

CLARIASM



Privacy Issues Associated with Tracking of Consumers' Online Behavior

CLARIA

Current Federal Standards

- **FTC Act**
 - Deception Policy Statement
 - Unfairness Policy Statement
 - Commission's Privacy Agenda:
 - Preventing misuse of consumers' personal information, especially their sensitive personal information
 - Prevent deception that results in harm to consumers
- **FTC Actions**
 - Geocities line of cases
 - Lilly line of cases
 - The unintended consequence: "Privacy Paradox" – No incentive to have a privacy policy at all, but if you do, the incentive is to make it as broad as possible to avoid perceived misrepresentations.

Should Privacy be Treated as a Consumer Protection Issue?

- Clear and Conspicuous standard
- FTC “Dot Com Disclosures” document
 - Very little enforcement
- FTC enforcement in privacy cases
- FTC regulation of online advertising industry
- The rub: Differing opinions on the utility of the EULA as a disclosure document in consumer transactions.

Congress, Recent FTC Activity: Yes

- HR 29, S 687 – Congress looking to raise the notice and consent standard for software that tracks consumers and uses the information for advertising purposes.
 - How? Layered notice works well in this context.
- Recent FTC speeches – Discuss adequacy of disclosures
- Recent FTC enforcement activity – D-Squared, Seismic Entertainment, Max Theater, Inc. make clear that the FTC is on the beat in the context of spyware.
- Implications could be much broader, and that's why Congressional activity is getting so much attention.

“Spyware” and “Adware”

- Claria’s definitions --
 - Spyware: Without notice and consent
 - Collects behavioral information
 - Uses it for an unrelated purpose (malicious, commercial)
 - Adware: With notice, consent, control
 - Advertising-supported software

The Future of Ad-Supported Software

- Keys –
 - Market Demands:
 - Enhanced value of ad inventory
 - Advertisers looking for more and more effective campaigns
 - More certainty in the market on regulatory framework
 - Consumer Demands: Value and control
 - Accept as a good value exchange – high benefit, low burden
 - “Bipolar consumer control”
 - Consistent with expectations of a positive online experience

Questions?