

Who Is Watching You?

Updates in Online Behavioral Advertising and Privacy

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Today's Topics

- Behavioral advertising – what is it and how is it being used?
- The current US regime
 - Self-regulatory updates
 - White House Privacy Report
- International issues
 - European Union



Behavioral Advertising – What Is It?

■ Online behavioral advertising

- “[T]he collection of data from a particular computer or device regarding Web viewing behaviors over time and across non-Affiliate Web sites for the purpose of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors. Online Behavioral Advertising does not include the activities of First Parties, Ad Delivery or Ad Reporting, or contextual advertising (i.e. advertising based on the content of the Web page being visited, a consumer’s current visit to a Web page, or a search query).”

DAA Self-Regulatory Principles for Online Behavioral Advertising

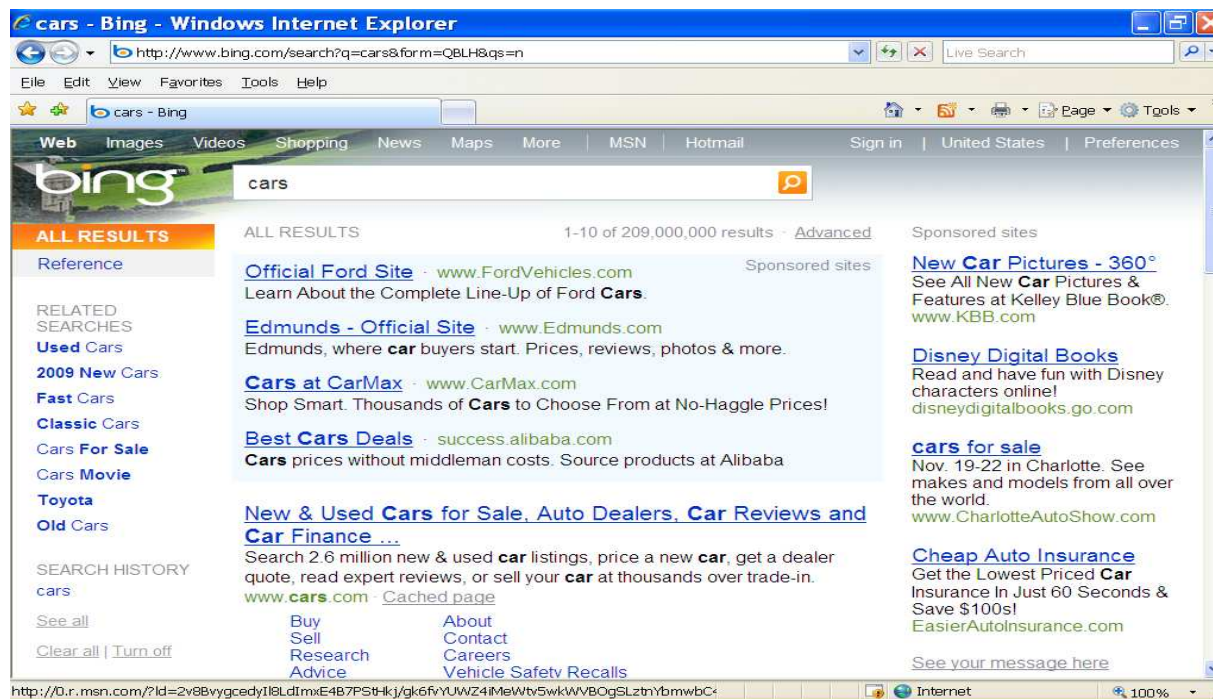
- Also called interest based advertising and online tracking



Behavioral Advertising Is Not...

■ Contextual advertising

- When a search engine displays an ad triggered by search terms entered by a consumer

