



## Targeted Online Advertising: What's the Harm & Where Are We Heading?

by Berin Szoka & Adam Thierer

The Federal Trade Commission (FTC) has finally released its revised “Self-Regulatory Principles for Online Behavioral Advertising”<sup>1</sup> (OBA) after proposing a draft of those principles back in December 2007. The FTC deserves credit for resisting calls to abandon self-regulation, and for its thoughtful consideration of the danger in stifling advertising—the economic engine that has supported a flowering of creative expression and innovation online content and services. But we continue to have our doubts about the FTC’s approach, however-well intentioned:

1. Where is this approach heading? Will a good faith effort to suggest best practices eventually morph into outright government regulation of the online advertising marketplace?
2. What, *concretely*, is the harm we’re trying to address? We have asked this question several times before and have yet to see a compelling answer.<sup>2</sup>
3. What will creeping “co-regulation” mean for the future of “free” Internet services? Is the mother’s milk of the Internet—advertising—about to be choked off by onerous privacy mandates?

### Is this Really Self-Regulation?

The FTC recognizes the cardinal virtue of industry self-regulation over command-and-control varieties of government regulation: “it provides the necessary flexibility to address evolving online business models.”<sup>3</sup> Yet every new FTC report or event seems to move us closer towards the European model of “co-regulation,” where the government steers and industry simply rows. So, what does “self-regulation” really mean here?

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1. Federal Trade Commission Staff Report, *Self-Regulatory Principles For Online Behavioral Advertising: Tracking, Targeting, and Technology*, February 2009, (“FTC Staff Report”) <http://ftc.gov/os/2009/02/P085400behavareport.pdf>

2. Berin Szoka & Adam Thierer, *Online Advertising & User Privacy: Principles to Guide the Debate*, Progress Snapshot 4.19. Sept. 2008, <http://www.pff.org/issues-pubs/ps/2008/ps4.19onlinetargeting.html>

3. FTC Staff Report at 11.

FTC Commissioner Jon Leibowitz correctly declares that the agency has the authority to—and should—enforce privacy policies. But he also asserts that the FTC also has the authority to “go after” companies that fail to “implement reasonable security for and limit their retention of sensitive consumer data.”<sup>4</sup> Thus, when he states his view of the FTC’s self-regulatory principles as a “sound *baseline* for further self-regulatory efforts,”<sup>5</sup> it sounds like he envisions someday enforcing these principles directly—just as the FCC has seemingly turned its 2005 Internet Policy Statement of net neutrality “principles” into enforceable mandates.<sup>6</sup> That certainly doesn’t *sound* like “self-regulation.”

Some commenters expressed concern that “self-regulation at the behest of a governmental entity such as the FTC cannot truly be self-regulatory,” and asked how FTC regulation, however disguised, can be reconciled with the First Amendment rights of website operators as well as advertisers (both commercial and otherwise).<sup>7</sup> The FTC responded simply that the agency has “studied the effectiveness of, and made suggestions for improving self-regulatory schemes, and that such efforts do not implicate the First Amendment”—citing its efforts to test industry self-regulation against the sale of violent video games to minors.<sup>8</sup> But the reference to the FTC’s ongoing reports on the *Marketing of Violent Entertainment to Children* is not an accurate comparison because those FTC reports do *not* outline detailed regulatory alternatives to existing voluntary industry self-regulatory ratings enforcement systems. Rather than threatening to impose a mandatory universal ratings system in the place of voluntary industry ratings systems, the FTC uses those reports to test the efficacy of industry ratings systems. By contrast, the FTC’s reports on online advertising seem to be inching closer to a formal blueprint for how the industry must do business going forward.

