss of advertising revenue. This trade-off could reduce or eliminate the appeal to consumers of "Do Not Track" and similar regulations.

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