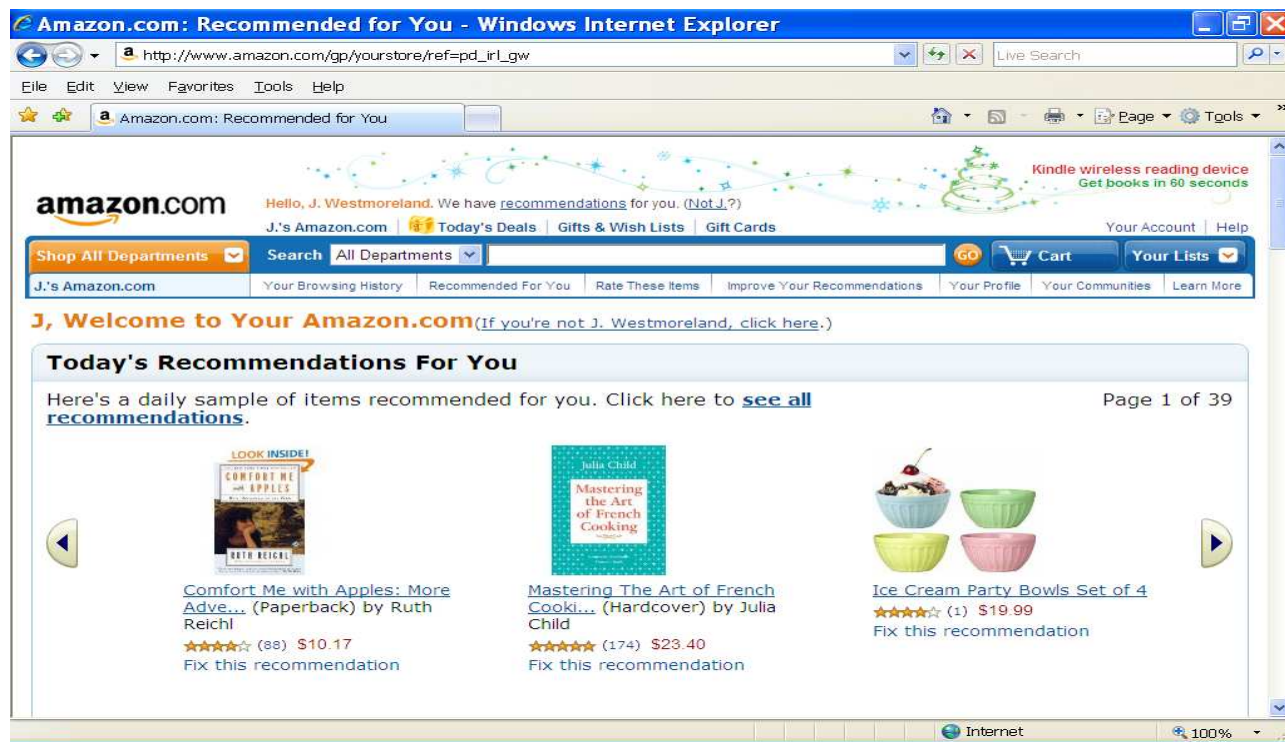


Behavioral Advertising Is Not...

(continued)

■ First-party advertising

- Tracking consumers' online activities by, or at, a single website. For example, Amazon.com provides recommendations based on previous purchases

