

CMOR

Promoting and Advocating Survey and Opinion Research

February 11, 2008

By email: BehavioralMarketingPrinciples@ftc.gov

Donald S. Clark
Secretary
Federal Trade Commission
Room H-135 (Annex N)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Behavioral Advertising Self-Regulatory Guidelines

Dear Secretary Clark,

CMOR is a non-profit trade association representing the entire survey and opinion research profession, including government agencies, academic institutions, opinion researchers, pollsters, market researchers, large client companies, small data collectors and other associations. We work to improve respondent¹ cooperation, promote respondent privacy and advocate for survey and opinion research in law, regulation and legislation.

CMOR pursues investigations into abuses of the research process and actively participates in consumer awareness campaigns. We seek to protect researchers' access to information, while balancing the need for information with the privacy rights of the public.

CMOR would like to thank the Federal Trade Commission (FTC) for hosting the "Behavioral Advertising: Tracking, Targeting and Technology" Town Hall in November 2007, and for having a member of CMOR's Online Subcommittee, George Pappachen of [Safecount](#), presenting on a panel. Following that Town Hall, the Commission requested comments on the [Proposed Online Behavioral Advertising Self-Regulatory Principles](#) (issued on December 20, 2007).

As an organization dedicated to protecting consumer privacy, CMOR supports most of the concepts and goals underpinning the FTC's principles.

¹ The survey and opinion research profession refers to participants in research as "respondents".

Data Security

For instance, CMOR shares the FTC's concerns about adequate and reasonable data security measures. The survey and opinion research profession is unlike most businesses that collect data in support of their businesses or in order to make their businesses work. The collection and analysis of data is the business of the survey and opinion research profession. Therefore, data privacy is the cornerstone of the survey and opinion research profession.

No research companies or organizations are known to have suffered a data breach and CMOR works to maintain this record. However, every new data security breach makes respondents more wary of research participation – even though research firms and organizations are not the culprits. Every contact with respondents is therefore an opportunity to reinforce the confidential nature of the research process.

Defining Behavioral Tracking

Unfortunately CMOR feels that, as currently drafted, much of the FTC's specific proposals for self-regulation of online behavioral tracking could have significant negative consequences for the survey and opinion research profession, and strangle many possible new methods of research – methods that could better serve consumer choice and privacy than current methods – before they've even been conceived.

While leaving arguments about the economic contributions of the Internet and information technology to other commentators, CMOR notes that research is a multi-million driver of the private economy – and that U.S. government agencies like the FTC are, as a group, the single largest purchaser/user of research from the survey and opinion research profession. CMOR also notes that online behavioral tracking could be a form of research particularly well-suited to the needs of non-profit entities, political activists, and for-profit businesses that are small or serve niche markets and interests. These parties have an even greater need than most to drill down to small, difficult-to-pinpoint segments of the population. Such research could have profoundly positive benefits for consumers and citizens and such public good is worth preserving.

Thus, CMOR would prefer to see the FTC flesh out and clarify its admittedly “broad definition” of behavioral advertising, because as currently conceived it could include and restrict behavioral tracking for legitimate research purposes.

The FTC staff statement explains this vague term to mean “the tracking of a consumer's activities online – including the searches the consumer has conducted, the web pages visited, and the content viewed – in order to deliver advertising targeted to the individual consumer's interests.”

CMOR would like to see this definition expanded to differentiate research purposes from commercial/sales purposes. The FTC's definition appears so broad that it could encompass virtually any collection and use of information about individuals' online behavior, no matter what the purpose. While federal laws tend to restrict data collection and usage for commercial purposes, this would inevitably constrict data collection and usage for purely research or informational purposes.

Research is different

As part of the research process, survey and opinion researchers regularly gather information about respondents' attitudes, opinions, and behaviors. Researchers often seek demographic information to help define the interest that the sample is likely to have in the product, service, or issue being studied. This information is not normally looked at by individual answers. Instead, each person's answers are combined with those of many others reported as a group to the client who requested the survey. Moreover, most research companies destroy individual data records at the end of the study, and names and contact information of participants are separated from the answers if additional tabulation of the results is done. Again, all of the personally identifiable records are usually destroyed after the study is completed or the validation check has been made, and all of a respondent's personally identifiable information is kept strictly confidential.

In fact, professional research association codes and standards generally prohibit the sharing or use of respondents' personally identifiable information (PII) for direct marketing/sales purposes, when such PII is collected in a research context. For instance, the Marketing Research Association code includes the following requirement: "Information will not be revealed that could be used to identify respondents." In addition, research association codes prohibit sales or fundraising under the guise of research (referred to as "sugging" and "frugging").

While online behavioral tracking may be conducted by research firms and organizations, it would be for aggregating groups and segments of the online population, not targeting specific individuals.

Do Not Track

In conjunction with the FTC's Town Hall group of U.S. privacy organizations demanded in late 2007 that the FTC set up a Do Not Track registry that would let consumers explore the Internet shielded from behavioral tracking. Registry advocates have compared it to the national Do Not Call Registry, but compiling and applying the list would be exceptionally difficult and registry compliance would be prohibitively expensive.

As in the FTC staff statement's overly vague definition of online behavioral advertising, the proposed Do Not Track Registry would make no useful distinction between tracking data collected for research, transactional, political, governmental, or commercial/sales purposes. Such distinctions are the cornerstone of the extremely popular Do Not Call

Registry, which shields consumers who so request shielding from unrequested telemarketing telephone calls, while allowing calls for survey/opinion purposes.

And, as always, the ultimate costs would hit the general public, including the cost of less available market, behavioral and public opinion research information on which so many decisions are made.

The Way Forward: Self-regulation

Leading research practices widely adopted by members of various research associations are the best way to produce effective research while safeguarding respondents' privacy. In addition to the many best practice guidelines promulgated by CMOR, effective self-regulation can be seen in the codes and standards of research associations that are members of CMOR, like the Interactive Marketing Research Organization (IMRO), American Association of Public Opinion Research (AAPOR), Marketing Research Association (MRA). As well, long-standing privacy seal programs like TRUSTe and BBBOnline, and innovation on the part of advertising groups like the Interactive Advertising Bureau (IAB) and the Network Advertising Initiative (NAI), demonstrate a keen commitment to transparency and consumer choice in the private sector.

Unlike government legislation and regulation, professional codes and standards are developed by the practitioners themselves, flexible in the face of technological and business innovation, and easier to improve and perfect over time.

As recently stated by Josh Chasin, Chief Research Officer for the research firm ComScore, researchers must "push the limits of data mining and data base integration and artificial intelligence, in the interest of deploying information technology to meet the needs of people. At the same time, it is incumbent upon us to zealously guard the privacy of the consumers whose lives we touch, even tangentially. I do not believe these two goals are paradoxical." Unfortunately, initial statements from the FTC and some privacy organizations appear to reflect the false assumption that the goals cannot be met at the same time.

Conclusion

According to the FTC staff statement, the "FTC's privacy program seeks to balance support for such innovation with the need to protect against harms to consumers' privacy." In the current situation, the FTC has demonstrated no harm from behavioral tracking for research purposes, nor any true deficiencies in current self-regulatory structures and strictures. However, we appreciate the Commission's efforts and its' interests in bringing together all parties for constructive discussion.

We respectfully ask that any definition of behavioral tracking exclude survey, opinion and marketing research.

CMOR will be working with the FTC, information technology entrepreneurs, privacy advocates, statisticians, and the entire survey and opinion research profession to drive public knowledge and understanding, innovation, consumer choice, and consumer privacy ever forward.

Sincerely,

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