Similarly, FTC Commissioner Pamela Jones Harbour recognizes that companies are increasingly competing with each other to develop “pro-consumer privacy tools” and policies such as shorter data retention periods.<sup>9</sup> Yet, she says she cannot “fully support a self-regulatory approach to behavioral advertising” because it “has not yet been proven sufficient to fully protect the interests of consumers with respect to behavioral advertising specifically, or privacy generally.”<sup>10</sup> She also speaks of the need “to rein in unbridled optimism”—implying that faith

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4. Concurring Statement of Commissioner Jon Leibowitz at 1 (Leibowitz Statement), *available at* <http://ftc.gov/os/2009/02/P085400behavadleibowitz.pdf>.

5. *Id.* (emphasis added).

6. Barbara Esbin, *The Law is Whatever the Nobles Do: Undue Process at the FCC*, Progress & Freedom Foundation, Progress on Point 15.12, [www.pff.org/issues-pubs/pops/2008/pop15.12undueprocess.pdf](http://www.pff.org/issues-pubs/pops/2008/pop15.12undueprocess.pdf).

7. FTC Staff Report at 18 & n.44.

8. *Id.*

9. Concurring Statement of Commissioner Pamela Jones Harbour at 8, (Harbour Statement), *available at* <http://ftc.gov/os/2009/02/P085400behavadharbour.pdf>.

10. *Id.* at 2.

in self-regulation is naïve.<sup>11</sup> And Commissioner Leibowitz ominously declares, “A day of reckoning may be approaching.”<sup>12</sup>

Thus, while both Commissioners are willing to tolerate continued reliance on self-regulation, at least for a time, it seems clear that they remain open to an expanded role for the FTC on this front and both call for national privacy legislation that includes new regulatory mandates and additional FTC oversight of online advertising.

### **But What’s the Harm, Anyway?**

The FTC Report declares that “the central goal of the Principles is to minimize potential misuses of data, including uses of data that could cause harm or are contrary to consumer expectations.”<sup>13</sup> But by what means could the FTC possibly divine the expectations of consumers in the aggregate? Consumers vary widely in their attitudes towards the inherently nebulous concept of privacy, as Cato Institute scholar Jim Harper has demonstrated:

Privacy is a state of affairs or condition having to do with the amount of personal information about individuals that is known to others. People maintain privacy by controlling who receives information about them and on what terms. Privacy is the subjective condition that people experience when they have power to control information about themselves and when they exercise that power consistent with their interests and values....

An important conclusion flows from the observation that privacy is a subjective condition: government regulation in the name of privacy is based only on politicians’ and bureaucrats’ guesses about what “privacy” should look like.<sup>14</sup>

Measuring expectations for *all* consumers becomes even harder when taken out of the philosophical and abstract—“What practices would websites ideally follow?”—and put into the practical and concrete—“What would an individual user actually expect when exchanging their data for free content and services?”

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11. *Id.* at 12.

12. Leibowitz Statement at 2.

13. FTC Staff Report at 31 n. 62.

14. “Properly defined, privacy is the subjective condition people experience when they have power to control information about themselves.” Jim Harper, *Understanding Privacy – and the Real Threats to It*, Cato Institute Policy Analysis No. 520, Aug. 4, 2004, [www.cato.org/pub\\_display.php?pub\\_id=1652](http://www.cato.org/pub_display.php?pub_id=1652). “Debates about online privacy often seem to assume relatively homogeneous privacy preferences among Internet users. But the reality is that users vary widely, with many people demonstrating that they just don’t care who sees what they do, post or say online. Attitudes vary from application to application, of course, but that’s precisely the point: While many reflexively talk about the ‘importance of privacy’ as if a monolith of users held a single opinion, no clear consensus exists for all users, all applications and all situations.” Berin Szoka, *A Wide Diversity of Consumer Attitudes about Online Privacy*, PFF Blog, Oct. 30, 2008, [http://blog.pff.org/archives/2008/10/a\\_wide\\_diversit.html](http://blog.pff.org/archives/2008/10/a_wide_diversit.html)

