Chapter VI

Privacy and the Internet: The Case of DoubleClick, Inc.

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With growing frequency, information about how you use the Web—the sites you visit, search terms and other queries you make, online purchases, “click through” responses to advertisements—is being captured by advertising networks or “profiling companies.” With the permission of the Web site, but not your permission, these companies place a tag on your computer. This tag—or identifier—is then used to track your movements as you surf the Web. In addition to long lists of collected information, a profile may contain “inferential” or “psychographic” data—information that the company infers about you based on your surfing habits. From this amassed data, elaborate inferences may be drawn, including your interests, habits, associations and other traits.

- The Center for Democracy and Technology (CDT, 2000)

INTRODUCTION

With the advent of the Internet, a number of issues have surfaced that are affecting our society positively, negatively and confusingly at breakneck speeds. The issues surrounding an individual’s right to privacy on the Internet are one such example. Affording an individual a right to privacy is most definitely a unique right preserving the quality of the Constitution of the United States. Certainly the Internet has blurred an already gray line that courts have fought hard and long to preserve and define over the past 225 years.

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Once it was thought that one could not legally invade another person’s privacy without a specific consenting act on the part of the invaded party, barring court order. However, since the Internet has come into common use, the question now comes before us, “Is access to the Internet an act of giving up one’s right to privacy?” or “Are we still afforded the same rights to privacy as traditionally held?” Surely, these questions are not answered simply and, in fact, approach so many different levels that the questions themselves does not even accurately frame the issue. Instead, the stage is still forming and the actors are just coming forward. The discussion in this chapter merely attempts to better define some of the blurry issues, bringing us closer to an understanding of how this new technology should fit into our traditional beliefs in a right to privacy.

The Internet has become a new locus for social interaction and communication on a global basis. The Internet by its nature is decentralized, open and interactive. It allows users to publish information, engage in commerce, communicate, research and even interact on levels only previously imagined in private and intimate settings. There are no barriers to geography, society and political community. As the Internet continues to grow and allows for fully integrated voice, data and video transfer at optimal rates of speed, it will quite literally become a virtual face-to-face social, commercial and political environment.

As for today, the Internet exists within social, technological and political arenas. The technology is progressing to a point where entities can gain access to information at their every whim. Implementation of such technological advances raises significant concern by all involved. Assuredly, everyone that interacts with the Internet has concerns of privacy. Whether it is a government that worries about national security, a bank that worries about financial record accuracy, a business that worries about balancing economic potential with anticompetition impulses or an individual sitting at home desiring to maintain anonymity while e-shopping, the concerns about privacy on the Internet are pervasive and remain unanswered.

As a result of all the technological advances, individuals and entities around the nation and across the globe are organizing efforts to understand and generate some kind of context in which to protect privacy. Governments are struggling to identify their role in this new environment, businesses are under pressure to be aware of certain limitations, and individuals are rushing to maintain their protections. As a result, we have a dynamic combination of governmental solutions, business solutions, industry solutions, advocate solutions and individual user solutions. It is difficult to make sense of these different efforts to solve a common problem and even more difficult to combine them for a focused solution. What’s more, the future for protection of privacy on the Internet is completely uncharted and reveals an unwritten chapter in this nation’s history. One thing is certain: The various constituencies that make up the Internet are all pushing toward new technologies and rules that provide greater control over information and privacy.

The following discussion takes a close look at DoubleClick and how they have experienced conflict and legal battles as they have apparently attempted to push the limits on an individual’s right to privacy. In order to gain a better perspective on
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