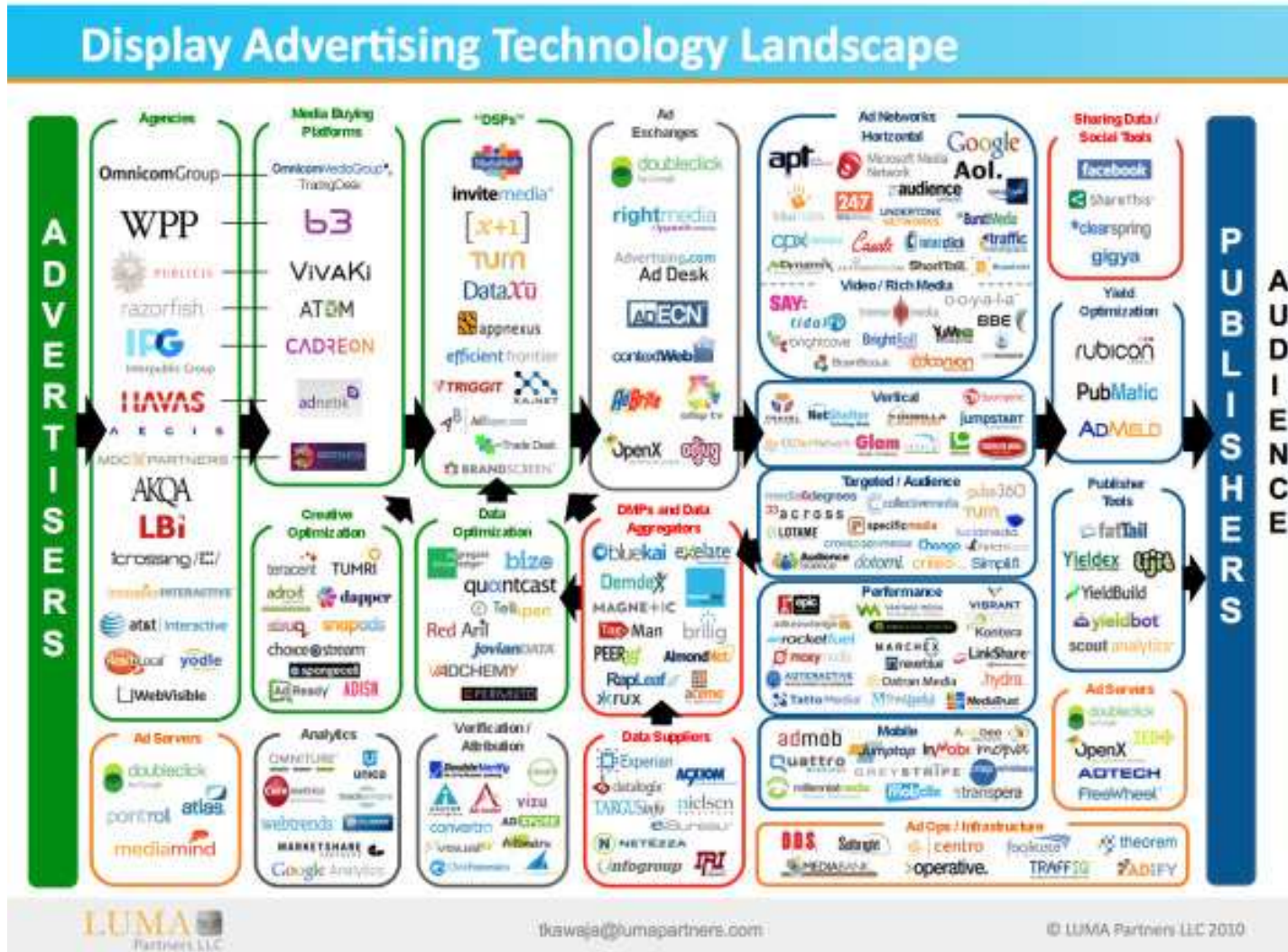


The screenshot shows a Windows Internet Explorer browser window displaying the Amazon.com website. The address bar shows the URL: http://www.amazon.com/gp/yourstore/ref=pd_irl_gw. The page title is "Amazon.com: Recommended for You". The main content area is titled "Today's Recommendations For You" and features three product recommendations:

- Comfort Me with Apples: More Adventure...** (Paperback) by Ruth Reichl. Price: \$10.17. Rating: 4.5 stars (88 reviews).
- Mastering The Art of French Cooking** (Hardcover) by Julia Child. Price: \$23.40. Rating: 4.8 stars (174 reviews).
- Ice Cream Party Bowls Set of 4**. Price: \$19.99. Rating: 4.5 stars (1 review).

Each recommendation includes a "Fix this recommendation" link. The page also includes a search bar, navigation links, and a "Kindle wireless reading device" promotion.

Data and Technology Landscape



Forms of Online Behavioral Advertising

- Vary in complexity, from simple to sophisticated
 - Depends on how much data is collected, from how many different sources, how it is analyzed, merged with other data, and used to display an ad

 - “Simple” OBA – Retargeting
 - Customer browsing/shopping activity on an advertiser’s site is used to “retarget” ads to those customers after they leave the site – “reminder” ads of products they looked at, etc.

 - “Sophisticated” OBA – User Profiles
 - Use of data profiles to identify particular user/devices’ past interests/activity and select relevant ads
 - Can be combined with offline data obtained through data providers



Self-Regulation

Digital Advertising Alliance

- OBA guidelines require:
 - Notice to consumers when behavioral information is collected or used
 - Opportunity to opt out of having tailored ads delivered
 - Opt-out that lasts 5 years
- Compliance monitored by BBB and DMA; both provide consumer complaint mechanism
- Guidelines for use of Multi-Site Data



Self-Regulation

(continued)

- DAA announced web browser companies will agree to comply when consumers use existing web browser features to opt-out of behavioral advertising
- DAA Managing Director said organization is working on mobile behavioral advertising guidelines
- DAA launches first phase of consumer education campaign



Who Must Comply?

- Who does this impact?
 - “First Parties”: website publishers / operators;
 - “Third Parties”: advertising networks and data companies (including ad exchanges and data aggregators) and in some cases advertisers; and
 - “Service Providers”: internet access provider, search engine, Web tool bar, browser, or other service that enables the provider to have access to all or substantially all URLs accessed by its users, that in the course of its activities as such a provider, collects and uses such user data for OBA.



