



TELECOMMUNICATIONS

SNAP UPdateSM

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DEVELOPMENTS SHAPING THE INTERNET

“OPT-IN” WEB TRACKING

Washington, DC: For some time, companies like Google and Yahoo have been tracking consumer searches on their own sites “to tailor advertisements to their interests.” Recently, however, the problem has grown as third-party advertising companies have teamed up with phone or cable Internet carriers to track user activities on the Internet more generally.

Congressman Joe Barton (R-TX) and Congressman Edward Markey (D-MA) believe that this automatic tracking process violates the public’s right to privacy. To address this concern, they have proposed an “opt-in” program which would allow consumers to choose whether they want to have their data logged to receive customized advertising.

Some lawmakers and privacy advocates are calling for even more regulation because these tracking practices “give ad companies unprecedented access to every move a person makes on the Internet.” Privacy advocates also argue that current data collection practices constitute illegal wiretapping because they allow the tracking party to intercept and acquire information without the express consent of the user.

Advertisers like Robert Dykes, CEO of NebuAD, disagree, arguing that “his company’s data doesn’t contain personally identifiable information” because it scrambles IP addresses. He also claims that NebuAD already allows consumers to “opt-out” of data tracking.

The House bill would only allow tracking on an “opt-in” basis. Representative Barton said: “I’m appreciative of their need to have a business model that allows them to have a product they can sell [but] they’re selling

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information about people who use the cable system ... I think it's my right to say whether I want to be part of that data collection. A lot of people would say 'yes.'"

Specific legislation has yet to be offered to address this issue.

PRIORITIZING WEB APPLICATIONS

In a series of recent complaints, consumer advocacy groups and small companies have alleged that "Comcast's traffic-shaping techniques" violate a September 2005 FCC policy statement prohibiting ISPs from discriminating in the priority given to different types of content or applications. This policy statement is consistent with long-standing FCC policy prohibiting telephone companies from deciding which phone calls to put through.

In response, FCC Chairman Kevin Martin has stated that cable operators must stop "prioritizing certain applications that tend to use a lot of bandwidth ... [concluding that this] is not a reasonable network management practice." Chairman Martin has urged that "Comcast change the practice within a reasonable time frame" and as it moves to new network practices that those

practices be disclosed to the FCC and consumers.

Comcast said that if Martin's proposal is approved, it will challenge it. A Comcast spokeswoman said: "You can't enforce this because there aren't any rules. It violates all sorts of due process in the way you are supposed to create rules." Comcast also argues that the policy referenced in the FCC complaints is not legally binding.

Martin said that he was aware of Comcast's concerns and that was one of the reasons he did not propose a fine. He also stated that if his proposal is implemented it could set important network precedents to discourage other companies from engaging in Comcast's current traffic-shaping techniques.

The proposal is scheduled to come to a vote on August 1. Some observers believe that the wording of any FCC order will be modified to be much narrower in scope.

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