The FTC is on much firmer ground—from legal, constitutional and policy perspectives—when the agency focuses on protecting consumers from concrete harms and truly deceptive practices. Regrettably, the FTC staff report says little about what the harm of OBA really is. The agency cites concerns about “the invisibility of the practice” (again, a matter of consumer expectations) and “the risk that sensitive data, once collected, could fall into the wrong hands.”<sup>15</sup> The latter certainly sounds scary, but what does it really mean? This is reminiscent of the many boogeyman scenarios set forth in debates over online child safety and the supposed impact of media on children: There’s always something nefarious supposedly lurking out there that necessitates preemptive government intervention, even though those fears typically prove almost entirely chimerical.<sup>16</sup> The FTC is not talking here about harm from targeted advertising—as distinct from, say, the case of deceptive marketing to children, who fall prey to scams far more easily than adults.

Instead, the FTC is jumping to possible “secondary uses” of data collected for OBA purposes but used for something else, such as “selling personally identifiable behavioral data, linking click stream data to [personally identifiable information (PII)] from other sources, or using behavioral data to make credit or insurance decisions.”<sup>17</sup> The FTC itself notes that “such uses do not appear to be well-documented.”<sup>18</sup> But are these concerns what is really driving the FTC’s efforts—and those who would support overt regulatory mandates? If so, why are *conjectural* concerns about the *use* of data driving restrictions about how data is *collected* for the purpose of delivering more relevant advertising to consumers (something that has not been shown to cause real harm)?

Commissioner Harbour makes an attempt to offer some detail about what “harm” might entail:

Already, it is possible to assemble a “digital dossier” that captures an individual’s interests and habits, runs them through a predictive model, and determines what that person likely will do in the future. Car registrations are data-mined to target potential voters. In the credit industry, behavioral scoring is used to justify lowering the credit limits of “at risk” card users. At the mall, cameras embedded in advertising kiosks identify viewers’ faces to deliver target ads.

It requires little stretching of the imagination to envision how firms may use data to make decisions that will have tangible effects on consumers’ lives. There may be a “tipping point” – a point where consumers become sufficiently concerned about the collection and use of their personal information that they want to exercise greater control over it, but where any such attempt to exercise control becomes futile because so much of their digital life already has been exposed.

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15. FTC Staff Report at 32 n. 62.

16. Adam Thierer, *Technopanics and the Great Social Networking Scare*, PFF Blog, July 10, 2008, [http://blog.pff.org/archives/2008/07/technopanics\\_an.html](http://blog.pff.org/archives/2008/07/technopanics_an.html).

17. *Id.* at 45.

18. *Id.*

Again, these concerns are largely conjectural or addressable in ways. Indeed, the best guard against her “tipping point” scenario is the increasingly tight limits on the duration of data retention she herself praises industry for adopting under competitive pressure. But most of the supposed harms she cites aren’t really harms at all. Behavioral scoring in the credit industry is a sensible way to minimize actual risk to lenders and the shareholders in those companies. To deny all behavior scoring of “at risk” card users would be to invite the onset of a massive financial moral hazard—a danger regulators should appreciate now more than ever in light of recent macroeconomic events. Moreover, the *Minority Report*-like scenario involving cameras in advertising kiosks to display tailored ads strikes some of us a perfectly sensible, if still-remote, evolution away from the world completely untargeted billboard advertising (the traditional media equivalent of e-mail spam). Again, how is a consumer actually *harmed* by such innovations? Is it because they might be tempted to buy more products? If so, that’s not a “harm” the government need concern itself with.

The FTC’s two most valid concerns focus on the collection of extremely sensitive information and ensuring that consumers are notified of changes to privacy policies. Indeed, the leading industry self-regulatory effort, the Network Advertising Initiative, already requires opt-in consent for the use of the most sensitive forms of information.<sup>19</sup> Beyond that relatively small subset of information, however, the burden of proof remains on the FTC to show how *concrete, not conjectural* harms would flow from efforts to create more targeted forms of advertising. And, as discussed next, the agency must conduct a true cost-benefit analysis that takes into account that many new innovations and consumer benefits that would flow from more targeted advertising techniques.