Self-Regulatory Enforcement

- November 2011: BBB announces six enforcement actions
- Network advertising initiative
 - Issues annual compliance report, but does not name companies that are non-compliant
 - No mechanism for consumer complaints



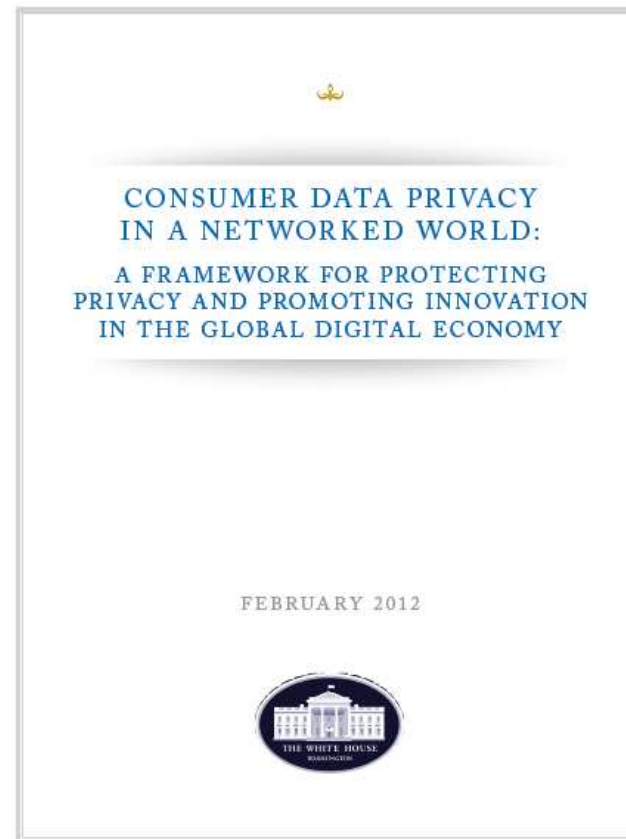
Self-Regulation + Existing Laws

- Legislation and regulation are still developing
 - Federal and state Do Not Track bills
 - 2012 White House Consumer Privacy Bill of Rights and voluntary codes of conduct (to be developed)
 - Self-regulatory program still in its infancy
 - Proposed changes to COPPA Rule
 - New mobile app privacy guidelines
 - California Attorney General settlement with mobile app providers
- Technology continues to develop faster than the law
- Browser-based “Do Not Track” functionality
 - a/k/a “Browser-based choice mechanism”
 - Now enabled (or committed to) by Mozilla, Microsoft, Apple, Google
 - DAA will incorporate browser-based do not track choices
 - Details remain to be fleshed out
 - W3C also exploring



White House Privacy Report

- February 23, 2012: White House releases Consumer Privacy Bill of Rights
 - Convene stakeholders to create codes of conduct
 - Enact new federal legislation
 - Align US privacy approach more closely with EU approach

