

Consumer Protection Alert: Buyer Beware

Who Else Might Be Monitoring Web-Surfing on Your Mobile Device?

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President Barack Obama's commitment to consumer privacy faces an early but critical test concerning federal safeguards for mobile-device users. Consumer advocate organizations, the Center for Digital Democracy (CDD) and the U.S. Public Interest Research Group (USPIRG), filed a complaint with the Federal Trade Commission (FTC) on January 13, 2009. The organizations seek protections to curb the ability of companies to track consumers' mobile Web-surfing habits, a measure which would prevent companies from targeting advertisements to mobile device consumers.

The complaint amends two petitions filed by the groups in 2006 and 2007 requesting that the FTC create safeguards regulating "behavioral" Internet advertising. CDD and USPIRG's new concern appears to be the greater immediacy of mobile marketing that comes from the user's more personal relationship with his or her mobile device, as well as location and tracking information that is unique to wireless.

In 2007, the FTC conducted an investigation of the issues and proposed guidelines for voluntary industry safeguards, measures which the consumer groups considered to be ineffective. Coincidentally, on the same day as the consumer groups filed the FTC complaint the American Association of Advertising Agencies, the Association of National Advertisers, the Direct Marketing Association, and the Interactive Advertising Bureau announced that they would jointly develop self-regulatory principles for online behavioral advertising aimed at addressing privacy concerns and increasing consumer trust and confidence in how online information is gathered and used for advertising purposes.

The 2009 complaint asks the FTC to adopt rules defining what constitutes "unfair and deceptive practices" in the context of mobile marketing and to require heightened disclosure that would better allow consumers to control how information about them is used. The complaint identifies five mobile marketing practices that allegedly violate consumer privacy:

- targeting;
- location-based targeting;
- user tracking/mobile analytics;
- audience segmentation; and
- data mining.

The consumer groups contend that mobile advertising poses greater risks to personal privacy than other forms of marketing because of the intimately personal way an individual's habits can be tracked.

The privacy complaint is aimed at practices conducted by major companies that utilize Internet advertising such as Google, Nokia, Yahoo!, and Verizon, and urges that they be required to develop stringent mobile Web safeguards such as enacting opt-in procedures for consumers. In response to the complaint, Google has said that the company is "keenly aware" of its responsibility to protect Web users' privacy and wants to work with other companies to develop voluntary guidelines. 99% of Google's 2007 revenue resulted from Internet advertising.

Consumer groups view the complaint as a litmus test for the Obama administration and an opportunity to set the tone for its approach to Internet privacy. Rob Enderle, president of USPIRG, noted that "[t]he Obama administration has made it clear that the Bush administration was way too passive with regard to privacy, and they will want to make a statement." Despite his close ties to Google CEO Eric Schmidt, an ardent Obama supporter, the President has expressed his desire to "strengthen privacy protections for the digital age and harness the power of technology to hold government and business accountable for violations of personal privacy," according to a technology agenda posted on the Obama transition Web site.

President Obama's commitment to consumer privacy will soon be tested. The manner in which the Obama administration reacts to and handles the FTC complaint could set the stage for its future treatment of consumer privacy issues.

Feel free to contact one of the attorneys listed below for further information. We would be pleased to assist you with any concerns you may have.

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