### **The *Quid Pro Quo* of Targeted Advertising for Content & Services**

So, if no real harm has been shown, why does the government need to get involved? The advocates of regulation pay lip service to the importance of advertising in funding online content and services but don’t seem to understand that this *quid pro quo* is a fragile one: Tipping the balance, even slightly, could have major consequences for continued online creativity and innovation.<sup>20</sup>

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19. Network Advertising Initiative, *2008 NAI Principles*, [www.networkadvertising.org/networks/2008%20NAI%20Principles\\_final%20for%20Website.pdf](http://www.networkadvertising.org/networks/2008%20NAI%20Principles_final%20for%20Website.pdf). The NAI Principles define “sensitive consumer information” to include:

- “Social Security Numbers or other Government-issued identifiers Insurance plan numbers
- “Financial account numbers
- “Information that describes the precise real-time geographic
- “location of an individual derived through location-based services ...
- “Precise information about past, present, or potential future health or medical conditions or treatments, including genetic, genomic, and family medical history.” *Id.* at 6.

20. This is also true in a macro sense in that regulation of the online advertising marketplace could curtail opportunities for competitive entry by smaller firms since “advertising typically benefits new entrants and small firms more than it does large, established firms.” Thomas Lenard & Paul Rubin, *Privacy and the Commercial Use of Personal Information* at xxii (2002), <http://pff.org/issues-pubs/pops/pop14.15lenardrubinCPNIprivacy.pdf>

Commissioner Harbour talks about companies competing on privacy as a “non-price dimension”—and that is clearly a positive thing. In traditional economics, there are three primary variables that are considered when discussing industry competition and efforts to regulate market structures: price, quantity, and quality. But in the context of the Internet, where digital economics have relentlessly driven prices down to zero, and where advertising support has become the only viable business model for most providers of content and services,<sup>21</sup> the price variable has largely been removed from the picture. This means—unless industry could somehow find a way to make pay-per-use, pay-per-view, or subscription-based models work in the future—that regulation of online advertising would have its most dramatic impact on the quantity and quality of content and services provided.

Depending on how regulation is structured, therefore, it is possible that new privacy mandates would severely curtail the overall *quantity* of content and services offered—and greatly limit the ability of new providers to enter the market with innovative offerings. Alternatively, or perhaps additionally, companies would change the character of their offerings and water-down sophisticated services that cater to consumer demand; in other words, the *quality* of service would deteriorate.

Bottom line: *Something must give because there is no free lunch.*<sup>22</sup> Regulation is a giant game of economic whack-a-mole: Attempting to control one of the primary variables of price, quantity, or quality inevitably results in non-optimal adjustments in the other two variables. The absence of price as a variable in this context means there is one less variable for the government to control in the first place. Simply stated, stifling the evolution of the online advertising marketplace will likely result in fewer free online services and less content, less high-quality online services and content, or some combination of both.

### **User Empowerment as a Supplement to Self-Regulation**

As we have emphasized, self-regulation, to be effective, must be part of a layered approach that includes user education and empowerment through the development of tools and methods by which users can take privacy into their own hands.<sup>23</sup>

The FTC report, however, says essentially nothing about this. Commissioner Harbour asks the right question—“given the current state of technology, are consumers able to exercise

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21. See, e.g., Chris Anderson, *Free! Why \$0.00 Is the Future of Business*, Wired Magazine, Feb. 25, 2008, [www.wired.com/techbiz/it/magazine/16-03/ff\\_free](http://www.wired.com/techbiz/it/magazine/16-03/ff_free).

22. “Privacy is both an individual and a social good. Still, the no-free-lunch principle holds true. Legislating privacy comes at a cost: more notices and forms, higher prices, fewer free services, less convenience, and, often, less security. More broadly, if less tangibly, laws regulating privacy chill the creation of beneficial collective goods and erode social values. ... Such regulation would likely increase both direct and indirect costs to the individual consumer, reduce consumer choice, and inhibit the growing trend of personalization and tailoring of goods and services.” Kent Walker, *The Costs of Privacy*, Harvard Journal of Law & Public Policy, Vol. 25, Fall 2001, pp. 87-91.