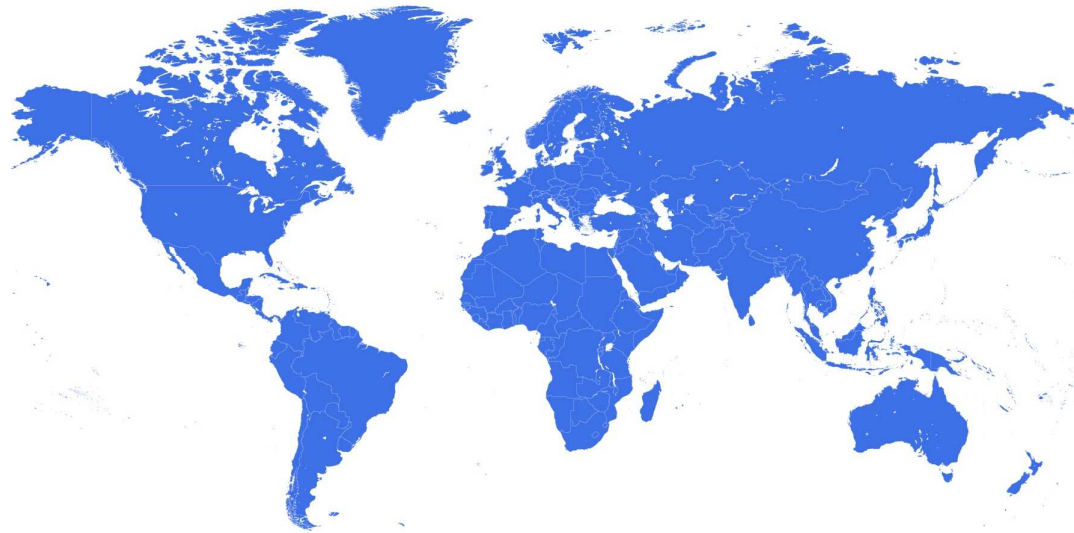


Consumer Privacy Bill of Rights

- **Individual Control:** Right to exercise control over what personal data organizations collect from them and how they use it
- **Transparency:** Right to easily understandable information about privacy and security practices
- **Respect for Context:** Right to expect that organizations will collect, use, and disclose personal data in ways that are consistent with the context in which consumers provide the data
- **Security:** Right to secure and responsible handling of personal data
- **Access and Accuracy:** Right to access and correct personal data in usable formats, as appropriate based on sensitivity of the data and risk of adverse consequences from inaccuracy
- **Focused Collection:** Right to reasonable limits on the personal data that companies collect and retain
- **Accountability:** Right to have personal data handled by companies with appropriate measures in place to assure they adhere to the Consumer Privacy Bill of Rights



International Issues



- EU proposes overhaul of EU-wide privacy law
- EU Cookie Directive
 - Compliance required by May 26, 2012
- Canada issues OBA guidelines



The EU Cookie Directive

- EU Cookie Directive requires website operators to obtain express consent before placing a cookie on a user's device
 - There is an exception to the requirement to provide information about cookies and obtain consent where the use of the cookie is:
 - (a) for the sole purpose of carrying out the transmission of a communication over an electronic communications network; or
 - (b) where such storage or access is strictly necessary for the provision of an information society service requested by the subscriber or user.

- Took effect May 2011

- UK Information Commissioner's Office (ICO) stated it would not enforce until May 2012



The EU Cookie Directive

- The UK ICO issued guidelines for complying with the cookie directive:
 - “The Regulations require that users or subscribers consent. [The Data Protection Directive] defines ‘the data subject’s consent’ as: ‘any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed’. Consent must involve some form of communication where the individual knowingly indicates their acceptance. This may involve clicking an icon, sending an email or subscribing to a service. The crucial consideration is that the individual must fully understand that by the action in question they will be giving consent.”
 - The method of consent a website operator decides to use depends on (1) what kind of cookies are being used, and (2) the website’s relationship with its users.
 - Regarding third party cookies: “This is one of the most challenging areas in which to achieve compliance with the rules.”



Proposed Overhaul of EU Privacy Laws

- Single set of privacy standards would apply in all 27 EU countries
- Consent, when required, must be explicitly given
- Would apply to non-EU based companies "that are active in the EU market and offer their services to EU citizens"
- Fines of up to 1 million Euros or 2% of global income for serious offenses
- Individuals would have the "right to be forgotten"
- Would require "privacy by default" and transparent, easily accessible data policies
- Standardized security breach notification requirement would apply to all companies



Mobile Issues

- Types of data collection:
 - Collecting personal information (such as name, age, interests, type of device) from a mobile device through an app or through the mobile operating system
 - Tracking a consumer’s activities when he/she uses a mobile device to access websites
 - Collecting location information
- Frequently in the headlines
 - Apple and Android apps reportedly copy address books and photos
 - Carrier IQ reportedly tracks location
- Congressional hearings, requests for FTC investigations, new bills, class action lawsuits
- California Attorney General “Joint Statement of Principles”
 - Agreement with Mobile App Market Companies (Apple, Google, H-P, Microsoft, Amazon, RIM)
- Mobile Marketing Association (MMA) mobile app privacy guidelines



Resources

- **DAA Self-Regulatory Guidelines**
<http://www.aboutads.info/principles>
- **NAI Self-Regulatory Guidelines**
<http://networkadvertising.org/Principles.pdf>
- **DMA Guidelines**
<http://www.dmaresponsibility.org/guidelines/>
- **BBB Online Interest Based Advertising Compliance**
<http://www.bbb.org/us/interest-based-advertising/>
- **MMA Guidelines**
<http://mmaglobal.com/policies/education>
- **California AG Joint Statement of Principles (mobile apps)**
http://ag.ca.gov/cms_attachments/press/pdfs/n2630_signed_agreement.pdf



Resources

(continued)

- **White House Consumer Privacy Bill of Rights**
<http://www.whitehouse.gov/sites/default/files/privacy-final.pdf>
- **NTIA Codes of Conduct**
<http://www.ntia.doc.gov/federal-register-notice/2012/multistakeholder-process-develop-consumer-data-privacy-codes-conduct>
- **Canadian OBA Guidelines**
http://www.priv.gc.ca/information/guide/2011/gl_ba_1112_e.cfm#contenttop
- **EU Proposed Amendments to Data Protection Directive**
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/46&format=HTML&aged=0&language=EN&guiLanguage=en>
- **UK Compliance with Cookie Directive**
http://www.ico.gov.uk/news/current_topics/new_pecr_rules.aspx

