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Legislators Seek Answers About Tracking Mechanisms

Reacting to a recent series of articles in *The Wall Street Journal*, Reps. Ed Markey (D-Mass.) and Joe Barton (R-Tex.) sent letters to 15 Internet companies questioning their practice of allowing third-party advertising companies to install cookies and other tracking mechanisms on visitors' computers.

The *WSJ* series, called "What They Know," told readers that "Marketers are spying on Internet users – observing and remembering people's clicks, and building and selling detailed dossiers of their activities and interests." The publication looked at the top 50 Web sites in the United States and found that these sites dropped an average of 64 pieces of tracking technology – like cookies – onto users' computers.

Writing to companies including AOL, Yahoo, and MSN, the legislators said they were "troubled" by the findings in the articles, which they said raised "important questions about the nature, scope and prevalence of Internet companies' use of consumers' personal information gleaned from their online activities, reportedly without consumers' knowledge or consent."

"This data gathering permits web-based enterprises to develop digital dossiers on consumers for a range of purposes, including highly targeted marketing," the lawmakers wrote.

Recipients of the letters were asked to respond to questions



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including what specific information they collect from consumers, whether the information is monetized, and if so, how much revenue is associated with the information over a 12-month period.

The companies were also asked about privacy policies and whether they offer consumers the ability to opt-in to or opt-out of collection practices, or allow consumers the option to prevent the collection and use of their data.

To read one of the identical letters sent to all 15 companies, click [here](#).

Why it matters: The letters requested answers from the companies by August 12, giving legislators time to consider the responses as they begin debating pending privacy legislation. Although Rep. Rick Boucher (D-Va.) circulated a draft of his proposed law first, he recently said that his bill will likely be merged with legislation introduced by Rep. Bobby Rush (D-Ill.), the Best Practices Act.

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FDA Warns Novartis About Facebook Widget

Drug company Novartis recently received a warning letter from the Food and Drug Administration's Division of Drug Marketing, Advertising, and Communications about a widget enabling visitors to the Web site for the company's drug Tassigna to share information with their Facebook friends.

The FDA claimed that the widget for Tassigna, a leukemia drug, violated federal regulations because it made representations about the drug's efficacy and failed to communicate any risk information. Tassigna's Web site offered Novartis-created information about the drug that Facebook users could "share" with their friends by posting it on their wall or sending it as a separate message. For example, one item read, "In addition to taking Tassigna (nilotinib) 200-mg capsules, talking to your doctor and receiving health tips can help you treat your CML [chronic myeloid leukemia]."

"By failing to disclose any risk information for Tassigna, the shared content misleadingly suggests that Tassigna is safer than has been demonstrated by substantial evidence or substantial clinical experience," the letter stated. The FDA noted that the shared content included a hyperlink to Tassigna Web sites, which do contain

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risk information, but said that wasn't enough. "The inclusion of such a hyperlink is insufficient to mitigate the misleading omission of risk information from these promotional materials. For promotional materials to be truthful and non-misleading, they must contain risk information in each part as necessary to qualify any claims made about the drug," the FDA said.

The letter requested that Novartis immediately cease the dissemination of the promotional materials, which the company did. In a statement, the company said it "will continue to have active discussions with the FDA to understand fully all of the concerns. We also will assess all of our Web assets and materials based on these concerns."

To read the FDA's warning letter, click [here](#).

Why it matters: Because drug advertising faces stricter regulation than other industries, companies have expressed concern about meeting their requirements in the world of social media. In April, pharmaceutical companies filed written statements with the FDA, urging it to adopt guidelines specific to Web marketing and the use of social media, arguing that it is impossible to convey the risk information required in other forms of advertising in a 140-character Tweet or an Internet banner ad. While the FDA has set no timetable for issuing such guidelines, its letter to Novartis – the first sent directly addressing marketing efforts on Facebook – highlights the fact that the agency is monitoring the use of social media.