23. Szoka & Thierer, *supra* note 2, at 2. See also Tom W. Bell, *Internet Privacy and Self-Regulation: Lessons from the Porn Wars*, Cato Institute Briefing Paper No. 65, Aug. 9, 2001, [www.cato.org/pub\\_display.php?pub\\_id=1504](http://www.cato.org/pub_display.php?pub_id=1504).

meaningful privacy choices?”<sup>24</sup>—but discounts the effectiveness of current tools, focusing on the concept of opt-out cookies.

Perhaps the closest the FTC gets to articulating a potential harm that could flow from showing users targeted advertising (rather than from “secondary uses” of targeting data) is its example in which “delivery of advertising associated with that user’s searches to the shared computer, even if the advertising does not identify the user, could reveal private information to another user of the same computer.”<sup>25</sup> But a wide range of tools exist that would easily allow users to avoid this problem—including the “private browsing” or “incognito” modes now trumpeted as standard features by the leading browser manufacturers.<sup>26</sup> Especially privacy-sensitive users can choose from a wide-range of browser plug-ins that give them even more control over their privacy. For example, almost 42 million people (roughly a half million every week) have downloaded the Adblock Plus add-on for the Firefox web browser, which lets users block online ads entirely.<sup>27</sup> The same total number (a quarter million a week) have downloaded the NoScript plug-in, which blocks the invisible third-party code on websites used to load cookies.<sup>28</sup>

Yet, again, the FTC says nothing about these “self-help” options, and seems to assume that consumers are utterly helpless. Why is it that the FTC and so-called privacy advocates aren’t doing more to highlight existing self-help tools or working to encourage the development of additional—and more robust—tools?

Moreover, there are many indirect pressures and reputational incentives that provide an important check on the behavior of firms and the privacy policies they craft.<sup>29</sup> Just as the Internet increases the ways advertisers can reach audiences, it increases the power audiences have to influence advertisers. For example, when Facebook introduced its Beacon program in 2007, which shared users’ online purchases with their friends without sufficient warning about how the program worked and the ability to opt-out of the program, the response was swift and

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24. Harbour Statement, at 2.

25. FTC Staff Report at 23.

26. Adam Thierer & Berin Szoka, “Privacy Solution Series: Part 1 – Introduction,” *PFF Blog*, September 5, 2008, [http://blog.pff.org/archives/2008/09/privacy\\_solutio.html](http://blog.pff.org/archives/2008/09/privacy_solutio.html)

27. See <https://addons.mozilla.org/en-US/firefox/addon/1865>. Also see: Adam Thierer & Berin Szoka, “Privacy Solution Series: Part 2 -- Adblock Plus,” *PFF Blog*, September 8, 2008, [http://blog.pff.org/archives/2008/09/privacy\\_solutio\\_1.html](http://blog.pff.org/archives/2008/09/privacy_solutio_1.html)

28. See <https://addons.mozilla.org/en-US/firefox/addon/722>

29. “Thus, when businesses use information in ways that consumers do not like, consumers quickly learn about it, and the firms are forced to stop. Such reputational penalties may be among the strongest protections available to consumers. They send powerful messages to firms that they will incur losses if their information management policies are not to their customers’ liking. Firms, therefore, have a strong incentive to avoid undertaking policies that run the risk of offending their customers. The Internet speeds up collection of information about consumers, but it also enables consumers to more easily obtain information about firms’ activities on the Web.” Thomas Lenard and Paul Rubin, *Privacy and the Commercial Use of Personal Information* (Washington, D.C.: The Progress & Freedom Foundation, 2002), p. xvii, <http://pff.org/issues-pubs/pops/pop14.15lenardrubinCPNIprivacy.pdf>

effective: Users “collectively raised their voices” and “the privacy pendulum [swung] back into equilibrium.”<sup>30</sup> Within two weeks of the Beacon program being first deployed, Facebook had created an opt-out procedure.<sup>31</sup>

