

Global Data Privacy and Security Team

WE ARE TRACKING YOU: What Legal Departments Need to Know About Online Behavioral Advertising At A Glance

Behavioral advertising refers to the use of information to predict the types of products or services of greatest interest to a particular consumer. Online behavioral advertising takes two forms. “First party” behavioral advertising refers to situations in which a website uses information that it obtains when interacting with a visitor. “Third party” behavioral advertising refers to situations in which a company permits others to place tracking cookies on the computers of people who visit the site, so that those individuals can be monitored across a behavioral advertising network.

Two self-regulatory associations – the Network Advertising Initiative (“NAI”) and the Digital Advertising Alliance (“DAA”) – have focused on creating standards for companies engaged in third party online behavioral advertising, as well as promoting mechanisms for consumers to opt-out of being tracked. In addition to the self-regulatory effort, on January 1, 2014, a California statute went into effect that could be interpreted as requiring websites to notify consumers if they permit third party behavioral advertising.

Bryan Cave’s Global Data Privacy and Security Team helps clients safely collect, utilize, transfer, and monetize data.

For more Information Contact:

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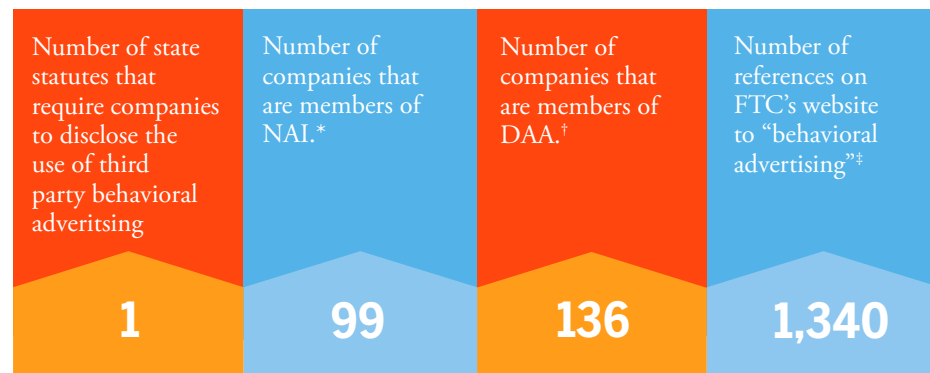
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The number of cookies placed by the top 5 retailers.§

*Companies listed on <http://www.networkadvertising.org> as of December 2014.

†Companies listed on aboutads.info/participants as of December 2014.

‡Based upon google search restricted to FTC.gov conducted on June 22, 2015.

§Top 5 Retailers as identified by the National Retail Federation. Quantity of cookies identified by Ghostery on retailer home page on June 22, 2015.

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What to think about when evaluating your company’s online behavioral advertising practices:

- ✓ Does your privacy policy comply with state law requirements concerning the disclosure of first-party online behavioral advertising practices?
- ✓ Does your privacy policy comply with state law requirements concerning the disclosure of third-party online behavioral advertising practices?
- ✓ Does your organization state or imply that it only permits behavioral advertisers to use its website if those advertisers utilize the opt-out mechanisms of NAI and/or DAA?
- ✓ If so, do all of the behavioral advertisers that you permit to use your website permit opt-out via the NAI and/or DAA mechanisms?
- ✓ Who within your organization has the authority to permit third parties to place cookies on your website?
- ✓ Has Legal reviewed the contracts with each behavioral advertiser with whom you have a relationship to verify that their privacy practices comply with law and with the standards of your organization?
- ✓ Have you audited the cookies that are placed, or tracked, on your website?
- ✓ Have you verified the accuracy of the description of behavioral advertising contained on your website?