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Report: Youth See Fewer Alcohol Ads

A new report released by the Center on Alcohol Marketing and Youth at Johns Hopkins' Bloomberg School of Public Health found youths are seeing fewer alcohol ads.

In 2003, alcohol companies undertook a voluntary effort and agreed not to place ads in magazines with youth readership comprising more than 30 percent of the total audience, a decrease from the prior level of 50 percent. The study, which reviewed 29,026 alcohol-product ads in national magazines placed at a cost of \$2.7 billion, analyzed whether the alcohol companies met their 30 percent standard and what effect it had on youth exposure. Defining "youth" as persons ages 12 to 20, the study found that total youth exposure to alcohol advertising declined 48 percent

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Topic/Speaker: "Negative

between 2001 and 2008. Alcohol ads placed in publications with audiences under 21 comprising more than 30 percent of the total readership “fell to almost nothing” by 2008.

The study noted that continued exposure of youths to alcohol ads will depend on a small handful of companies: only 16 brands accounted for more than 50 percent of youth exposure. “The industry has made progress in reducing total youth exposure to alcohol advertising in magazines, but continued success will rely on changes in the advertising practices of specific alcohol brands,” according to the report. Alcohol companies have also shifted the type of alcohol advertised in magazines, the study found. Between 2001 and 2008, liquor ads decreased by 34 percent (trending toward television ads), while beer ads increased 158 percent.

To read the report, click [here](#).

Why it matters: Although the study affirms that alcohol companies have followed through with their pledge, the study notes that calls have been made to the industry to lower the exposure standard to 15 percent maximum of the youth audience. “While total youth exposure to alcohol advertising in magazines has declined... [s]tricter standards are needed to protect youths from the risks posed to them by exposure to advertising for alcoholic beverages,” the report concluded.

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Senators Introduce Data Protection Bill

Sens. Mark Pryor (D-Ark.) and Jay Rockefeller (D-W.Va.) introduced a data protection bill that would require both businesses and non-profits to establish “reasonable” security policies to protect personal consumer information.

Under the “Data Breach and Security Notification Breach Act of 2010” as introduced, entities that own or possess information like credit card numbers would be required to notify consumers of a data breach within 60 days and provide them with credit monitoring for two years. “An estimated 9 million Americans have their identities stolen each year, resulting in destroyed credit ratings and legal troubles,” Sen. Rockefeller, Chairman of the Senate Commerce Committee, said in a statement. “Consumers are placed at risk of identity theft, fraud, and other harm when bad actors get access to their personal information as a result of security breaches. Companies and other entities who collect and

Option/Advance
Consent/Affiliate Upsells," [Marc Roth](#)

Topic/Speaker: "Children's Marketing," [Christopher Cole](#)
Chicago, IL
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Under the proposed law, entities must “establish and implement policies and procedures” for safeguarding personal information, including a security policy “with respect to the collection, use, sale, other dissemination, and maintenance” of personal information.

The legislation also contains provisions about consumer access to their information and disputed information. Companies that suffer a breach – not limited by the bill in scope, covering a breach of four names or 4 million – must notify affected individuals as well as the Federal Trade Commission. Notice must be given within 60 days unless the company can show the time frame is not feasible or receives a delay for national security or law enforcement purposes.

Notification can be made in writing, by e-mail, or other electronic means if that is the company’s primary form of communication with the consumer. The notice itself must include the date or estimated date range of the security breach, a description of the personal information that was acquired, contact information for the company, the major credit reporting agencies and the FTC so that consumers may inquire about the breach, as well as information about the two-year credit counseling.

To read Senate bill 3742, click [here](#).

Why it matters: The federal legislation would likely preempt a patchwork of state laws on data breach notification, which have various requirements for who must receive notice, how notice can be given, if penalties exist for non-compliance, and whether companies must take pro-active steps like establishing security programs. The bill is similar to legislation introduced last month by Sens. Tom Carper (D-Del.) and Robert Bennett (R-Utah), who have introduced data breach notification legislation in prior sessions without success.

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