## Conclusion

We stand at an important crossroads in the debate over the online marketplace and the future of a “free and open” Internet. Many of those who celebrate that goal focus on concepts like “net neutrality” at the distribution layer, but what really keeps the Internet so “free and open” is the economic engine of online advertising at the applications and content layers. If misguided government regulation chokes off the Internet’s growth or evolution, we would be killing the goose that laid the golden eggs.

Apart from a hardcore fringe who embrace the Marxist dogma that advertising is inherently deceptive and wasteful, most participants in this debate at least pay lip service to the economic importance of online advertising. One might therefore be lulled into a false sense of complacency that “sensible” regulation (or government-led co-regulation) would surely avoid crippling this dynamo. This widespread assumption calls to mind the famous quip of Chris Patten, last British Governor of Hong Kong, who paraphrased those who dismissed his concerns about the potentially negative effects of a Chinese take-over of the British colony in 1997, as follows: “It is unimaginable that the Chinese would kill such a goose.” To this, Patten responded, “Yet we wouldn’t need the metaphor of golden eggs and geese if history weren’t full of dead geese.”<sup>32</sup> The dangers of regulation to the health of the Internet are real, but the ease with which government could disrupt the economic motor of the Internet (advertising) is not widely understood—and therein lies the true danger in this debate.

Even less appreciated is the connection among online advertising, the marketplace for online information, and vibrant freedom of speech and expression. Every Web 2.0 website, discussion board, social networking site, user-generated content community, free e-mail or blogging service, and so on, owes its very existence to the mother’s milk of the Internet innovation—online advertising. The Internet has given every man, woman, and child a soapbox to stand on to preach to the world and to communicate with the masses and close friends alike—but that soapbox is funded by ad dollars. This is the “long tail” of Internet publishing and creativity.<sup>33</sup>

Importantly, advertising itself is an important type of speech that communicates relevant information to consumers. As Nobel laureate economist George Stigler pointed out in his now

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30. Comments of the Interactive Advertising Bureau on Online Behavioral Advertising Proposed Principles, at 4, April 11, 2008, [www.ftc.gov/os/comments/behavioraladprinciples/080411interactiveadbureau.pdf](http://www.ftc.gov/os/comments/behavioraladprinciples/080411interactiveadbureau.pdf)

31. *Id.*

32. Tom Plate, “Hong Kong ‘Will Remain Very Much Alone’ After 1997,” *The Standard*, Jan. 7, 1996, [http://www.thestandard.com.hk/archive\\_news\\_detail.asp?pp\\_cat=&art\\_id=20783&sid=&con\\_type=1&archive\\_d\\_str=19960107](http://www.thestandard.com.hk/archive_news_detail.asp?pp_cat=&art_id=20783&sid=&con_type=1&archive_d_str=19960107)

33. See Randall Rothenberg, “Small Publishers Unite! You Have Nothing to Save but Your Business,” *IAB Blog*, June 26, 2008, <http://www.iab.net/iablog/2008/06/small-publishers-unite-you-hav.html>



legendary 1961 article on the economics of information, advertising is “an immensely powerful instrument for the elimination of ignorance.”<sup>34</sup> And as advertising expert John E. Calfee has argued, “advertising has an unsuspected power to improve consumer welfare” since it “is an efficient and sometimes irreplaceable mechanism for bringing consumers information that would otherwise languish on the sidelines.”<sup>35</sup> More importantly, Calfee argues:

Advertising’s promise of more and better information also generates ripple effects in the market. These include enhanced incentives to create new information and develop better products. Theoretical and empirical research has demonstrated what generations of astute observers had known intuitively, that markets with advertising are far superior to markets without advertising.<sup>36</sup>

These observations are even more relevant to the online marketplace, where advertising has been shown to be the only business model with any real staying power. Walled gardens, pay-per-view, micropayments, and subscription-based business models are all languishing. Consequently, *the overall health of the Internet economy and the aggregate amount of information and speech that can be supported online are fundamentally tied up with the question of whether we allow the online advertising marketplace to evolve in an efficient, dynamic fashion.* Heavy-handed privacy regulation (or co-regulation) could, therefore, become the equivalent of a disastrous industrial policy for the Internet that chokes off the resources needed to fuel e-commerce and online free speech going forward.

At the same time, however, some consumers are concerned about how information about them might be used to create more tailored online advertising messages. The ideal state of affairs would be to create a system of tools and data disclosure practices that would empower each user to implement their personal privacy preferences while also recognizing the freedom of those who rely on advertising revenues to “condition the use of their products and services on disclosure of information”<sup>37</sup>—not to mention the viewing of ads!

Self-regulatory efforts can be refined, especially through technological innovation to better satisfy the concerns of policymakers, privacy advocates, and average consumers. For example, if websites and ad networks participating in a self-regulatory framework supplemented their current “natural language” privacy policies with equivalent “machine-readable” code, that data could be “read” by browser tools that would implement pre-specified user preferences by blocking the collection of information depending on whether the privacy policies of certain websites or ad networks met the user’s preferences about data-use.<sup>38</sup> Such robust and

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34. George Stigler, “The Economics of Information,” *Journal of Political Economy*, Vol. 69, No. 3, June 1961, pp. 213.

35. John E. Calfee, *Fear of Persuasion: A New Perspective on Advertising and Regulation* (Monnaz, Switzerland: Agora Association, 1997), p. 96.

36. *Id.*

37. Harbour Statement at 8.

38. Such a protocol for machine readable privacy code already exists: the Platform for Privacy Preferences (P3P) project. See <http://www.w3.org/P3P/>

granular disclosure, if implemented for behavioral advertising, would exceed the wildest dreams of those who argue that users currently do not read privacy policies—without disrupting the browsing experience or cluttering websites. But this system would only work if users had to make *real* choices about “pay[ing] for ‘free’ content and services by disclosing their personal information.”<sup>39</sup>

Truly privacy sensitive users should be free to opt out of whatever tracking they find objectionable—but not without a cost: The less data they agree to share, the less content and services they can fairly expect to receive for free. Concretely, this means that they might not be able to access certain sites, content, or functionality without watching extra (untargeted ads), or paying for that content or service (assuming such a micropayment model can be worked out). Of course, there will always be ways to “cheat” in such a system, but Commissioner Harbour is exactly right on one point: Each content creator and service provider must be “free to strike whatever balance it deems appropriate.”<sup>40</sup> This freedom is vital to the Internet’s future because the easier we make it for some users to get “something for nothing,” the smaller will be the economic base for the content and services everyone else takes for granted. Again, there is no free lunch.

### Related PFF Publications

- *Online Advertising & User Privacy: Principles to Guide the Debate*, Berin Szoka & Adam Thierer, Progress Snapshot 4.19, September 2008.
- *Parental Controls and Online Child Protection: A Survey of Tools and Methods*, Adam Thierer, *Special Report*, Version 3.1, Fall 2008.
- *Privacy Solutions*, Adam Thierer & Berin Szoka, Ongoing Series, PFF Blog.
- *Freedom of Speech & Information Privacy: The Troubling Implications of a Right to Stop People from Talking About You*, Eugene Volokh, Progress on Point 7.15, Oct. 2000.
- *Writ of Certiorari of PFF*, Amicus Brief, U.S. Supreme Court in the matter of *Trans Union v. FTC*, by Randy May, February 22, 2002.
- *Privacy and the Commercial Use of Personal Information*, Thomas Lenard & Paul Rubin, 2002.

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39. Harbour Statement at 1.

40. Harbour Statement at 8.